

CANADA / JUDGMENT

Deeb v. Canada (Attorney General)

2025 FC 1954

COURT

Federal Court

DECIDED

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Decision Content

Date: 20251212

Docket: T-889-24

Citation: 2025 FC 1954

Ottawa, Ontario, December 12, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

REYNOLD DEEB

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

- [1] On December 2, 2022, the Applicant Reynold Deeb [the Applicant] was named and included in the schedule to the Regulations Amending the Special Economic Measures (Haiti) Regulations, SOR/2022-258 [the Amending Regulations], which amended the Special Economic Measures (Haiti) Regulations, SOR/2022-226 [the Haiti Regulations]. The Applicant was named and added to the list of names of economic sanctionees identified in Part 1 of the Schedule to the Haiti Regulations under the title “Individuals – Grave Breach of International Peace and Security” [the Schedule]. The Applicant’s inclusion in the Schedule made him subject to the array of economic sanctions provided by the Haiti Regulations and by its empowering statute, the Special Economic Measures Act, SC 1992, c 17 [the SEMA].
- [2] The Applicant sought to be removed from the Schedule through a removal application made pursuant to subsection 8(2) of the Haiti Regulations [the Removal Application]. The Minister of Foreign Affairs [the Minister] rejected the Applicant’s Removal Application on March 21, 2024 [the Decision]. The Applicant seeks judicial review of the Decision.
- [3] The Applicant argues that the Decision is unreasonable and was arrived at in breach of his rights of procedural fairness. The Applicant has the burden of establishing that the Decision is either unreasonable or made in breach of his rights of procedural fairness. He has not met his burden. This application is therefore dismissed for the reasons that follow.

I. The Legislative Framework [4] The SEMA was assented to on June 4, 1992. Its purpose, as set out in its section 3.1, is to enable the Government of Canada to take economic measures against certain persons in circumstances where an international organization of states or association of states of which Canada is a member calls on its members to do so, where a grave breach of international peace and security has occurred, where gross and systematic human rights violations have been committed in a foreign state or where acts of significant corruption involving a national of a foreign state have been committed. Paragraphs 4(1.1) (b) and (c) of SEMA provide the Governor in Council [GIC] with the authority to impose sanctions against foreign states, entities and individuals in prescribed circumstances, including when there has been a grave breach of international peace and security, or when gross and systematic human rights violations have been committed.

- [5] The Haiti Regulations were enacted in November 2022 pursuant to subsections 4(1), (1.1), (2) and (3) of SEMA. As is reflected in the Regulatory Impact Analysis Statement [the RIAS] that was published in the Canada Gazette along with the Amending Regulations, Canada was concerned that economic elites were using their position, association with political figures, influence and resources to protect and/or support the activities of criminal gangs, which contributed to a severe humanitarian crisis and a grave breach of international peace and security. The Haiti Regulations were enacted in response to Haiti’s multidimensional crisis which includes rampant inflation, chronic poverty, alarming insecurity, and political

deadlock which has paralyzed most public institutions.

- [6] The Haiti Regulations allow Canada to target sanctions at key individuals who finance, support or benefit from the activities of armed gangs who terrorize and subjugate the Haitian population and operate under the protection of political elites and oligarchs in Haiti during the crisis that grips it.
- [7] The sanctions contemplated by the Haiti Regulations are set out in their section 3. In brief, any person in Canada and any Canadian outside of Canada is prohibited from facilitating a transaction, providing any financial or related services, making available any goods wherever they may be situated, or providing any financial or related services to a person listed in the Schedule, or with respect to any of property that they own, hold or directly or indirectly control. Only those persons who are named in the Schedule are subject to the sanctions set out within the Haiti Regulations. The mechanism by which a person may be included and named in the Schedule as well as the criteria used to identify those persons who may be named and included in the Schedule are set out in paragraph 4(1)(a), subsection (1.1), and paragraph 4(2)(a) of SEMA and section 2 of the Haiti Regulations as follows:

Special Economic Measures Act, SC 1992, c 17

Loi sur les mesures économiques spéciales, LC 1992, c 17

Orders and regulations

Décrets et règlements

4 (1) The Governor in Council may, if the Governor in Council is of the opinion that any of the circumstances described in subsection (1.1) has occurred,

4 (1) S'il juge que s'est produit l'un ou l'autre des faits prévus au paragraphe (1.1), le gouverneur en conseil peut:

- (a) make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (2) in relation to a foreign state that the Governor in Council considers necessary;
- a) prendre les décrets et règlements qu'il estime nécessaires concernant la restriction ou l'interdiction, à l'égard d'un État étranger, des activités énumérées au paragraphe (2);

[...]

[...]

Circumstances

Faits

(1.1) The circumstances referred to in subsection (1) are the following:

(1.1) Sont visés au paragraphe (1) les faits suivants :

- (a) an international organization of states or association of states, of which Canada is a member, has made a decision or a recommendation or adopted a resolution calling on its members to take economic measures against a foreign state;
- a) une organisation internationale d'États ou une association d'États, dont le Canada est membre, a pris une décision, adopté une résolution ou formulé une recommandation incitant ses membres à prendre des mesures économiques contre un État étranger;
- (b) a grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis;
- b) une rupture sérieuse de la paix et de la sécurité internationales est susceptible d'entraîner ou a entraîné une grave crise internationale;
- (c) gross and systematic human rights violations have been committed in a foreign state; or
- c) des violations graves et systématiques des droits de la personne ont été commises dans un État étranger;
- (d) a national of a foreign state who is either a foreign public official, within the meaning of section 2 of the Corruption of Foreign Public Officials Act, or an associate of such an official, is responsible for or complicit in ordering, controlling or otherwise directing acts of corruption - including bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources - which amount to acts of significant corruption when taking into consideration, among other things, their impact, the amounts involved, the foreign national's influence or position of authority or the complicity of the government of the foreign state in question in the acts.
- d) un national d'un État étranger, qui est un agent public étranger, au sens de l'article 2 de la Loi sur la corruption d'agents publics étrangers ou une personne qui est associée à un tel agent, est responsable ou complice d'avoir ordonné, supervisé ou dirigé d'une façon quelconque des actes de corruption - notamment le versement de pots-de-vin, le détournement de biens publics ou privés pour son propre bénéfice, le transfert de produits de la corruption à l'extérieur de l'État étranger ou tout acte de corruption en matière d'expropriation ou visant des marchés publics ou l'extraction de ressources naturelles - qui constituent, compte tenu notamment de leurs effets, de l'importance des sommes en jeu, du degré d'influence ou de la position d'autorité du national ou du fait que le gouvernement de l'État étranger en cause en est complice, des actes de corruption à grande échelle.

Restricted or prohibited activities

Activités interdites

- (2) Orders and regulations may be made pursuant to paragraph (1)(a) with respect to the restriction or prohibition of any of the following activities, whether carried out in or outside Canada, in relation to a foreign state:
- (2) Les activités qui peuvent être visées par les décrets et règlements d'application du présent article sont les suivantes, qu'elles se déroulent au Canada ou à l'étranger :
- (a) any dealing by any person in Canada or Canadian outside Canada in any property, wherever situated, that is owned - or that is held or controlled, directly or indirectly - by that foreign state, any person in that foreign state, a national of that foreign state who does not ordinarily reside in Canada or a person outside Canada who is not Canadian;
- a) toute opération effectuée par quiconque se trouvant au Canada ou par un Canadien se trouvant à l'étranger portant sur un bien, indépendamment de la situation de celui-ci, appartenant à l'État étranger visé, à une autre personne qui s'y trouve, à un de ses nationaux qui ne réside pas habituellement au Canada ou à une personne à l'étranger qui n'est pas un Canadien, ou détenu ou contrôlé, même indirectement, par lui;

Special Economic Measures (Haiti) Regulations, SOR/2022-226

Règlement sur les mesures économiques spéciales visant Haïti, DORS/2022-226

Listed person

Personne dont le nom figure sur la liste

2 A person whose name is listed in the schedule is a person who is in Haiti, or is or was a national of Haiti who does not ordinarily reside in Canada, and in respect of whom the Governor in Council, on the recommendation of the Minister, is satisfied that there are reasonable grounds to believe is

2 Figure sur la liste établie à l'annexe le nom de toute personne qui se trouve en Haïti ou qui est ou était un de ses nationaux ne résidant pas habituellement au Canada à l'égard de laquelle le gouverneur en conseil est convaincu, sur recommandation du ministre, qu'il existe des motifs raisonnables de croire qu'il s'agit de l'une des personnes suivantes :

- (a) a person engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti;
- a) une personne se livrant à des activités qui, même indirectement, compromettent la paix, la sécurité et la stabilité d'Haïti;
- (a.1) a person who has participated in gross and systematic human rights violations in Haiti;
- a.1) une personne ayant participé à des violations graves et systématiques des droits de la personne en Haïti;

- (b) a current or former senior official of the Government of Haiti;
 - b) un haut fonctionnaire, ou un ancien haut fonctionnaire, du gouvernement d'Haïti;
 - (c) an associate of a person referred to in any of paragraphs (a) to (b);
 - c) un associé d'une personne visée à l'un des alinéas a) à b);
 - (d) a family member of a person referred to in any of paragraphs (a) to (c) and (g);
 - d) un membre de la famille d'une personne visée à l'un des alinéas a) à c) et g);
 - (e) an entity owned - or held or controlled, directly or indirectly - by a person referred to in any of paragraphs (a) to (d);
 - e) une entité appartenant à une personne visée à l'un des alinéas a) à d) ou détenue ou contrôlée, même indirectement, par elle;
 - (f) an entity owned - or held or controlled, directly or indirectly - by Haiti; or
 - f) une entité appartenant à Haïti ou détenue ou contrôlée, même indirectement, par lui;
 - (g) a senior official of an entity referred to in paragraph (e) or (f).
 - g) un cadre supérieur d'une entité visée aux alinéas e) ou f).
- [8] A person who has been named in the Schedule to the Haiti Regulations may apply to be removed from the Schedule through a written application made to the Minister pursuant to section 8 of the Haiti Regulations, which reads as follows:

Removal from list

Radiation

8 (1) A listed person may apply to the Minister in writing to have their name removed from the schedule.

8 (1) La personne dont le nom figure sur la liste établie à l'annexe peut demander par écrit au ministre d'en radier son nom.

Reasonable grounds

Motifs raisonnables

- (2) On receipt of an application, the Minister must decide whether there are reasonable grounds to recommend the removal to the Governor in Council.
- (2) À la réception de la demande, le ministre décide s'il existe des motifs raisonnables de recommander la radiation au gouverneur en conseil.

- [9] The removal application process and its final result contemplates a two-step decision process before an applicant is removed from the Schedule. The first step and the first decision to be made is the Minister's decision on the removal application itself. As contemplated by subsection 8(2) of the Haiti Regulations, the Minister must decide whether the listed person has established reasonable grounds for the Minister to make a recommendation for their removal from the Schedule. If the Minister finds that there are no reasonable grounds to recommend the applicant's removal from the Schedule, then the Minister makes a decision to reject the removal application. Section 9 of the Haiti Regulations contemplates that an applicant may make another application if their circumstances change materially after their previous removal application, pursuant to subsection 8(2).
- [10] If the Minister finds that there are reasonable grounds to recommend that an applicant be removed from the Schedule, then the Minister makes her recommendation in this regard to the GIC. The second step of the process rests with the GIC. The GIC makes the second decision of determining whether the applicant should be removed from the Schedule through a regulation as contemplated by section 4 of SEMA (*Saint-Rémy v Canada (Attorney General)*, 2024 FC 1380 at para 56).

II. The Facts A. The Applicant's inclusion as a named person in the Schedule [11] The GIC designated the Applicant as an associate of a person referred to in paragraphs 2(a) to (b) of the Haiti Regulations on December 2, 2022, and included him in the Schedule. Paragraphs 2(a) and (b) of the Haiti Regulations refer to "a person engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti", and to "a current or former senior official of the Government of Haiti". The RIAS that was published with the Amending Regulation that included the Applicant in the Schedule set out the basis for the Applicant's inclusion in the Schedule as follows:

The Regulations Amending the Special Economic Measures (Haiti) Regulations (the amendments) include three individuals subject to a broad dealings ban. There is reason to believe that the designated three individuals, all considered among the economic elite in Haiti, have used their influence and resources to protect and/or support the activities of criminal gangs, including through money laundering and other acts of corruption. These gangs are committing unspeakable violence and terrorizing vulnerable populations with impunity.

- [12] The Applicant was opposed to his inclusion in the Schedule and sought to learn why he had been added to it notwithstanding that the RIAS set out the basis upon which he had been included.
- [13] The Applicant subsequently filed his Removal Application. He argued that the inclusion criteria set out in section 2 of the Haiti Regulations are not satisfied in his regard because he does not support, and has not in any way ever supported, the activity of criminal gangs in violation of human rights and stability in Haiti. The Removal Application will be discussed in greater detail below.

[14] Global Affairs Canada [GAC] sent the Applicant a procedural fairness letter on November 22, 2023 [the PFL]. The PFL clarified the basis upon which the Applicant had been included in the Schedule beyond what had been set out in the RIAS as follows:

Canada has listed you on December 2, 2022, pursuant to paragraph 2(c) of the Haiti Regulations. The Governor in Council, on the recommendation of the Minister of Foreign Affairs, is satisfied there are reasonable grounds to believe you are an associate of a person referred to in any of paragraphs (a) to (b) of the Regulations. You were recommended for listing based on your association with current or former officials of the Government of Haiti, including former President Michel Martelly, who was listed pursuant to paragraph 2(b) of the Haiti Regulations. In addition, according to the open-source information reviewed, we have found reasonable grounds to believe that you have engaged with criminal actors, were involved in a kidnapping network as well as in money laundering, illicit funds transfer and smuggling activities.

[15] The Applicant responded to the PFL and continued to argue that he does not meet the listing criteria set out in the Haiti Regulations, that he has not engaged in any activities that directly or indirectly undermine the peace, security, or stability of Haiti, and that he is not an “associate” of the Haitian political class.

B. The Removal Application [16] The Applicant’s Removal Application was presented in seven sections which overlap in some respects. A number of documents were attached in its support. The thrust of the Applicant’s grounds and submissions to the Minister were that he does not meet the criteria set out in section 2 of the Haiti Regulations for being named in the Schedule.

[17] The Applicant submitted that he has not engaged in activities that directly or indirectly undermine the peace, security, and stability of Haiti. He submitted that he was a Haitian businessman involved in the Deka Group as the Chief Operating Officer and Purchasing Manager for its Tire and Motorcycle Division. The Deka Group, he explains, is a group of companies he operated with his brothers. He argues that the Deka Group collectively are leading importers of consumer goods in Haiti and, in more recent years, began to transition from import to domestic production in support of a more self-sufficient Haitian economy.

[18] The Applicant further submitted that he does not have ties to Haitian gangs, but has been the victim of gang activity. He also submitted that he has not provided any funds or weapons to these organizations, beyond the ransom payments he is forced to pay to keep his business operating.

[19] The Applicant made submissions to counter what he described as conspiracies that involve him, particularly with respect to his alleged control over Haitian ports. The Applicant addressed various reports published in the Haiti Liberte, Le Nouvelliste and the Canada-Haiti Information Project that reported that he had been given power over Haitian ports by President Moïse or by former President Martelly. The Applicant submitted that there is one government port regulator and two private port operators in Haiti. He submitted that his interest and authority over any of these authorities was limited to a 7% interest in one of the private port operators, and that that interest does not provide him with any management

power or directing interest that could sway how Haitian ports are operated.

- [20] The Applicant submitted that he is not an “associate” of anyone engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti, or an “associate” of a current or former senior official of the Government of Haiti. He submitted that he does not have any ties to current or former officials of the Government of Haiti that are close enough for him to be considered an “associate” of these individuals. The Applicant submitted that he has no ties to any political party or political organizations, has not actively engaged in politics and that any engagements he has with public officials are generally part of the normal business operations of the Dekka Group.
- [21] The Applicant admitted that he met with President Moïse on two or three occasions when he was President, but that the discussions held during those meetings were with other business persons in attendance and generally revolved around the state of the Haitian economy, discussing matters such as how to ensure Haitians had access to affordable rice. The Applicant submitted that he did not have any business dealings with President Moïse and has never had any one-on-one meetings with him. The Applicant submitted that he engaged with President Moïse solely as part of Dekka Group’s normal business operations, as he says is the case with his dealings with all other political figures in Haiti, and that the relationship did not extend further.
- [22] The Applicant argued that he could not be considered an “associate” of the persons contemplated by section 2 of the Haiti Regulations because he lacked the close ties that would be required to consider him an “associate”. His argument contained submissions on how to interpret the word “associate” as it appears in the Haiti Regulations.
- [23] The Applicant argued that Canada is the only country in the world that has seen fit to sanction him. He submitted that jurisdictions outside of Canada would have sanctioned him also if there existed evidence to support and justify sanctioning him. The Applicant specifically submitted that neither the United Kingdom nor the United Nations have sanctioned him in connection with events in Haiti.

C. The PFL [24] As set out above, GAC sent the Applicant a PFL dated November 22, 2023, and set out why the Applicant had been named and added to the Schedule.

- [25] The PFL also noted that Canada was not the only jurisdiction to have sanctioned the Applicant. GAC noted that the Dominican Republic had banned the Applicant from entering the country in April 2023, and that the United National Security Council Panel of Experts on Haiti [the Panel of Experts] published a report on October 18, 2023 [the Panel of Experts Report], in which they reported that the Applicant had been financing members of gangs to protect his business and secure the transportation of commodities he imported.
- [26] GAC invited the Applicant to make further submissions in response to the information set out in the PFL before December 7, 2023. GAC assured the Applicant that the Minister would consider all of the information the Applicant would provide.

D. The December 5, 2023, Response to the PFL [27] The Applicant responded to the PFL in two separate submissions. The first on December 5, 2023, within the time requested by GAC, and the second on December 20, 2023, after the time requested by GAC had expired. The Applicant's additional submissions reiterate some of the submissions he had made in his Removal Application with respect to his alleged involvement in criminal activities and gangs in Haiti and with respect to his suggested interpretation of the word "associate" found in paragraph 2(c) of the Regulations.

[28] In his December 5, 2023, additional submission, the Applicant argued that the allegations disclosed by GAC in the PFL were either false or based on sources that obviously lacked credibility and were insufficiently verified by GAC to ensure their accuracy or credibility. Further, he submitted that his relationship with former President Martelly was an insufficient basis to justify his listing in the Schedule.

[29] The Applicant strenuously objected to the content of the open-source articles relied on by GAC, especially in light of the misinformation, rumours and false stories that circulate broadly in Haiti. The Applicant submitted that the allegations that he had ties to Arnel Joseph, the leader of the Village de Dieu gang, and that he had used Mr. Joseph to assist him in his "war" with Mr. Bigio were quite simply untrue. The Applicant submitted his research as to the sources of the open-source articles relied upon by GAC and observed that many if not all of them were suspect and lacked credibility, and sought to demonstrate that the information relied upon by GAC was false and/or not credible and ought not to be relied upon.

[30] The Applicant also objected to GAC's reliance on his being barred from entering the Dominican Republic, arguing that the reasons for barring him from entry remain unclear and, in any event, do not overlap sufficiently with the grounds for listing an individual under the Haiti Regulations.

[31] The Applicant also took issue with the Panel of Experts Report, not least because it was filed in September 2023, well after he was named and included in the Schedule on December 2, 2022. The Applicant argued that the Panel of Experts Report was not an official report issued by the United Nations, expressed the views of a panel of experts convened to investigate the situation in Haiti, but did not express the views of the United Nations. Accordingly, he argues, the Panel of Experts Report was not binding on the United Nations Security Council. Further, the Applicant noted no person had been listed for economic sanctions by the United Nations Security Council in response to the Panel of Experts Report's allegations, despite months having passed since it was transmitted to the United Nations Security Council Committee on Haiti. The Applicant noted that he had not been contacted by the Panel of Experts despite that its own protocols would have required that they contact him to provide him with an opportunity to respond to the allegations prior to publishing their report.

- [32] The Applicant responded to the allegations that he was an associate of former government officials in some detail. The Applicant submitted that he does not align himself with any specific political movement or politician in Haiti and that he did not and does not speak out in support of or contribute to political campaigns, nor does he publicly express opposition to them, while acknowledging that he does have relationships with some of the political actors in Haiti.
- [33] The Applicant did not deny that he had and has a long-standing social relationship with former President Martelly. He acknowledged that they have met on numerous occasions. However, their relationship, he submitted, is merely social in nature. The Applicant submitted that he does not discuss his business or politics with President Martelly, did not speak out in support of President Martelly either while he was a candidate or in office, did not attempt to influence President Martelly on matters of government policy when he was in office, and has never been part of any group of advisors (formal or informal) that supported or advised President Martelly on matters related politics or the economy. The Applicant asserted that he has and had no ability to influence President Martelly on matters related to Haitian politics.
- [34] The Applicant admitted being an acquaintance of then Prime Minister Henry, but that he had neither supported nor opposed his run for political office.
- [35] The Applicant admitted having known former President Moïse for an extended period of time. The Applicant submitted that this relationship arose when President Moïse was running a business (prior to his time in politics) and was one of the Applicant's customers. The Applicant further submitted that they had an amicable relationship that continued while he was President. As he had submitted previously, the Applicant reiterated that he had met President Moïse on two or three occasions when he was President, and that those meetings occurred with other business persons in attendance, generally involved the state of the Haitian economy and matters such as how to ensure Haitians had access to affordable rice.
- [36] The Applicant submitted that the fact that he had interacted with former and current political and economic actors in Haiti should not result in his being included in the Schedule.

E. The December 20, 2023, Additional Response to the PFL [37] The Applicant submitted an additional response to the PFL on December 20, 2023. This December 20, 2023, additional response letter sought to provide GAC with an update on activity regarding listings of Haitian individuals by Canada's close allies and by the United Nations. The Applicant submitted that since December 8, 2023, the United Nations, the United States Office of Foreign Asset Control, the United States Department of State and the United Kingdom Foreign, Commonwealth and Development Office listed a number of Haitian individuals in their list of persons under sanction and that he was not one of them. He further argued that the United Nations, the United States, and the United Kingdom's actions undermine Canada's decision to include him in the list of

persons subject to sanctions pursuant to the Haiti Regulations.

F. The Memorandum for Action [38] The Minister received a Memorandum for Action dated March 18, 2024, from her Deputy Minister [the Memorandum]. The Memorandum contained a critical analysis of the content of the Applicant's Removal Application and supporting documents as well as of the Applicant's arguments and submissions that he should be removed from the Schedule. An Annex setting out the information compiled by GAC, including source materials, supporting GAC's recommendation that the Applicant met the criteria set out in section 2 of the Haitian Regulations was attached to the Memorandum along with a copy of the Applicant's Removal Application.

- [39] The Memorandum and its Annex set out a reasonably detailed analysis of the Applicant's general background as a businessman in Haiti as well as the information compiled by GAC from local reporting in Haiti, open sources, aol.com, le Quotidien News, Voice of America, and the Panel of Experts Report submitted pursuant to resolution 2653 (2022), and others. The Memorandum and Annex sets out the information compiled with respect to the Applicant's business practices and their intersection with senior officials of the Government of Haiti, including former Presidents Martelly and Moïse, Gary Bodeau, Nenèl Cassy and Romel Bell, and the reported and likely financing and bribing of political actors to the Applicant's business' benefit.
- [40] The Memorandum and Annex also sets out the information compiled with respect to the Applicant's relationships with senior members of the Haitian Government which, as was reported by the Reuters news agency in 2016, led to the Applicant being considered as a possible interim prime minister. The Memorandum and Annex go on to consider the information compiled pertaining to the Applicant's involvement with the selection and activities of government appointees charged with operating customs and other activities at Haiti's ports, and his reported involvement with gangs in Haiti.
- [41] The Memorandum specifically noted that the Applicant argued that the Panel of Experts Report is not an official report issued by the United Nations and it is not binding on the United Nations Security Council, and that the Panel of Experts made serious allegations against him without ever contacting him, despite the fact that their own protocol would require them to do so by default. GAC considered the Applicant's sworn statement and arguments in support of his Removal Application but nevertheless formed the belief that the Panel of Experts provided credible expert analysis supported by significant field work, and that there are sufficient indications, from a variety of sources, to support the Panel of Experts' conclusions.
- [42] The core of the recommendation to the Minister was that there is evidence demonstrating that the Applicant was an associate of a current or former senior official of the Government of Haiti, as well as reasons to believe that the Applicant engaged in criminal acts, including corruption, fiscal evasion and the financing of gangs. In the result, considering the Applicant's submissions and documents in support of his Removal Application in light of the

information complied by GAC, GAC recommended to the Minister that there are no reasonable grounds to recommend that the Applicant be removed from the Schedule.

III. The Decision [43] The Minister made her decision to reject to the Applicant's Removal Application on March 21, 2024. The key passages of the Decision read as follows:

I have considered the information and arguments put forth in your submissions and have decided to maintain your name on Schedule 1 of the Haiti Regulations. Based on available open-source information, I do not believe that there are reasonable grounds to conclude that you are not an associate of current or former senior officials of the Government of Haiti. In fact, you appear to be a close ally of former President Michel Martelly, among others. Furthermore, you have reportedly financed politicians' electoral campaigns, including those of Mr. Gary Bodeau, who was considered one of the most powerful lawmakers under President Jovenel Moïse. Your relationship with Mr. Bodeau benefitted your businesses. You have also reportedly benefitted from tax evasions of some of the goods you imported into the country through your relationship with Mr. Romel Bell, former Director General of the General Customs Administration, who was sanctioned by the United States.

[...]

After careful review of your application, based on the information provided by you and gathered about you by Global Affairs Canada, I do not have reasonable grounds to recommend to remove your name from the Haiti Regulations, but rather have reasonable grounds to believe that maintaining your name on the list of sanctions is coherent with Canada's foreign policy objectives in relation to Haiti, as well as with the Canadian approach for sanctions implementation.

(Emphasis added)

[44] The Applicant filed his Notice of Application for judicial review of the Minister's decision on April 22, 2024.

IV. The Issues [45] The parties submit that the issues are whether the Decision is reasonable and whether the process leading to it was procedurally fair.

[46] The Applicant submits that the standard of review with respect to the assessment of the Minister's Decision is the reasonableness standard while the standard applicable to questions of procedural fairness is the correctness standard (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 83, 87 [Vavilov]; Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at para 58).

[47] The Respondent agrees with the Applicant that the applicable standard of review of the Minister's Decision is reasonableness as discussed in Vavilov. The Respondent takes a more nuanced view of the standard applicable to questions of procedural fairness and relies on the description of the applicable standard set out in Canadian Association of Refugee Lawyers v Canada, 2020 FCA 196 at para 35. The Respondent argues that on the issue of procedural fairness, the applicable standard is best reflected as correctness even though no

standard of review is being applied.

V. The Standards of Review [48] The Court agrees with the parties that the reasonableness standard as discussed in *Vavilov* and *Mason* applies to the Minister's Decision.

[49] While the standard of applicable to questions of procedural fairness is often referred to in shorthand as the correctness standard, the Federal Court of Appeal has concluded that the correctness standard is not the standard that is being applied. Rather, as set out in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 54:

A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the Baker factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at paragraph 20) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

[50] The reasonableness standard of review is a deferential standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[51] An applicant must establish that the decision that he contends is unreasonable contains flaws that are sufficiently central, significant, or serious such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[52] The administrative decision maker alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences may be drawn, and makes a decision. The reviewing court can interfere only where the decision maker has committed fundamental errors in fact-finding that undermine the acceptability of the decision under review (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3).

- [53] Other considerations must be accounted for in the reasonableness review to be undertaken in this case, and those consideration arise from the nature of the Decision under review. In *Makarov v Canada (Foreign Affairs)*, 2024 FC 1234, affirmed 2025 FCA 223 [Makarov], the Court was focussed on subsections 8(1) and (2) of the Special Economic Measures (Russia) Regulations, SOR/2014-58 [the Russia Regulations] and judicial review of a ministerial decision made in a regulatory environment that is nearly identical to the one at issue in this proceeding. Subsections 8(1) and (2) of the Russia Regulations contained the same substantive regulatory language as is found in subsections 8(1) and (2) of the Haiti Regulations.
- [54] In *Makarov*, Mr. Justice Henry Brown engaged in an extensive examination of the degree of deference a reviewing Court should afford the Minister when she gives a decision as to whether reasonable grounds exist to recommend to the GIC that a person's name be removed from the schedule to economic sanction regulations, thereby ceasing the sanctions that had applied against them. His Honour concluded at follows at paragraph 69 of *Makarov*:
- [69] As discussed below, the Court concludes that: (1) the Minister is entitled to the widest deference in weighing and assessing the record and making the Decision in this case given its nature and purpose and her role at the apex of Canadian decision making, (2) the Minister is not bound by the strict rules of evidence in making this Decision, (3) the Decision is not one to be tested on criminal or civil standards of proof, and (4) because viewed holistically the Decision meets the test of reasonableness established by the Supreme Court of Canada.
- [55] Justice Brown also concluded at paragraphs 84 to 85 of *Makarov* as follows:
- [84] Justice Gleason concludes:
- [120] Indeed, this Court has repeatedly held that “[when] decisions made by administrative decision makers lie more within the expertise and experience of the executive rather than the courts, courts must afford administrative decision makers a greater margin of appreciation”: *Gitxaala Nation* at para. 147, citing *Delios v. Canada (Attorney General)*, 2015 FCA 117, [2015] F.C.J. No. 549 at para. 21; *Boogaard* at para. 62; *Forest Ethics* at para. 82; see also guidance in *Paradis Honey Ltd. v. Canada (Attorney General)*, 2015 FCA 89, [2016] 1 F.C.R. 446 at para. 136, leave to appeal to SCC refused, 36471 (29 October 2015).
- [Emphasis added]
- [85] In the result, I have concluded the deference owed to this Minister in this case is equal to that owed to the Governor in Council – that is to say, the Minister is owed the widest deference on judicial review of a determination of who should or should not be sanctioned in this case and cases like it. I say this given the circumstances, context and purposes of the Russia Regulations as set out in the Regulatory Impact Assessment Statements referred to above, the findings of the Minister in her Decision letter and supporting material relied upon from the Memorandum, the Minister's undoubted knowledge and expertise along with

that of her Deputy Minister and departmental officials, all in the context of the enormous complexity of global and international affairs generally, and the Canadian and global responses to Russia's invasion of and war in Ukraine, which among other things entail issues relating to war and peace. While the issue in this case is justiciable, the bar the Applicant must overcome to succeed is exceedingly high.

[56] The Court adopts Justice Brown's reasoning and conclusions and shall apply them, *mutatis mutandis*, in the context of the Haiti Regulations. This Court may only intervene in the Minister's specialized fact and knowledge-based assessment of the record if the Applicant establishes the Minister made a fundamental or fatal error per *Vavilov* and *Doyle* (Makarov at para 93). Intervention by the Court will be rare (Makarov, 2025 FCA 223, at para 8)

VI. Arguments and Analysis [57] It is important to appreciate the evidentiary threshold to be met by the Applicant in his Removal Application. Subsection 8(2) of the Haiti Regulations sets out that the Minister must decide on receipt of an application whether there are reasonable grounds to recommend the removal of an applicant's name from the Schedule to the GIC. The "reasonable grounds" evidentiary standard has been determined by the Supreme Court of Canada to mean "something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]). The Supreme Court of Canada reconciled the various expressions of the applicable evidentiary standard as follows: "In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera* at para 114).

A. The Minister did not apply the wrong test [58] The Applicant argues that the Minister applied the wrong test because the Minister considered the applicable test in the negative and applied a more onerous standard as a result. The Applicant argues that the Minister applied this negative test when she wrote as follows at the sixth paragraph of her Decision:

Given the situation in Haiti, one of the most corrupt countries in the world, and given your association with former President Michel Martelly, former President of the Chamber of Deputies Gary Bodeau, who were listed in the Annex of the Haiti Regulations, as well as former Director General of the General Customs Administration Romel Bell, your arguments do not allow me to conclude that there are no reasonable grounds to believe that you have not been associated with current or former officials of the Government of Haiti, nor that you have not benefitted from these relationships to advance your business interests, nor that you have not engaged in criminal acts, which have contributed to undermining stability, democracy and the rule of law in the Republic of Haiti.

- [59] The Applicant relies on my colleague Mr. Justice Russel Zinn's decision in *Abdelrazik v Canada* (Minister of Foreign Affairs), 2009 FC 580 [Abdelrazik] at paragraph 53, for the proposition that proving a negative is inherently more difficult. The Applicant argues that the Minister put the Applicant in exactly the same untenable position as the Court described in *Abdelrazik* by requiring the Applicant to prove that he did not meet the criteria set out in section 2 of the Haiti Regulation to be listed in its Schedule.
- [60] These arguments must be rejected.
- [61] *Abdelrazik* is of no assistance to the Applicant in this case. The facts and legal questions in issue in *Abdelrazik* are sufficient to distinguish its application from the current matter. The similarity between the two matters lies in the fact that Mr. *Abdelrazik* had been included in a list. In *Abdelrazik*, the list had been prepared by the United Nations 1267 Committee and had listed Mr. *Abdelrazik* as an associate of Al-Queda, but no-one provided him with information as to the basis for his inclusion in the list (*Abdelrazik* at para 53). The Applicant's situation here is quite different.
- [62] The Amending Regulation and the RIAS set out the basis upon which the Applicant had been included in the Schedule: he was considered among the economic elite in Haiti, and considered to have used his influence and resources to protect and/or support the activities of criminal gangs, including through money laundering and other acts of corruption.
- [63] Additional information supporting the Applicant's inclusion in the Schedule was provided to him through the PFL and was clear as to the basis for his inclusion in the Schedule: there were reasonable grounds to believe that the Applicant is an associate of a person referred to in any of paragraphs 2(a) and (b) of the Haiti Regulations based on his association with current or former officials of the Government of Haiti, including former President Michel Martelly, who was listed pursuant to paragraph 2(b) of the Haiti Regulations. The PFL included examples of the open-source evidence the Minister and the GIC had considered.
- [64] It must be remembered that the Applicant specifically argued in his Removal Application that he was not an associate of anyone described in paragraphs 2(a) and (b) of the Haiti Regulations, more particularly that he was not an "associate" of former President Moïse, and that his dealings with other political figures in Haiti was "solely part of normal business operations of Deka Group, and nothing more" prior to receiving the PFL. The Applicant was also provided with the opportunity to respond to the additional information communicated to him through the PFL and provided a fulsome 46-page response to the PFL, including 9 appendices, which disputed the specific information communicated by GAC.
- [65] The Applicant was aware of the case to meet, was aware that his burden was to establish reasonable grounds to believe that he should be removed from the Schedule, and filed submissions in support of his argument that no reasonable grounds existed to include in him the Schedule.

[66] The Applicant's argument that the Minister applied the wrong test by using in the negative phrasing does not withstand scrutiny.

[67] The Applicant focusses on a specific passage of the Decision to the exclusion of those passages of the Decision which communicate the basis of the Decision to the Applicant. The Decision uses the expression "reasonable grounds" on four occasions. Those occasions are:

a)in the third paragraph of the Decision: "I have considered the information and arguments put forth in your submissions and have decided to maintain your name on Schedule 1 of the Haiti Regulations. Based on available open-source information, I do not believe that there are reasonable grounds to conclude that you are not an associate of current or former senior officials of the Government of Haiti";

b)in the fourth paragraph of the Decision: "Additionally, I have reasonable grounds to believe that you engaged in criminal acts, including corruption, fiscal evasion and financing of gangs. For instance, you have likely bribed politicians on several occasions, interfering with the political independence of Haiti's legislature and have contributed to fomenting nationwide paralysis of economic activities, known as "peyi lòk" in 2019 and 2022, through payments to politicians involved in the protests";

c)in the sixth paragraph of the Decision, as argued by the Applicant: "Given the situation in Haiti, one of the most corrupt countries in the world, and given your association with former President Michel Martelly, former President of the Chamber of Deputies Gary Bodeau, who were listed in the Annex of the Haiti Regulations, as well as former Director General of the General Customs Administration Romel Bell, your arguments do not allow me to conclude that there are no reasonable grounds to believe that you have not been associated with current or former officials of the Government of Haiti, nor that you have not benefitted from these relationships to advance your business interests, nor that you have not engaged in criminal acts, which have contributed to undermining stability, democracy and the rule of law in the Republic of Haiti" (emphasis added by the Applicant in his materials);

d)in the eighth paragraph of the Decision: "After careful review of your application, based on the information provided by you and gathered about you by Global Affairs Canada, I do not have reasonable grounds to recommend to remove your name from the Haiti Regulations, but rather have reasonable grounds to believe that maintaining your name on the list of sanctions is coherent with Canada's foreign policy objectives in relation to Haiti, as well as with the Canadian approach for sanctions implementation".

[68] The determinative use of the expression "reasonable grounds" is contained in the eighth paragraph of the Decision where the Minister sets out her conclusion with respect to the test applicable to a removal application as set out by subsection 8(2) of the Haiti Regulations. The Minister writes "I do not have reasonable grounds to recommend to remove your name from the Haiti Regulations". The Minister applied the test fixed by the Haiti Regulations and determined whether there were reasonable grounds to recommend the Applicant's removal from the Schedule. In this case, the Minister determined that there were no reasonable

grounds to recommend the removal of the Applicant's name from the Schedule. The Minister applied the correct test to the application that was before her.

- [69] The use of "reasonable grounds" in the third paragraph of the Decision refers to the specific issue of the Applicant being an associate of current or former senior officials of the Government of Haiti. While the specific wording of the paragraph might have been formulated differently, a holistic and contextual reading of the paragraph as is required by Vavilov at paragraph 97 reveals that the Minister set out her conclusion that the Applicant has not established reasonable grounds that contradict open-source information that appears to show that the Applicant is a close ally of former President Martelly. In short, the Applicant had not met his burden.
- [70] The use of "reasonable grounds" in the fourth paragraph of the Decision is in relation to the Minister's conclusion that there is reasonable ground to conclude contrary to the Applicant's assertions in his Removal Application regarding criminal acts, including corruption, fiscal evasion and financing gangs. The Decision reflects that the Applicant had not met his burden on this issue.
- [71] The use of "reasonable grounds" in the sixth paragraph of the Decision, a paragraph written almost entirely in the negative form, appears to refer to the Minister's original recommendation for listing to the GIC pursuant to subsection 2(1) of the Haiti Regulations that there were reasonable grounds to believe that the Applicant had been an associate of current or former senior official of the Government of Haiti, and the Minister's conclusion that the original recommendation was well supported. It is this paragraph that the Applicant focusses on, yet the paragraph has little to no bearing on the determination of the Applicant's Removal Application given its focus on the Minister's appreciation of her initial recommendation to the GIC. The Applicant's focus on the sixth paragraph of the Decision shines a light on a non-determinative paragraph of the Decision.
- [72] That the Minister may have expressed any of her conclusions in a negative form of phrase does not detract from the expressed conclusion and meaning of the words used considered in a holistic and contextual manner. The Minister did not apply the applicable test in the negative and did not apply a more onerous standard than the standard set out in subsection 8(2) of the Haiti Regulations.
- [73] Finally, this Court considered the Applicant's "proving a negative" argument in connection with a removal application in Makarov. Justice Brown found that the "proving a negative" argument is really a red herring that avoids the real issue of whether an applicant established reasonable grounds to recommend the removal of their name from the schedule to an economic sanctions' regulation (Makarov at para 113). I come to the same conclusion as Justice Brown. The Applicant's argument is rejected.

B. The Minister's Decision is reasonable [74] The Applicant argues that the Decision is unreasonable for several reasons. I address each reason in turn and explain why the Minister's Decision is reasonable.

- (1) The Minister's consideration of open-source information is entitled to the widest deference and is reasonable [75] The Applicant argues that the Decision is unreasonable because the Court cannot trace the Minister's reasoning without encountering flaws in its overarching logic due to the "available open-source information" referred to in the Decision not being identified. He further argues that the open-source information identified in the PFL or in the Memorandum cannot be used to support the Decision because they pertained to the original reasons for the listing. The Applicant relies on *Tendai v Canada* (Citizenship and Immigration), 2023 FC 880 [Tendai], and *Cepeda-Gutierrez v Canada* (Minister of Citizenship and Immigration), 1998 CanLII 8667 (FC) [Cepeda-Gutierrez] in support of his arguments.
- [76] The Applicant further argues that the Minister cannot consider open-source information blindly and without analysis. He argues based on paragraph 89 of *Makarov* that the Minister may consider credible and probative news articles from reliable and/or credible non-government organizations, but not from problematic sources and from known sources of fake news and misinformation. He argues that decision-makers must consider the accuracy, credibility and trustworthiness of documentary evidence and that a failure to do so may make the resulting decision unreasonable (*Jalil v Canada* (Minister of Citizenship and Immigration), 2006 FC 246 [Jalil] at paras 34 and 40).
- [77] The Applicant argues that the Haiti Observateur documents that speak to allegations of the Applicant's financing of political campaigns and use of influence with respect to customs and tax evasion are not credible and would have been found to be lack credibility had due diligence been exercised. The Applicant argues that the Facebook Posts of Oscar Hughes Price are equally problematic and lacking credibility, as are the confessions of Arnel Joseph. The Minister's failure to consider the legitimacy of these sources, he argues, leads to the Decision being unreasonable.
- [78] The Respondent argues that the Minister's consideration of open-source materials was reasonable. The Respondent notes that the Minister is not constrained by the normal rules of evidence and may, like other tribunals, act on any material that is logically probative even though it may not meet the requirement of evidence law (*Makarov* at paras 94-99; *Canadian Recording Industry Association v Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322 at paras 20-21).
- [79] The Respondent argues that the evidentiary record supporting the Minister's decision must be considered in the context of the sanctions regime. Like most other sanctioned persons, the Applicant is a foreign national that has never resided in Canada. The "reasonable grounds" standard used in the Haiti Regulations reflects the fact that GAC does not have any investigative powers under the Haiti Regulations, and thus may not have direct evidence of a foreign

national's involvement in Haiti.

- [80] The Respondent argues that the Minister is entitled to rely on open-source information, relevant information collected by GAC, and on the Minister's own judgment and experience (Makarov at para 76). The Respondent also argues, with ample support in the record, that traditional reporting and journalism from Haiti is scarce due to violence against journalists and human rights defenders.
- [81] The Court must defer to the Minister's determination of whether and to what extent open-source information considered is probative, reliable or credible (Makarov at para 99). The determination of open-source documents' reliability and credibility, whether assessed individually or collectively, or considered in light of the collected experience of GAC and the Minister, as well as any inferences to be drawn from them, are matters that fall within the Minister's powers and, absent a showing of exceptional or fundamental error, may not be interfered with by this Court (Makarov at para 99). The Applicant has shown no such exception or fundamental error here.
- [82] Despite the Applicant's argument to the contrary, neither the Minister nor GAC were obligated to disclose open-source information that the Applicant would have had access to (Gomez at para 125).
- [83] A review of the Decision and of the record, including the Memorandum and the basis of its recommendation to the Minister, reflect that the Minister considered a variety of open-source documents, but also considered the extensive work of the Panel of Experts and its report. The Applicant's concerns with the Haiti Observateur documents, the Facebook Posts of Oscar Hughes Price and the confessions of Arnel Joseph are outsized considering that the information that had been presented to the Minister for consideration from other credible sources such as Voice of America, Reuters, National Public Radio, the Miami Herald, and the Panel of Experts Report, to cite but a few, appear from the Memorandum to have been more significant in GAC's formulation of a recommendation to the Minister and the Minister's Decision that arose from it than the specific documents the Applicant is concerned about.
- [84] The Applicant's arguments based on Tendai and Cepeda-Gutierrez must be rejected as neither decision applies here. The decisions are factually and legally distinguishable from the facts and the applicable law in this case. The Applicant misreads Tendai, appearing to suggest that the requirements applicable to matters of documentary authenticity findings in immigration matters should be parachuted into a decision on a removal application pursuant to section 8 of the Haiti Regulations. There is no basis established to support the Applicant's proposition. Cepeda-Gutierrez stands for the well-established proposition in administrative decision making that the burden of explanation increases with the relevance of the evidence in question to the disputed facts. Vavilov teaches at paragraph 92 that we must take the context in which a decision is made into account:

- [192] Administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge — nor will it always be necessary or even useful for them to do so. Instead, the concepts and language employed by administrative decision makers will often be highly specific to their fields of experience and expertise, and this may impact both the form and content of their reasons. These differences are not necessarily a sign of an unreasonable decision — indeed, they may be indicative of a decision maker’s strength within its particular and specialized domain. “Administrative justice” will not always look like “judicial justice”, and reviewing courts must remain acutely aware of that fact.
- [185] The Minister’s Decision is not required to specify which sources she relied upon from the Memorandum, the weight she gave them, and for which proposition they were retained. A holistic and contextual review of the Decision in light of the record (Vavilov at para 103) reflects that the Minister considered the sources presented to her by GAC, open-source and otherwise, the Applicant’s submissions and criticism of them, and that she gave weight to each of them based on her experience and skill in making her determinations of fact. Cepeda-Gutierrez is distinguishable and finds no application here.
- [186] While the Court appreciates the Applicant’s reliance on Jalil, it must be recalled that the issue there was with respect to two documents that had been shown to contain information from unreliable sources found on the internet, many of which were not identified with any specificity and whose accuracy, reliability and credibility were deemed doubtful. The evidence submitted by the applicant in that case regarding the reliability of the two documents, including expert evidence, was overwhelming. The evidence led in this matter on the documentary reliability issues falls short of being considered as overwhelming, particularly considering the breadth of information and documents considered by the Minister.
- (2) The Minister considered and addressed the Applicant’s Submissions dated February 17, 2023, and December 5, 2023 [87] The Applicant argues that the Minister failed to grapple with the key issues and central arguments he raised through his submissions. More specifically, he argues that the Minister failed to engage with his submissions that:
- a) he has no affiliation with Haitian gangs, which was confirmed by Réseau National de Défense de Droits Humains, a Haitian non-governmental organization that works to support and defend human rights in Haiti, which stated that it is not aware of any allegations against the Applicant, and that on the contrary “he is a victim”;
 - b) he and his business have been routinely victimized by gangs in Haiti, including the kidnapping of his employees for ransom and theft/loss of millions of dollars worth of products, and this directly contradicts the Minister’s allegation that he supports or benefits from gangs in Haiti;
 - c) his company, the Deka Group, is one of the largest taxpayers and the largest payer of customs duties in Haiti, which is contrary to the Minister’s allegation that Mr. Deeb engaged in tax evasion;

d) despite listing other parties under their Haiti sanctions regimes, the United Nations and other jurisdictions have not sanctioned him;

e) fake news and misinformation is widely circulated in Haiti, and is directed at individuals in the business community;

f) he is severely impacted by being listed in the Schedule to the Haiti Regulations, and that he as a result is at risk that other jurisdictions follow suit without conducting their own analysis; and

g) the consequences of the listing are contrary to the objectives of the sanctions, which are to serve the Haitian people, as he is involved in extensive humanitarian work and his business supplies essentials goods to ordinary Haitians, and the sanctions effected through the Haiti Regulations hamper those efforts.

[88] This failure to grapple with his issues and submissions, he argues, makes the Decision unreasonable (Vavilov at 127-128).

[89] The record reflects that the Applicant's key issues as set above were considered by GAC in the Memorandum and in turn by the Minister. Indeed, paragraph 5 of the Memorandum shows that GAC was alive to the Applicant's submissions on these points:

5. On February 17, 2023, Mr. Deeb submitted his application for delisting to the Minister of Foreign Affairs, requesting to have his name removed from the Schedule. In his application, Mr. Deeb claims that he is not an associate of anyone described in subsections 2(a) and 2(b) of the Haiti Regulations; that he is not closely connected to the Haitian political class and that the term "associate" should be interpreted narrowly. Mr. Deeb further claims that he has not engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti, and that he is not engaged in criminal activities in Haiti. In his submissions, Mr. Deeb also rejects the allegations made by the United Nations Security Council Panel of Experts (POE) and submits that he is a victim of gangs and a positive influence in Haiti. Mr. Deeb notes that he has not been sanctioned by any countries other than Canada, and that his listing has significantly impacted his family's finances.

[90] Paragraphs 10 to 20 of the Memorandum specifically consider each of the Applicant's arguments. Further consideration of many of these arguments is found in the document attached to the Memorandum titled Annex 1 – Information supporting the listing.

[91] The Decision itself also sets out in its sixth paragraph that the Applicant's issues and submissions were considered by the Minister through the following language:

[...] your arguments do not allow me to conclude that there are no reasonable grounds to believe that you have not been associated with current or former officials of the Government of Haiti, nor that you have not benefitted from these relationships to advance your business interests, nor that you have not engaged in criminal acts, which have contributed to undermining stability, democracy and the rule of law in the Republic of Haiti.

[92] The Memorandum reflects that GAC considered the Applicant's submission and that he did not meaningfully factually challenge the basis upon which he came to be listed in the Schedule. The Applicant acknowledged having relationships with former President Martelly, who is a person the GIC has reasonable grounds to believe engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti, and with former President Moïse, who is a former senior official of the Government of Haiti. By acknowledging the existence of these relationships, despite arguing about their nature and effect and the statutory meaning of the word "associate" as found in the Haiti Regulations, the Applicant confirmed that he was a person who could be considered to be an associate of either or both of former Presidents Martelly and Moïse. The Applicant therefore acknowledged in his Removal Application and in his response to the PFL that he could be a person that falls within the ambit of paragraph 2(c) of the Haiti Regulations. The Memorandum takes note of this as follows:

9. While he acknowledges relationships with political actors, such as Michel Martelly and Jovenel Moïse, Mr. Deeb argues that he is not an associate of anyone described in subsections 2(a) and 2(b) of the Haiti Regulations; that he is not closely connected to the Haitian political class; and that "associate" should be interpreted narrowly. Based on the Department's experience in Haiti, which is also supported by various analyses from experts, the Department is of the view that the relationship between Mr. Deeb and these political actors is illustrative of how businessmen and politicians collude to favour each other in Haiti. The nature of his connections with politicians is beyond those of a normal, influential businessman and have contributed to undermine stability, democracy and the rule of law in the country.
10. Michel Martelly was sanctioned by Canada on January 13, 2023. In addition, in its final report to the Security Council Committee, the Panel of Experts on Haiti, established pursuant to Security Council resolution 2653 (2022), found that Michel Martelly was financing gangs in Haiti. It was also found that Mr. Deeb gained influence in the control of Haiti's main ports, and in particular in the public port of Port-au-Prince, following the election of Michel Martelly in 2011. Mr. Deeb's relationship with Mr. Martelly was such that the former president had proposed him as a potential interim prime minister in 2016.

[93] While the Applicant is correct in arguing that the Minister did not grapple extensively with the Applicant's submissions identified as items a), b), c), d), e) and g) above, it is equally correct that these issues and arguments fail to address any of the listing criterion set out in section 2 of the Haiti Regulations and therefore would have little to no impact on whether he had established reasonable grounds to remove him from the Schedule.

[94] Through the Memorandum, the Minister was alert to the Applicant's arguments and issues as presented and argued in his Removal Application submissions and in his submission in response to the PFL. The Minister's failure to engage explicitly with issues and arguments that fail to address the listing criterion set out in section 2 of the Haiti Regulations in the text of the Decision itself, beyond the brief manner in which she did, is a minor misstep that

does not on its own cause the Decision to be unreasonable (Vavilov at paras 100 and 128). There is no fundamental flaw in the Decision in this regard.

- (3) The Decision is not unreasonable for not speaking to submissions with respect to economic sanction decisions made by other entities and states delivered after the time provided for submissions to be made had expired [95] The Applicant filed additional submissions on December 20, 2023. These additional submissions were filed beyond the date specified in the PFL within which the Applicant could deliver submissions in response to the PFL. These additional submissions were also filed without requesting more time to respond to the PFL.
- [96] The December 20, 2023, additional submissions were described by the Applicant as an update on significant activity regarding listings of Haitian individuals by Canada's close allies and the United Nations since December 5, 2023. The content of the update letter was limited to the transmittal of information regarding decisions made by the United Nations Security Council, by the US Office of Foreign Asset Control, the U.S. Department of State, and the U.K. Foreign, Commonwealth and Development Office to include certain Haitian individuals in their economic sanction lists. The Applicant's update did not attach any of the decisions themselves, nor the reasons for them. The Applicant communicated that none of these jurisdictions included him in their list of persons to suffer sanctions.
- [97] The Applicant reiterated the submission he had previously made in his Removal Application and in his response to the PFL: that he considered the content of the Panel of Experts Report in his regard to be false and that his non-inclusion in the recent additions to the United Nations Security Council sanctionees list despite being included in the Panel of Experts Report is strong support for his claim that the allegations in the Panel of Experts Report are false. The Applicant did not submit documentary evidence with his update letter that substantiated the decision to sanction some Haitian individuals rather than others. There is no evidence of any reason why the Applicant was not included in the sanctionees list while others were. Given the absence of evidence on the matter, the Applicant's argument that he was not included in the United Nations Security Council sanctionees list despite being included in the Panel of Experts Report because the allegations made against him are false must be described as conjecture and speculation.
- [98] The Applicant's December 20, 2023, submissions were nevertheless included in the certified tribunal record produced in the record before the Court and the Respondent argues that the update letter was considered by the Minister. Neither the Decision nor the Memorandum speak directly to the sanctions imposed by other entities or states on Haitians generally. The Decision confirms that Canada is actively engaged in finding solutions to the current crisis in Haiti alongside international partners, but also, that Canada has imposed autonomous sanctions under the Haiti Regulations. As is the case with other administrative decision makers, the Court presumes that the Minister reviewed and considered all the information filed for her review regardless of whether it is referred to in the Decision. There is no requirement that every argument and tendered document be referred to in any event (Vavilov at para 128).

- [99] The Applicant argues that Canada should have determined his Removal Application in a manner consistent with the Minister's past practice in connection with other jurisdictions, and that the Minister was obligated to justify her departure from the approach of Canada's international partners such as the United States of America and the United Kingdom. The Applicant has led no evidence of what any such past practice is or may be, or whether or how Canada's foreign policy objectives in relation to Haiti as well as the Canadian approach for sanctions implementation in Haiti is constrained by the approach taken by the United States of America or the United Kingdom. The Applicant has not argued any authority that supports his argument. The Applicant's argument in this regard must be rejected.
- [100] The Applicant also argues that the Minister explicitly invoked the United Nations in her Decision, stating that the Decision was in part animated by the United Nations Security Council establishing a sanctions regime related to Haiti on October 21, 2022. The Minister's Decision refers to Canada's engagement with its international partners and the United Nations Security sanctions regime related to Haiti, as well as the resolution renewing the regime on October 19, 2023. The Minister then writes that "Canada has also imposed autonomous sanctions under the Haiti Regulations". The Applicant misreads the Decision. The Applicant's argument is ill-founded in fact and must be rejected.
- [101] Like the situation with the Applicant's arguments regarding his non-involvement with gangs etc., the matter of whether Canada's international partners include the Applicant in their list of economic sanctionees is not relevant to the issue of whether the Applicant has established that there are reasonable grounds for his removal from the Schedule in light of his acknowledged relationships with former Presidents Martelly, Moïse or others who fall within the scope of paragraphs 2(a) and (b) of the Haiti Regulations. The Minister's failure to address the content of the Applicant's late submission in the Decision is a minor matter that does not cause the Decision to be unreasonable.
- (4) The Impact of the Decision was considered by the Minister [102] The Applicant argues that the Decision fails to take the impact of its effect on the Applicant into account and that it should have (Vavilov at para 135). He argues that because the Decision impacts important interests like life, liberty, dignity or livelihood, the Minister had a heightened responsibility to ensure that she considered the consequences of the Decision and that those consequences are justified in fact and law. He further argues that the Minister failed to consider his submissions on the serious consequences of the Decision on his ability to operate his business, and failed to demonstrate she considered the consequences of her Decision.
- [103] The Applicant identifies the impacts of the Decision as being "the denial of access to ordinary services from banks and other financial institutions, exclusion from business and community opportunities, severe reputational damage, and the inability to travel to Canada. After my listing, my family and I started to experience exclusion from financial institutions, including the closure of several bank and credit accounts (e.g. Barclays, Citibank, and Merrill Lynch), including my own accounts and those of my wife and

children.” He also deposes to having voluntarily resigned from the Deka Group after the GIC decision because he wanted to protect the Deka Group from “potential negative impacts associated with his listing”. No documentary evidence is led in support of any of these allegations.

[104] The impacts described by the Applicant are the impacts of measures that Parliament has explicitly included in the Haiti Regulations to limit financial support that benefits those who perpetuate violence in Haiti. These sanctions, as noted by the Minister in her Decision, are intended, among other things, to help break the cycle of impunity in Haiti by exerting pressure on individuals who, directly or indirectly, contribute or have contributed to violence and insecurity in Haiti, including through corruption, support to the gangs or facilitating the flow of illicit funds and weapons into Haiti. The impact of regulatorily prescribed sanctions on economic sanctionees like the Applicant is a feature of listing someone in the Schedule.

[105] The Minister’s Decision reflects that the Minister considered the consequences of her Decision on the Applicant and that those consequences were coherent with Canada’s foreign policy objectives in Haiti and with Canada’s approach for sanctions implementation. The Decision reflects that the Minister considered and accepted that the Applicant would continue to suffer the financial and financial services impacts he describes in his submission and that those impacts continue to be justified in light of the facts and the law.

[106] The Minister’s determination in this regard is fact-suffused and must be given the widest deference on judicial review (Makarov at paras 71, 79, 118). The Applicant has not persuaded the Court that the Minister was obligated to explain her reasoning on this issue in any greater or explicit detail. The Applicant’s argument must be rejected.

C. The Decision was rendered in a procedurally fair manner [107] The Applicant argues that the Decision was rendered in a procedurally unfair manner because he was not given the opportunity to be heard in person by the Minister. He also argues that the process was procedurally unfair because his submissions were “blithely rejected”.

[108] The Applicant argues more particularly that the procedure followed by the Minister was unfair because:

- a) the decision-making process resembles a judicial process, involving fact-finding and is much like a trial;
- b) the statutory framework reflects that there is no appeal from the Minister’s Decision;
- c) the Decision is of significant importance because his listing in the Schedule impacts every aspect of his daily life, including his livelihood, access to financial institutions and mobility;
- d) he had a legitimate expectation that the Minister would respond to his submissions, consider the evidence put before her, and provide written reasons showing her path of reasoning; and

e)the Minister chose to proceed in a manner that was not supported by any evidence and was entirely unresponsive to his submissions.

- [109] The Respondent argues that the extent of procedural fairness owed in the context of a removal application under the Haiti Regulations is low because the regulation does not set out a procedure for a removal application. The Minister therefore has the ability to choose her own procedures and has expertise in determining what procedures are appropriate in connection with a removal application (Baker at para 27). The Respondent relies on Madam Justice Catherine M. Kane's reasoning in Gomez at paragraph 116 in support of her argument.
- [110] Gomez involved the judicial review of a decision by the Minister of Foreign Affairs to refuse to remove the applicant, Mr. Gomez, from the list of persons set out in the Schedule to the Justice for Victims of Corrupt Foreign Officials Regulations, SOR/2017-233 enacted pursuant to the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), SC 2017, c 21. The statutory and regulatory language at issue empowered the GIC to include a foreign national as a sanctioned person identified in the schedule by way of a regulation, and that a listed person could apply, in writing, to the Minister of Foreign Affairs, to cease being subject to regulation and, by extension, to the sanctions against them.
- [111] Subsection 8(2) of the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) provided that the Application was to be determined by the Minister through the following statutory language:
- (2) On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant ceases to be the subject of it.
- [112] As is the case in the Haiti Regulations, the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) provided that the person sought to be removed from the regulation's application could submit another application for removal if there has been a material change in their circumstances since their last application. There was no right of appeal from the Minister's decision on the removal application contemplated by the statute, but the decision could be judicially reviewed. The statutory language providing for the removal application was substantively identical to the statutory language used in the Haiti Regulations for the Applicant's Removal Application.
- [113] Justice Kane wrote as follows at paragraphs 114 to 116 of Gomez:
- [114] Mr. Rangel Gomez also argues that listed persons have a legitimate expectation that they will receive a fair hearing and be provided with the details of the case against them, that the Government of Canada has an interest in ensuring that only those people who warrant sanctions actually receive them, and that the Minister should want listed persons to know why they are sanctioned in order to modify their behaviour. He argues that this calls for a higher level of procedural fairness. However, these submissions are about the application

of a duty of procedural fairness and not about a legitimate expectation that could inform the level of procedural fairness owed. As noted above, a legitimate expectation refers to whether there was a departure from an official practice or a clear undertaking of what the process would be. In the present case there is no official practice and no undertakings were made to him regarding the process to be followed. Mr. Rangel Gomez acknowledged that he had the opportunity to make extensive submissions and a second opportunity to make additional submissions. The DM's Memo and Minister's decision demonstrate that his submissions were thoroughly considered. Mr. Rangel Gomez focusses his argument on not knowing the case to meet.

- [115] With respect to the choice of procedure of the Minister, Mr. Rangel Gomez submits that because no procedure is set out in the Act, there is no need to defer to the Minister's choice of procedure. However, the Act leaves the procedure to be followed in a delisting application up to the Minister and this choice should be respected. The Minister is only required to decide whether there are reasonable grounds to recommend delisting (subsection 8(2)), make a decision within 90 days after the application is received (subsection 8(3)), and give notice without delay to the applicant of the refusal to delist (subsection 8(4)). This factor does not support a higher level of procedural fairness.
- [116] In summary, the application of the Baker factors does not support finding that a high level of procedural fairness was owed in the context of Mr. Rangel Gomez's Delisting Application. The Minister is not engaged in judicial decision-making, there is an opportunity for judicial review and an opportunity to bring a new application where there is a material change in circumstances, Mr. Rangel Gomez had no legitimate expectation about the process that would be followed, and the choice of process is within the discretion of the Minister.
- [114] Justice Kane's reasoning applies here, and I can do no better than to adopt it.
- [115] The Applicant's procedural fairness arguments must fail as they are ill-founded in fact and in law. The process followed by the Minister to determine the Applicant's Removal Application bears no similarity to a trial and does not resemble the judicial process in any meaningful way as it is not an adversarial process and has none of the hallmarks of an adversarial process. There is no right of appeal set out in the Haiti Regulations, but the ministerial decision remains subject to challenge by way of judicial review. This does not imply that heightened procedural fairness requirements should be applied. There is no evidence of any legitimate expectation being held by the Applicant that the Minister would craft a process that would lead to an in-person meeting or hearing of any sort. To the contrary, the entirety of the process contemplated by the Haiti Regulations is a written process.
- [116] I conclude that the process followed by the Minister was procedurally fair in light of the context. The Applicant's procedural fairness arguments are therefore all rejected.

D. Ex Post Facto Facts and Arguments [117] The Applicant has led some evidence and has made limited submissions on matters occurring after the date of the Decision. The evidence led and the submissions made in consideration of it have no bearing on any of the issues before the Court with respect to the reasonableness of the Decision or to the question of procedural fairness. They need not be considered any further as a result.

VII. Conclusions and Costs [118] The Applicant has neither established nor persuaded the Court that the Decision is unreasonable or was made in a procedurally unfair manner. The Applicant has also not persuaded the Court that the Minister did not consider the impacts of the Decision on him. A review of the record and of the Decision reveals that the Decision is justified, transparent, intelligible, coherent and reasonable. There is no basis upon which the Court should interfere with the Decision.

[119] The Applicant's application for judicial review is therefore dismissed.

[120] The Respondent has sought his costs of this proceeding. The Court strongly encourages the parties to confer and attempt to agree on the costs prior to January 9, 2026. If the parties agree on costs by then, they may deliver a letter on consent to my attention that sets out their agreement as to costs for the Court's consideration.

[121] In the event that the parties do not agree on costs, then the Respondent shall have until January 13, 2026, to serve and file her costs submissions that do not exceed three pages, double-spaced, exclusive of schedules, appendices, and authorities. The Applicant will then have until January 30, 2026, to serve and file his costs submissions, also limited to three pages, double-spaced, exclusive of schedules, appendices, and authorities.

[122] If no agreement as to costs is filed by January 9, 2026, and no costs submissions are served and filed by January 13, 2026, then no costs will be awarded to any party.

JUDGMENT in T-889-24

THIS COURT'S JUDGMENT is that:

The Applicant's application for judicial review is dismissed.

Costs of this proceeding are reserved to be determined following the parties' submissions on costs in accordance with the directions as to costs set out above.

"Benoit M. Duchesne"

Judge

FEDERAL COURT

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