

## **The global Magnitsky landscape**

### **Introduction**

- 3.1 Targeted sanctions regimes have been enacted in a number of jurisdictions around the world.
- 3.2 This Chapter will first examine the United States targeted sanctions legislation, including the background of Sergei Magnitsky.
- 3.3 It will then review various Magnitsky-style Acts in other countries, as well as providing a brief overview of methods used by other states or international bodies to sanction human rights abusers.
- 3.4 This Chapter looks at aspects of these United States, Canadian and United Kingdom Acts, comparing and contrasting the various pieces of legislation.
- 3.5 These pieces of legislation, from countries with legal systems similar to the Australian legal system, provide examples of how Australia could approach the introduction of targeted sanctions, and how that might contribute to global efforts to combat human rights abuse and corruption.

### **What are ‘Magnitsky’ sanctions or targeted sanctions?**

- 3.6 The use of sanctions for diplomatic and other purposes is a well-established aspect of statecraft. It was argued that the traditional focus of sanctions has been on sanctioning states, and until recently there has been

little focus on sanctioning individuals.<sup>1</sup> It was suggested to the inquiry that this been the case with Australia's current sanctions regime.<sup>2</sup>

- 3.7 Mr Geoffrey Robertson AO QC observed that although human rights abuses can be listed as designating criteria for sanctioning, under Australia's current regime, there is little scope for sanctioning an individual for corruption.<sup>3</sup>
- 3.8 'Magnitsky' sanctions, or targeted sanctions, differ from older sanction regimes in that they are expressly created to sanction individuals who are responsible for human right abuses and serious corruption within their own countries.<sup>4</sup> These sanctions take the form of travel bans that restrict a sanctioned person from entering a country, and the freezing or seizure of financial assets held by that person within a sanctioning country.<sup>5</sup>
- 3.9 The aim of these sanctions is primarily to act as a deterrent – by reducing the opportunity to enjoy 'ill-gotten gains' with impunity. Sanctions limit the ability for human rights abusers or those benefitting from corruption to enjoy the profits or proceeds internationally, by limiting travel and investment in real estate, and access to high quality education and healthcare systems.
- In the age of know your customer, no bank is going to give facilities to a potential customer who's on a Magnitsky list, and social media is going to report it. A Google search means that a Magnitsky listing, naming, blaming and shaming, is going to be feared by wrongdoers, and it may deter them from doing wrong. It may deter them, it's logical to believe, from becoming complicit in human rights abuses.<sup>6</sup>
- 3.10 The transparency aspects of targeted sanctions may involve publicly identifying a 'watchlist' of individuals being considered for sanctioning, as well as publishing a list of those who have been sanctioned, including the reasons for the sanctions. This combination serves to 'name and shame' and can also alert banks or other institutions that may otherwise do business with or facilitate transactions of sanctioned individuals. As Professor Cotler of the Raoul Wallenberg Centre for Human rights observed:

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1 Name withheld, *Submission 57*, p. 1.

2 Name withheld, *Submission 57*, p. 1.

3 Mr Geoffrey Robertson AO QC, 'Why Australia needs a Magnitsky law', *Australian Quarterly*, Oct-Dec 2018, p. 24.

4 Law Council of Australia, *Submission 99*, p. 7.

5 Mr Vladimir Kara-Murza, Vice-President, Free Russia Foundation, *Committee Hansard*, Canberra, 15 May 2020, p. 1.

6 Mr Geoffrey Robertson AO QC, *Committee Hansard*, Canberra, 15 May 2020, p. 40.

...such legislation operates not only to name and shame the human rights violators abroad, not only to impose travel bans or freeze their assets, not only to prevent such violators sending their children to schools abroad et cetera but it operates so as to exercise serious reputational damage and thereby deter others who might engage in the same kinds of violations ... sometimes the very threat of sanctions, even without them being imposed, can achieve their desired effect. This occurred with regard to Mohamed Nasheed, the President of the Maldives. When the UN Working Group on Arbitrary Detention declared his detention illegal and arbitrary, the very threat of sanctions brought about his release and achieved its desired purpose.<sup>7</sup>

## The origins of the United States targeted sanctions legislation

- 3.11 In 1996, American financier William Browder moved to Russia and created an investment fund called Hermitage Capital. This fund grew to become the largest investment fund in Russia.<sup>8</sup>
- 3.12 In the case of his fund operations, Mr Browder uncovered various acts of corruption relating to previously state owned assets in Russia. Mr Browder engaged in 'naming and shaming' the people involved in this corruption in the international press.<sup>9</sup>
- 3.13 By late 2005, Mr Browder had been expelled from Russia. Eighteen months after this, Hermitage Capital's offices, and the offices of the law firm representing Hermitage Capital, were raided by Russian police and documents relating to the ownership of various investment holding companies were seized.<sup>10</sup>
- 3.14 Soon after this, Mr Browder discovered that ownership of these investment holding companies had been re-registered into the names of

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7 Professor Irwin Cotler, Chair and Founder, Raoul Wallenberg Centre for Human Rights, *Committee Hansard*, Canberra, 15 May 2020, p. 20.

8 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 30.

9 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 30.

10 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, pp. 30-31.

- new owners, completely unknown to Mr Browder. In order to investigate this, Mr Browder hired a Russian lawyer named Sergei Magnitsky.<sup>11</sup>
- 3.15 In the course of his investigation Mr Magnitsky uncovered large scale tax fraud on the part of the new owners of these companies. Mr Magnitsky filed official complaints and made sworn statements to various Russian regulatory and law enforcement organisations.<sup>12</sup>
- 3.16 In July 2008, Mr Magnitsky's allegations became public in Russia, 'causing...serious embarrassment and annoyance to the Russian government.'<sup>13</sup> In November 2009 Mr Magnitsky was arrested and charged with conspiracy to commit tax evasion. He was remanded in custody and all applications for bail were denied.<sup>14</sup>
- 3.17 Mr Browder told the Sub-committee of Mr Magnitsky's treatment in Butyrka prison:
- When he was in pre-trial detention, he was then tortured to get him to withdraw his testimony. They put him in cells with 14 inmates and eight beds and left the lights on 24 hours a day to impose sleep deprivation. They put him in cells with no windows and no heating in December in Moscow, so he nearly froze to death. They put him in cells with no toilet; just a hole in the floor so the sewage would bubble up. They moved him from cell to cell to cell in the middle of the night. The purpose of this was to get him to withdraw his testimony against the corrupt police officers.<sup>15</sup>
- 3.18 Mr Magnitsky's health deteriorated in prison and he developed pancreatitis. On 16 November 2009, Sergei Magnitsky was moved from Butyrka prison to another facility with a medical wing where he died.<sup>16</sup>
- 3.19 After this, Mr Browder lobbied the United States government to sanction the individuals who were responsible for Mr Magnitsky's death. This campaign eventually lead to the passage of the first 'Magnitsky Act' in 2012.<sup>17</sup>

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11 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 31.

12 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 31.

13 Australian Lawyers for Human Rights, *Submission 33*, p. 12.

14 Australian Lawyers for Human Rights, *Submission 33*, p. 13.

15 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 31.

16 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, pp. 31-32.

17 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 32.

## Targeted sanctions legislation globally

### The United States of America, Canada and the United Kingdom

- 3.20 In 2012, the United States Senate passed the *Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012* (USA). This Act focused on sanctioning the people responsible for the detention and death of Sergei Magnitsky as well as other Russian officials involved in human rights violations against people seeking to expose illegal behaviour and promote human rights within the country.<sup>18</sup>
- 3.21 In 2016 this previous Act was superseded by the *Global Magnitsky Human Rights Accountability Act 2016* (USA) (the Global Magnitsky Act).
- 3.22 This saw the legislation expanded on the previous Act to allow targeted sanctions against any foreign person responsible for human rights violations and corruption.<sup>19</sup>
- 3.23 The scope of the US Targeted Sanctions regime was further expanded by Executive Order 13818 (*Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption*), signed into effect by President Donald J Trump on 21 December 2017.
- 3.24 The Executive Order created a broader victim class, expanding the application of the Act to include 'serious human rights abuses' (rather than the previous scope of 'gross human rights abuses' and allowed the sanctioning of secondary participants in human rights abuses.<sup>20</sup>
- 3.25 Since the implementation of the original Magnitsky Act in 2012, 275 designations have been made: 114 against entities and 116 against individuals.<sup>21</sup>
- 3.26 In 2017, the Canadian Government introduced similar legislation to the United State's Global Magnitsky Act, the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) 2017*.<sup>22</sup> The Canadian Government has sanctioned 70 individuals under this Act.<sup>23</sup> It has sanctioned individuals for the extra-judicial murder of journalist Jamal Khashoggi, Myanmar military personnel for their roles in the Rohingya

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18 Australian Human Rights Commission, *Submission 21*, p. 9.

19 Australian Human Rights Commission, *Submission 21*, p. 9.

20 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, pp. 23-24.

21 Australian Human Rights Commission, *Submission 21*, p. 10.

22 SC 2017, c 21.

23 Australian Human Rights Commission, *Submission 21*, p. 11.

humanitarian crisis, and Venezuelan government officials for the persecution of political dissidents.<sup>24</sup>

- 3.27 In the United Kingdom there are two laws which provide a legislative framework for sanctioning individuals for human rights abuses: the *Sanctions and Anti-Money Laundering Act 2018* (UK), and amendments to the *Proceeds of Crime Act 2002* (UK).<sup>25</sup>
- 3.28 In July 2020, the *Sanctions and Anti-Money Laundering Act* was used to impose targeted sanctions against:
- 25 Russian individuals for their involvement in the death of Sergei Magnitsky;
  - 20 Saudi individuals for their involvement in the death of journalist Jamal Khashoggi;
  - Two Myanmar generals for their involvement in the persecution of the Rohingya people and other ethnic minorities within that state; and
  - Two organisations involved in torture, murder and forced labour in North Korean prison camps.<sup>26</sup>

The British Overseas Territory of Gibraltar and the British Crown Dependency of Jersey, both centres of financial activity, have also adopted Magnitsky-style targeted sanction regimes.<sup>27</sup>

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24 Islamic Council of Victoria (ICV), *Submission 105*, p. 7.

25 Australian Human Rights Commission, *Submission 21*, p. 11.

26 Foreign and Commonwealth Office, 'The UK sanctions list' <<https://www.gov.uk/government/publications/the-uk-sanctions-list>> viewed 25 September 2020.

27 Gibraltar's Sanctions Act 2019 provides for the automatic recognition and enforcement of United Nations and United Kingdom sanctions imposed through the UK's Sanctions and Anti-Money Laundering Act 2018. Gibraltar's Sanctions Act 2019 provides for separate Gibraltar sanctions designations to be made by the relevant competent authorities in Gibraltar if necessary. There are no such designations at present. See <<https://www.gfiu.gov.gi/sanctions>> viewed 26 September 2020 and <[https://www.gfiu.gov.gi/uploads/UcjV5\\_Financial\\_Sanctions\\_Guidance\\_Notes\\_v1.0.pdf](https://www.gfiu.gov.gi/uploads/UcjV5_Financial_Sanctions_Guidance_Notes_v1.0.pdf)> viewed 27 September 2020. Jersey's Sanctions and Asset-Freezing (Jersey) Law 2019 and Sanctions and Asset-Freezing (UK Human Rights Designations) (Jersey) Order 2020 similarly implements United Nations and United Kingdom sanctions imposed through the UK's Sanctions and Anti-Money Laundering Act 2018. See <<https://www.gov.je/Government/Departments/JerseyWorld/Pages/SanctionsFAQ.aspx>> viewed 26 September 2020. Both Gibraltar and Jersey thus automatically implement the United Kingdom's Magnitsky-style targeted sanctions.

## Other States

- 3.29 The Baltic states of Estonia, Lithuania and Latvia have also enacted targeted sanctions regimes inspired by the ‘Magnitsky Acts’ in 2016, 2017 and 2018 respectively.<sup>28</sup>
- 3.30 These Acts, although similar to the Acts passed in the United States and Canada, are mostly focused on travel bans against Russian officials involved in the death of Sergei Magnitsky.<sup>29</sup>
- 3.31 The Republic of Kosovo has also adopted a Magnitsky-style targeted sanctions regime.<sup>30</sup>

## Other Sanctions Regimes

### The European Union

- 3.32 The European Union (EU) has the ability to impose sanctions (or ‘restrictive measures’) based on the decisions of the European Council.<sup>31</sup> These sanctions are typically reflective of UNSC sanctions, but in some cases have gone further.<sup>32</sup> There are currently over 40 EU sanctions measures in place.<sup>33</sup>
- 3.33 There are no specific criteria that must be met before imposing sanctions however the *Treaty on European Union* does state that the actions of the EU must be in accordance with certain principles:
- ...democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.<sup>34</sup>

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28 Falun Dafa Association of Australia, *Submission 6*, pp. 13-14.

29 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, pp. 21-22.

30 Progressive Lawyers Group (Hong Kong), *Submission 112*, p. 5.

31 European Commission, ‘Restrictive Measures (sanctions)’ <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions\\_en#commission](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions_en#commission)> viewed 24 September 2020.

32 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 35.

33 European Commission, ‘Restrictive Measures (sanctions)’ <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions_en)> viewed 25 September 2020.

34 *Treaty on European Union*, art 21(1).

- 3.34 EU sanctions can involve asset freezes and travel bans on individuals and entities as well as arms embargoes and other economic measures like restricting trade.<sup>35</sup>
- 3.35 In 2019 EU foreign ministers ‘agreed to launch the preparatory work for a global sanctions regime to address serious human rights violations,’<sup>36</sup> which would act as the EU equivalent of other Magnitsky Acts.<sup>37</sup>
- 3.36 On 16 September 2020 the President of the European Commission, Ursula von der Leyen said in her State of the Union address that the EU will soon bring forth a ‘European Magnitsky Act.’<sup>38</sup>

## Other regional bodies

- 3.37 There are other regional bodies with the power to impose targeted sanctions on countries or individuals which may then be implemented by member states.
- 3.38 In Africa, the African Union can impose political and economic sanctions against member states that ‘fail to comply with the decisions and policies of the Union.’<sup>39</sup> Article Three of the Constitutive Act of the African Union states that one of the objectives of the African Union is to ‘promote and protect human and people’s rights.’<sup>40</sup> Article 23 of the Constitutive Act empowers African nations to impose sanctions on member states for non-payment of budget or contributions, failure to comply with the African Unions decisions and policies, and for unconstitutional changes of Government. In practice however, it would seem the main focus of African Union sanctions have related to the non-payment of budgetary contributions.<sup>41</sup>

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35 European Commission, ‘Restrictive Measures (sanctions)’ <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/sanctions_en)> viewed 25 September 2020.

36 J Barigazzi, ‘EU to prepare Magnitsky-style human rights sanctions regime’ *Politico*, 10 December 2019, <<https://www.politico.eu/article/eu-to-prepare-magnitsky-style-human-rights-sanctions-regime/>> viewed 25 September 2020.

37 J Barigazzi, ‘EU to prepare Magnitsky-style human rights sanctions regime’ *Politico*, 10 December 2019, <<https://www.politico.eu/article/eu-to-prepare-magnitsky-style-human-rights-sanctions-regime/>> viewed 25 September 2020.

38 European Commission, ‘State of the Union Address by President von der Leyen at the European Parliament Plenary,’ <[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655)> viewed 25 September 2020.

39 *Constitutive Act of the African Union*, art 23(2).

40 *Constitutive Act of the African Union*, art 3(f).

41 The Sanctioning Success of the African Union – Part Success, Part Failure Dr Konstantinos D. Magliveras, Department of Mediterranean Studies, University of the Aegean, Greece;

- 3.39 However, the African Union has also imposed sanctions against individuals. Such sanctions have included visa denials, travel bans and asset freezes.<sup>42</sup> In 2015, the African Union's Peace and Security Council imposed sanctions on 'Burundian stakeholders whose actions and statements contributed to the perpetuation of violence', making note of an increase in human rights abuses.<sup>43</sup>
- 3.40 The Economic Community of West African States (ECOWAS), a 15 member, regional grouping of West African nations,<sup>44</sup> also permits a member state to be sanctioned if it 'fails to fulfil its obligations to the Community.'<sup>45</sup> Sanctions include suspension of financial loans or aid, suspension of ECOWAS projects within the country and suspension of the country's participation in ECOWAS activities, including voting rights.<sup>46</sup>
- 3.41 ECOWAS has since enacted other measures allowing it to sanction individuals and entities. In 2012 the *Supplementary Act A/SA 13/02/12 of 17 February 2012 on the imposition of sanctions against Member States that do not honour their obligations towards ECOWAS* was introduced. This Act was used in 2018 to impose travel bans and asset freezes on 20 individuals involved in a political crisis in Guinea-Bissau.<sup>47</sup>
- 3.42 Regional bodies in the Americas, such as the Organization of American States and the Inter-American Commission, do not have a sanctions regime.<sup>48</sup> Similarly there is no regional human rights focussed sanctions regime for the various Asian regional organisations.<sup>49</sup>
- 3.43 In 2011, the Arab League imposed financial sanctions on the Syrian Government as well as travel bans on senior Syrian officials travelling to

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<https://au.int/en/pressreleases/20181127/african-union-strengthens-its-sanction-regime-non-payment-dues>; <https://www.voanews.com/africa/south-sudan-focus/african-union-sanctions-south-sudan-nonpayment>.

- 42 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 38.
- 43 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 38.
- 44 For a full list of the member nations of ECOWAS see <<https://www.ecowas.int/member-states/>>.
- 45 *Revised Treaty of the Economic Community of West African States*, art 77(1).
- 46 *Revised Treaty of the Economic Community of West African States*, art 77(2).
- 47 Economic Community of West African States (ECOWAS), 'ECOWAS imposes individual sanctions for non-implementation of the Conakry agreement in Guinea-Bissau' *Media Release*, 7 February 2018, available at <<https://www.ecowas.int/ecowas-imposes-individual-sanctions-for-non-implementation-of-the-conakry-agreement-in-guinea-bissau/>> viewed 25 September 2020.
- 48 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 39.
- 49 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 39.

other Arab League nations for the repression of anti-government protests.<sup>50</sup>

- 3.44 The Commonwealth of Nations has not asked its members to impose economic sanctions since those imposed on apartheid South Africa and Rhodesia.<sup>51</sup>

## Comparative analysis of Magnitsky-style sanctions legislation

### Triggers/Activation

- 3.45 The US, UK and Canadian Targeted Sanctions legislation have differing methods for nominating an individual or entity to be sanctioned.
- 3.46 Under the US Global Magnitsky Act, the President should consider information provided by the following groups when deciding whether an individual should be nominated for sanctions:
- The Chairperson and ranking member of ‘appropriate Congressional Committees’;<sup>52</sup>
  - Other countries; and
  - Non-government organisations that monitor human rights.<sup>53</sup>
- 3.47 The Canadian Act does not have a role for the non-government organisations such as diaspora groups or a non-executive branch of government to trigger a nomination. However, interested parties can submit evidence and reports to the Parliamentary All-Party Human Rights Caucus which does provide an informal method for supporting sanctions listings.<sup>54</sup> The *Canadian Justice for Victims of Corrupt Foreign Officials Act* has no requirement that the government respond to any evidence submitted to this Caucus. It is unique in this regard as both the US and UK Acts both

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50 ‘Syria Unrest: Arab League adopts sanctions in Cairo’ BBC News, 27 November 2011, <<https://www.bbc.com/news/world-middle-east-15901360>> viewed 25 September 2020.

51 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 39.

52 The Committee on Banking, Housing and Urban Affairs and the Committee on Foreign Relations of the Senate and the Committee on Financial Services and the Committee on Foreign Affairs of the House of Representatives – *Global Magnitsky Human Rights Accountability Act* S.284 USC §§ 2(1) (A) and (B).

53 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(c).

54 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 34.

have requirements for the government to respond publicly to submitted proposals for sanctioning.<sup>55</sup>

- 3.48 The UK Sanctions and Anti-Money Laundering Act is similar to the Canadian Act in that it also does not have a formal mechanism through which interested parties can submit information to the executive decision maker in order to trigger consideration of a sanctioning decision.<sup>56</sup> However, the UK Act does impose several reporting requirements on the government (discussed in more detail below).
- 3.49 More specifically, the UK Act requires the decision maker to make an annual report to Parliament which would detail, among other things, a response to any recommendations made by a Parliamentary Committee relating to sanctioning an individual.<sup>57</sup> This provision (section 32(1)(c)) indicates that there may be a role for Parliamentary Committees to recommend to Government that an individual be sanctioned and that stakeholder groups and other NGOs could make submissions to Committees recommending sanctions against an individual.<sup>58</sup>

## Decision maker and factors in the decision

- 3.50 All three Acts place decision making for sanctions in the hands of the Executive government, though there are differences. See below:

	The United States	Canada	United Kingdom
<i>Decision Maker</i>	The President. <sup>59</sup> This is expanded to the Secretary of the Treasury acting in consultation with the Secretary of State and the Attorney	The Governor in Council <sup>61</sup> In practice this is done on the recommendations of the Minister for Foreign Affairs. <sup>62</sup>	'An Appropriate Minister' <sup>63</sup> This is defined to be Secretary of State or the Minister of the Treasury. <sup>64</sup>

55 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 34.

56 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 30.

57 *Sanctions and Anti-Money Laundering Act 2018* (UK) s32(1)(c).

58 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 31.

59 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(a).

61 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s4(1).

62 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 32.

63 *Sanctions and Anti-Money Laundering Act 2018* (UK) s1.

64 *Sanctions and Anti-Money Laundering Act 2018* (UK) s1 (9).

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General in Executive  
Order 13818.<sup>60</sup>

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- 3.51 In the United Kingdom, in practice decisions around listing are made by the Foreign Office and implementation of those decisions is handled by the Department of Treasury and other government departments.<sup>65</sup>
- 3.52 The US, UK and Canadian Acts are all silent on what information the decision maker must take into account when making a decision to sanction an individual.
- 3.53 It should also be noted that the US, UK and Canadian Acts do not contain provisions for a sanctioned person to challenge a potential designation.

## Sanctions – People, Conduct and Consequences

- 3.54 The three Acts have similar provisions for sanctionable conduct, who can be sanctioned and what form sanctions take, with some key differences. See below:

	The United States	Canada	The United Kingdom
<i>Sanctionable conduct</i>	<ul style="list-style-type: none"> <li>• Serious human rights abuses<sup>66</sup></li> <li>• Corruption<sup>67</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Extrajudicial killings, torture or other gross violations of internationally recognised human rights<sup>68</sup></li> <li>• Acts of significant corruption<sup>69</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Gross human rights abuses<sup>70</sup> (see below for definition).</li> </ul>
<i>Sanctionable people</i>	<ul style="list-style-type: none"> <li>• 'Foreign persons'<sup>71</sup></li> <li>• 'Any person' in the case of secondary participants<sup>72</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Foreign nationals<sup>73</sup></li> </ul>	<ul style="list-style-type: none"> <li>• 'Any designated person'<sup>74</sup></li> </ul>

60 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii).

65 UK Parliament, Commons Select Committee on Foreign Affairs, 'Fragmented and incoherent: the UK's sanctions policy', *Committee Report*, 12 June 2019, p. 11.

66 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii)(A).

67 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii)(B)(1).

68 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s2(a).

69 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s2(c).

70 *Sanctions and Anti-Money Laundering Act 2018* (UK) s1(7).

71 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii).

72 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(iii).

73 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s2(a).

74 *Sanctions and Anti-Money Laundering Act 2018* (UK) s9.

<b>Sanctions</b>	<ul style="list-style-type: none"> <li>• Denial of visas to enter the US and withdrawal of existing visas<sup>75</sup></li> <li>• Blocking of all transactions in property and interests in property within the US<sup>76</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Denial of visas to enter Canada<sup>77</sup></li> <li>• The seizure, sequestration, or freezing of property<sup>78</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Immigration sanctions (denial of visas and entry)<sup>79</sup></li> <li>• Financial sanctions (freezing of funds and prevention of financial transactions)<sup>80</sup></li> <li>• Trade, aircraft and shipping sanctions<sup>81</sup></li> </ul>
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- 3.55 The Canadian, UK and US Acts all specifically state that human rights abuses are sanctionable conduct. The Canadian and UK Acts identify ‘gross’ human rights abuses as cause for sanctioning.
- 3.56 Under the US’s 2016 Magnitsky Act, ‘gross human rights abuses’ and ‘serious corruption’ were grounds for sanctioning.<sup>82</sup> This was expanded in the 2017 Executive Order to ‘serious human rights abuses’ and ‘corruption’.<sup>83</sup> The term ‘serious human rights abuses’ is not defined and is considered to be broader than ‘gross human rights abuses’. Similarly the use of the term ‘corruption’ rather than ‘serious corruption’ in the Executive Order has broadened the sanctioning power of the US.<sup>84</sup>
- 3.57 The UK Act takes its definition of ‘gross human rights abuses’ from s241A of the *Proceeds of Crime Act 2002* (UK). Broadly, this Act defines ‘gross human rights abuses’ as torture or the intentional infliction of severe pain or suffering onto a person who has sought to expose illegal activity (i.e. corruption) of a government official or who is trying to promote human rights and freedoms.<sup>85</sup> See Appendix A for the full text of this section.
- 3.58 The UK Act does not make specific mention of corruption as being a cause for sanctioning.
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75 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(b)(1)(A) and (B).

76 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(b)(2)(A).

77 *Immigration and Refugee Protection Act* SC 2001 c 27 s35(1)(e).

78 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s4(1)(b).

79 *Sanctions and Anti-Money Laundering Act 2018* (UK) s4; *Immigration Act 1971* (UK) s8B(4)(b).

80 *Sanctions and Anti-Money Laundering Act 2018* (UK) s3.

81 *Sanctions and Anti-Money Laundering Act 2018* (UK) s5-7.

82 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(a)(1) and (3).

83 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii)(A) and (B)(1).

84 International Bar Association Human Rights Institute, *Report on the Use of Targeted Sanctions to Protect Journalists*, 2020, p. 23.

85 *Proceeds of Crime Act 2002* (UK) s241A.

- 3.59 Both the US and Canadian Acts specify that only foreign nationals can be sanctioned under these Acts.<sup>86</sup> Executive Order 13818 does expand on this to allow sanctioning of ‘any person’ who has materially assisted or provided support for human rights abuses (secondary participants in human rights abuses).<sup>87</sup>
- 3.60 The UK Act does not limit itself to only foreign citizens, and a ‘designated person’ is defined to include corporate entities and other organisations.<sup>88</sup>
- 3.61 None of the three Acts have explicit provision for sanctioning family members of human rights abusers.
- 3.62 The US and Canadian Acts have very similar sanctioning provisions. Both deny visas to sanctioned people wishing to enter the respective country and both allow for the blocking of all property and property interests of a sanctioned person.
- 3.63 The UK’s sanctioning powers go further, expanding sanctions beyond immigration and financial sanctions to sanctions of trade, aircraft and shipping sanctions. Governments may have other executive powers available to them under other legislation.

## After the fact – review powers, de-listing, and transparency

- 3.64 All three Acts have differences about the post-decision processes.

	The United States	Canada	The United Kingdom
<i>Post decision review</i>	<ul style="list-style-type: none"> <li>Act is silent</li> </ul>	<ul style="list-style-type: none"> <li>The relevant Parliamentary Committees may review sanctions and make recommendations to the Government about sanctioned people<sup>89</sup></li> </ul>	<ul style="list-style-type: none"> <li>A sanctioned person has the right to review by the Minister<sup>90</sup></li> <li>A sanctioned person has the right to judicial review by the High Court<sup>91</sup></li> </ul>
<i>De-listing</i>	<ul style="list-style-type: none"> <li>President has power to terminate sanctions if certain conditions are</li> </ul>	<ul style="list-style-type: none"> <li>A sanctioned person has the right to apply to the relevant</li> </ul>	<ul style="list-style-type: none"> <li>A sanctioned person has the right to review by the Minister.<sup>94</sup></li> </ul>

86 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(ii); *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s2(a).

87 Exec. Order No. 13818, 82 CFR 60839 (2017) § 1(a)(iii).

88 *Sanctions and Anti-Money Laundering Act 2018* (UK) s9(5).

89 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s16(3).

90 *Sanctions and Anti-Money Laundering Act 2018* (UK) s23.

91 *Sanctions and Anti-Money Laundering Act 2018* (UK) s38(2).

94 *Sanctions and Anti-Money Laundering Act 2018* (UK) s23.

	met <sup>92</sup> (see 3.68 below)	Minister for delisting <sup>93</sup>	<ul style="list-style-type: none"> <li>• A sanctioned person has the right to judicial review by the High Court<sup>95</sup></li> </ul>
<i>Reporting and transparency</i>	<ul style="list-style-type: none"> <li>• President must report annually to the relevant Committees<sup>96</sup> (see 3.69 below)</li> </ul>	<ul style="list-style-type: none"> <li>• Within five years after the Act comes into force, the relevant Committee must review the Act and report to Parliament<sup>97</sup></li> <li>• Committees are also able to review sanctioning decisions and report to the Government (see above)<sup>98</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The Minister must perform a periodic review of all sanctioning decisions every three years<sup>99</sup></li> <li>• The Secretary of State must provide Parliament annual reports with a list of all sanctioned people, any changes to existing sanctions and the human rights purpose of the sanctioning. The Secretary must also specify which sanctions have resulted from Parliamentary Committee recommendations<sup>100</sup></li> </ul>

- 3.65 Under the US Legislation, the President has the power to terminate sanctions which have been imposed on an individual if the sanctioned individual can show:
- There is credible information the individual did not engage in the conduct which lead to their sanctioning;<sup>101</sup>
  - The individual has been appropriately prosecuted for the activity which led to their sanctioning;<sup>102</sup> or

92 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(h).

93 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s8(1).

95 *Sanctions and Anti-Money Laundering Act 2018* (UK) s38(2).

96 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 4.

97 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s16(1-2).

98 *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s16(3).

99 *Sanctions and Anti-Money Laundering Act 2018* (UK) s24.

100 *Sanctions and Anti-Money Laundering Act 2018* (UK) s32(1).

101 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(h)(1).

102 *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(h)(2).

- The individual has shown ‘a significant change in behaviour, has paid an appropriate consequence...and has credibly committed to not engage in...’ the activity which lead to their sanctioning.<sup>103</sup>

The President must write to the relevant Congressional Committees to inform them of this de-listing at least 15 days before the termination of the sanctions.<sup>104</sup>

- 3.66 The US Act also places reporting obligations on the President. The President is required to annually report to the appropriate Congressional Committees with information including a list of all people sanctioned in the previous year, a description of the types of sanctions imposed, any de-listing decisions made and the reasons for those de-listings.<sup>105</sup>
- 3.67 This annual report also requires that the President describe the efforts made to encourage other governments to impose similar sanctions.<sup>106</sup> This is a unique feature of the US Act, and makes it the only Act of the three countries to have an advocacy role within it.
- 3.68 The Canadian Act is the only Act which specifically requires a review of the legislation. Under Section 16, the Canadian Act must be reviewed within five years of coming into force by Senate and House Committees.<sup>107</sup> These Committees must submit a report to the Parliament within one year of the review being undertaken.<sup>108</sup>
- 3.69 In general the post-decision processes for all three Acts are fairly limited. This seems to be a reflection of the relative newness of these Acts. The UK has the most comprehensive review powers of the three Acts, perhaps reflecting that this is a newer Act which has benefited from the analysis of implementation to date of other jurisdictions’ Magnitsky Acts.

## Referencing Sergei Magnitsky

- 3.70 The Sub-committee notes that two of the three Acts, the US and Canadian Acts, reference Sergei Magnitsky’s name in their titles. Mr William Browder gave evidence to the Committee of the importance of keeping Sergei Magnitsky’s name attached to targeted sanctions legislation:

At this point in the world of human rights ‘Magnitsky’ has become a verb. When you look for information you ‘Google’ something. If

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<sup>103</sup> *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(h)(3).

<sup>104</sup> *Global Magnitsky Human Rights Accountability Act* S.284 USC § 3(h).

<sup>105</sup> *Global Magnitsky Human Rights Accountability Act* S.284 USC § 4(a)(1)-(5).

<sup>106</sup> *Global Magnitsky Human Rights Accountability Act* S.284 USC § 4(a)(6).

<sup>107</sup> *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s16 (1).

<sup>108</sup> *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* SC 2017, c 21, s16 (2)-(3).

you want to sanction somebody, you Magnitsky them. Because nine other countries have Magnitsky's name in their legislation, not having it would effectively be a political gift to Vladimir Putin, who desperately doesn't want the name on anyone's legislation, because it's a reminder of where this thing originated from. To not have his name on it would just, basically, be a political gift to Vladimir Putin, and we can't allow that to happen.<sup>109</sup>

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109 Mr William (Bill) Browder, Head, Global Magnitsky Justice Campaign, *Committee Hansard*, Canberra, 15 May 2020, p. 37.

