Federal Court Cour fédérale

Date: 20251010

Docket: T-2195-23

Citation: 2025 FC 1684

Toronto, Ontario, October 10, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

FRANTZ CARL BRAUN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Franz Carl Braun, seeks to appeal a December 4, 2024 Judgment of Associate Judge Michael Crinson [AJ] by way of motion pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106. The AJ's Judgment granted a motion by the Attorney General of Canada [AGC] to strike the Applicant's application for judicial review [AJ's Judgment]. For the reasons set out below, the Applicant's motion is dismissed.

I. Background

[2] The Applicant is a Haitian national. He is the founder and former Chairman and Chief Executive Officer of UNIBANK, a financial services group.

[3] On September 20, 2023, the Governor in Council [GIC] added three names, including the Applicant's, to Schedule 1 of the *Special Economic Measures (Haiti) Regulations* SOR/2022-226 [*Haiti Regulations*] under the *Special Economic Measures Act*, SC 1992, c-17 [*SEMA*]. The GIC's decision was made pursuant to section 2 of the *Haiti Regulations* on the recommendation of the Minister of Foreign Affairs [Minister].

[4] The *Haiti Regulations* place sanctions on those listed in Schedule 1 [Sanctions List]. The *Regulations* prohibit any person in Canada, and any Canadian outside of Canada, from engaging in certain dealings and activities with a person listed on the Sanctions List.

[5] There is no right in the *SEMA* or the *Haiti Regulations* to advance notice that a person will be added to the Sanctions List. Section 8 of the *Haiti Regulations* sets out the process for a listed person to apply to have their name removed from the Sanctions List. Section 8 also requires the Minister, on receipt of an application, to decide whether there are reasonable grounds to recommend the removal of a name to the GIC.

[6] On September 21, 2023, Global Affairs Canada [GAC] issued a News Release announcing the Applicant had been added to the Sanctions List. The News Release stated, "Canada has reason to believe these individuals are fuelling the violence and instability in Haiti

through corruption and other criminal acts and by enabling the illegal activities of armed gangs that terrorize the population and threaten peace and security in Haiti." On October 11, 2023, GAC also published a Regulatory Impact Analysis Statement in relation to the decision to add three names to the Sanctions List.

[7] The Applicant's counsel sent a letter to GAC on October 16, 2023, requesting particulars of the rationale for placing the Applicant on the Sanctions List and the specific provision under section 2 that the decision was based on. In a response letter dated December 18, 2023, GAC stated the Applicant was listed pursuant to paragraph 2(a) of the *Haiti Regulations*. The letter added "[o]pen sources indicate that, as a businessman and chairman of the Board of Directors of Unibank, you have been involved in criminal acts and leveraged your influence and resources, including through corruption, money laundering and embezzlement of public funds." The letter also informed the Applicant that individuals on the Sanctions List "may apply in writing to the Minister of Foreign Affairs to have their names removed from the sanctions list."

[8] The Applicant started an application for judicial review on October 17, 2023. The Applicant did not apply under section 8 of the *Haiti Regulations* to have his name removed from the Sanctions List. On March 26, 2024, the AGC brought a motion to strike the application for judicial review on the basis that it was premature.

[9] On December 4, 2024, the AJ granted the AGC's motion and found that the application for judicial review was brought prematurely because of the adequate alternative remedy available to the Applicant under section 8 of the *Haiti Regulations*.

[10] The Applicant filed the current motion in accordance with Rule 51 on December 13, 2024, seeking to set aside the AJ's Judgment striking the application for judicial review.

II. Issues and Analysis

[11] The Applicant raises the following four issues on this motion – whether the AJ erred in failing to:

(a) follow the legal framework for determining whether section 8 of the *Haiti Regulations* constitutes an adequate alternative remedy;

(b) consider the burden (or nature) of the initial listing decision on a section 8 application;

(c) consider whether the delisting application process is capable of curing the procedural defects that occurred in the initial decision to list; and

(d) balance the expeditiousness, timeliness, convenience and costs of the alternative remedy with the suitability of judicial review.

[12] Put another way, I must determine whether the AJ's Judgment was (a) factually supported and (b) legally correct in the four areas identified by the Applicant. For each, I feel that it was under the applicable standard of review, which was succinctly summarized recently by Justice Fothergill in *Bigio v Canada*, 2025 FC 888 [*Bigio 2025*] at paras 15-16:

> A discretionary order of an associate judge is subject to review in accordance with the standards articulated by the Supreme Court of Canada in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*] at paras 2, 79). Questions of law are reviewed against the standard of correctness, and findings of fact

> or mixed fact and law may be revisited only where there is palpable and overriding error (*Hospira* at paras 66; *Housen* at paras 26-28).
>
> The palpable and overriding error standard is highly deferential. "Palpable" means an obvious error, while an "overriding" error is one that affects the decision-maker's conclusion (*Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras 61-64).

A. *Did the AJ err in his analysis of the legal framework?*

[13] The Applicant asserts that the AJ erred by failing to apply *Strickland v Canada (Attorney General)*, 2015 SCC 37 [*Strickland*] in his assessment of whether section 8 of the *Haiti Regulations* constitutes an adequate alternative remedy. The Applicant cites *David Suzuki Foundation v Canada (Health)*, 2018 FC 380 at para 208 and *Facebook, Inc v Canada (Privacy Commissioner)*, 2023 FC 534 at paras 117-118 for the proposition that *Strickland* must be applied to assess the adequacy of an alternative remedy.

[14] *Strickland* sets out a contextual approach, which requires a balancing of factors (at para 43). *Strickland* provides a non-exhaustive list of these factors, as follows (at para 42):

> These considerations include the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost: *Matsqui*, at para. 37; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332, at para. 31; Mullan, at pp. 430-31; Brown and Evans, at topics 3:2110 and 3:2330; *Harelkin*, at p. 588. In order for an alternative forum or remedy to be adequate, neither the process nor the remedy need be identical to those available on judicial review. As Brown and Evans put it, "in each context the reviewing court applies the same basic test: is the alternative

> remedy adequate in all the circumstances to address the applicant's grievance?": topic 3:2100.
>
> [Emphasis in original.]

[15] Here, most critically, the Applicant contends that that the AJ did not give any consideration to whether judicial review was appropriate in the present case, but rather focused solely on the alleged efficacy of the delisting process. Specifically, the Applicant emphasizes that he wishes to clear his name from the case against him based on 'open sources'. He says he cannot do that because the listing process wasn't transparent. He also argues that any delisting which might potentially result from the section 8 process does not remedy his concern. For that reason, amongst others, he argues that the AJ erred in failing to consider, in all the circumstances, whether the alternate section 8 remedy was adequate to address his grievance.

[16] I cannot agree. The AJ considered what had been submitted to him and chose to follow an approach that had already been taken by this Court. The AJ followed decisions in recent judicial review challenges to other listings under the *Haiti Regulations* in *Bigio v Canada (Governor General in Council),* 2024 FC 1748 [*Bigio 2024*] at paras 18-20 and *Charles Saint-Rémy v Attorney General of Canada, 2024 FC 1380* [*Saint-Rémy*]. He took into account that the Notice of Application in this matter set out as its ultimate objective relief in the nature of having the Applicant removed from the Sanctions List. After considering *Bigio 2024* and *Saint-Rémy*, the AJ found section 8 provides an adequate alternative remedy to the Applicant that should have been, but was not, exhausted before seeking judicial review.

[17] That conclusion has since been upheld in two further decisions of this Court on Rule 51 appeals – namely that of *Bigio 2025* and *Mobile Telesystems Public Joint Stock Company v*

Canada (Attorney General), 2025 FC 181 [*Mobile 2025*]. Justice Fothergill upheld AJ Crinson's decision of *Bigio 2024*, as he did Associate Judge Cotter's decision of *Mobile Telesystems Public Joint Stock Company v The Attorney General of Canada*, 2024 FC 1237 [*Mobile 2024*]. The *Mobile* decision, while similar, did not involve the *Haiti Regulations*, rather it concerned the *Special Economic Measures (Russia) Regulations*, SOR/2014-58 under *SEMA*.

[18] Justice Fothergill responded to the same argument in *Mobile 2025* that the Applicant argues here – namely that the Associate Judge had wrongly applied *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 [*CB Powell*] rather than *Strickland* on the issue of prematurity:

> [34] MTS says the CMJ should have applied the legal framework established in *Strickland v Canada (Attorney General)*, 2015 SCC 37 [*Strickland*], but instead undertook "a contrived analysis focused solely on the purported efficacy" of the process prescribed by s 8 of the Regulations. According to MTS, the Supreme Court of Canada's decision in *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 [*Yatar*] confirms that *Strickland* remains good law.
>
> [35] *Strickland* and *Yatar* concerned circumstances where a court declined to exercise judicial review altogether, either in favour of another forum (*Strickland*) or in favour of another remedy (*Yatar*). Neither case addresses the Court's discretion to strike a notice of application on the ground of prematurity.
>
> [36] The Federal Court of Appeal confirmed in *Gupta v Canada (Attorney General)*, 2021 FCA 202 that *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 [*CB Powell*] continues to be the governing authority for assessing the adequacy of an alternative remedy that has yet to be exhausted, notwithstanding *Strickland*. *Yatar* may be distinguished for the same reason.
>
> [37] The CMJ did not err in applying *CB Powell* rather than *Strickland* to decline jurisdiction on the ground of prematurity.

[19] I should note that counsel also raised *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 [*Yatar*] in this case. However, like *Strickland* which considered whether the Federal Court was the appropriate forum to hear a family law matter rather than the provincial court, *Yatar* did not squarely address prematurity due to an adequate alternate remedy. Quite the opposite, *Yatar* found that where there was a limited right of appeal to the licensing appeal tribunal for questions of law, judicial review would still be appropriate for questions of fact or mixed fact and law. The Court, however, held that adequate alternatives do exist where – unlike in *Yatar* – internal review processes have not been exhausted or where there is a statutory right to appeal that is not restricted, such that questions of law, fact, and mixed fact and law could be considered on appeal (*Yatar* at para 63).

[20] Ultimately, I note that the AJ here turned his mind to the issue, adopting as his own the finding in *Saint-Rémy* made by Case Management Judge Duchesne that "[c]onsidering the factors identified in *Strickland*, *CB Powell* and *Dugré* [*Dugré v Canada (Attorney General)*, 2021 FCA 8], the Court finds that a Section 8 Application is an adequate and effective remedy that is available to the Applicant now and later" (at para 61).

B. *Did the AJ err in appreciating the burden (or nature) of the section 8 process?*

[21] Here, the Applicant claims that the AJ failed to consider the burden of previous findings under section 8. He claims that section 8 is a 'reconsideration' process of an earlier decision. He relies on three decisions for his argument that judicial review is not precluded in the instance of reconsideration, which in this case he argues is not an adequate alternate remedy (*I.B.E.W., Local 894 v Ellis-Don Ltd*, 2001 SCC 4 [*Ellis-Don*] at para 57; *Rogers Communications Canada Inc v*

Metro Cable TV Maintenance, 2017 FCA 127 [*Rogers*] at para 17; *Buenaventura Jr v Telecommunications Workers Union*, 2012 FCA 69 [*Buenaventura*] at para 30).

[22] Specifically, the Applicant maintains that both the section 2 listing decision and the section 8 decision upon receipt of an application to remove a name, are made by the Minister and both on recommendation to the GIC. Therefore, the Applicant argues that the process amounts to a reconsideration by the same decision-maker.

[23] Once again, I cannot agree. This case does not involve reconsideration – usually discretionary and restrained – by the same decision-maker, in the way that that *Ellis-Don*, *Rogers* or *Buenaventura* did. The same argument has been advanced in the other section 8 cases before this Court and has been rejected each time. I see no reason to diverge with my colleagues for reasons that have been amply explained. For the benefit of this Applicant, I do so once again.

[24] The AJ, in his Judgment under review, correctly relied on *Saint-Rémy* wherein it was noted that "[t]he decision-making scheme set out in the *Haiti Regulations* does not contemplate that the Governor in Council is reconsidering its initial decision […]. Rather, it contemplates different decision-makers with different decisions to make on the basis of different information" (at para 56).

[25] Justice Fothergill then expanded on the distinction in *Mobile 2025*, noting that a reconsideration power is typically more restrained and exceptional, whereas here, the Applicant may submit new evidence and information, fundamentally distinguishing the Minister's decision

under section 8 from the GIC's initial decision under section 2 (at para 41). Justice Fothergill also agreed with AJ Cotter that section 8 diverged from a reconsideration power which typically "is to be exercised with restraint, so that reconsideration is the exception rather than the norm" (*Buenaventura* at para 31).

[26] This Court in *Saint-Rémy* endorsed the four ways in which AJ Cotter had articulated in *Mobile 2024* that section 8 was distinct from a reconsideration process (*Saint-Rémy* at para 54; *Mobile 2024* at para 32), namely that:

(i) the Minister makes a decision under section 8 based on materials that the Applicant submits, a process that differs from reconsideration;

(ii) the applicant can submit whatever evidence, information and submissions they wish;

(iii) the Minister does not reconsider the original decision to place the person on the list, but rather if there are reasonable grounds to recommend delisting; and

(iv) the Minister makes the decision to recommend delisting or not, rather than the GIC.

[27] These observations, also supported in the two more recent decisions by Justice Fothergill implicating this process within the listing regime (*Bigio 2025*; *Mobile 2025*), make eminent sense. As subsection 8(2) reads, "[o]n receipt of an application, the Minister must decide whether there are reasonable grounds to recommend the removal to the Governor in Council" [emphasis added]. Unlike a reconsideration process which provides a great amount of flexibility and

ultimately discretion to the decision-maker, here the Minister has an obligation to decide on what will invariably be new evidence from an applicant. This process fundamentally differs from reconsideration, where the same decision-maker re-reviews the same materials. The decision-maker customarily has the right – but not the obligation – to reconsider or vary its own prior decision (*Rogers* at paras 16, 18). Again, this distinguishes the *Haiti Regulations* from standard reconsideration models.

C. *Did the AJ err in failing to consider whether the delisting application process is capable of curing the procedural defects that occurred in the initial decision to list appreciating the burden (or nature) of the section 8 process?*

[28] The Applicant contends that the process has been procedurally unfair in that the Applicant did not have the opportunity to comment during the listing process, and will not receive a record of the decision that was made lest he be permitted to file a judicial review. The Applicant lists various grievances he has with the process apart from those enumerated above. These include that the process is non-transparent in both the listing and the section 8 stage in terms of what materials to submit; the nature of the delisting decision-making process and the lack of monitoring thereof; the full discretion of the Minister on section 8 applications; the lack of assurance of impartiality; and documented failure to make decisions without Court orders to do so.

[29] In terms of redressing these points of claimed unfairness, the Applicant cites authorities including *Schmidt v Canada (Attorney General*), 2011 FC 356 [*Schmidt*] at para 17 and *Yatar*. *Schmidt* is cited for the proposition that "where the authority of an appellate body is somehow constrained or where the burden shifts to the aggrieved party to obtain appellate relief, it is

unlikely that a previous grave procedural defect will be overcome" when the review process does not involve a "full and independent consideration of the case without being contaminated by the unfairness of what happened below."

[30] As for *Yatar*, the Applicant cites the proposition that judicial review remains important to "ensure that those whose interests are being decided by a statutory delegate have a meaningful and adequate means to challenge decisions that they consider to be unreasonable having regard to their substance and justification, or were taken in a way that was procedurally unfair" (at para 65).

[31] The Applicant relies on the principles enunciated in *Kniss v Canada (Privacy Commission)*, 2013 FC 31 [*Kniss*] at para 43 and *Canada (Privacy Commissioner) v Facebook Inc*, 2021 FC 599 [*Facebook*] at para 92, to argue that delisting is not an adequate alternative remedy. He says section 8 cannot provide the remedy that he is seeking in this judicial review, and given the significant reputation and other damage suffered as itemized in his affidavit submitted in support of this motion, that too is unfair.

[32] First, I note that the three recent decisions of this Court have all rejected the same or very similar procedural fairness arguments (*Saint-Rémy* at paras 32-33, 61; *Mobile 2025* at para 8; *Bigio 2025* at paras 11, 33).

[33] Second, as noted above in the Background section to these reasons, neither the *SEMA* nor the *Haiti Regulations* provide the person concerned with a right to advance notice of listing.

Advance notice would be inappropriate and counterproductive to the objectives of the sanctions regime, given the risk of asset flight and the urgency to impose sanctions in a timely manner (*Bigio 2025* at para 7; *Mobile 2025* at para 6).

[34] Third, *Kniss* and *Facebook* arise in different contexts, and are both distinguishable. Comments made in *Kniss* were obiter, as is plainly evident from paragraphs 42 and 43 of that decision regarding reports of the Office of the Privacy Commissioner [OPC]. They are not helpful to the Applicant's assertions regarding the alternate remedy in this case. Similarly, *Facebook* addressed the conduct of the OPC in conducting an investigation, and the issues raised did not relate to prematurity or the scope of an alternate recourse.

[35] Finally, the Applicant suggests that the procedural defects in the section 8 process are "well documented" by the Canadian Senate's Standing Committee on Foreign Affairs and International Trade, which urged the Government to "establish an effective, transparent process to review applications for delisting" in its May 2023 Report entitled "Strengthening Canada's Autonomous Sanctions Architecture."

[36] In *Bigio 2025*, Justice Fothergill commented that while the Applicant's complaints about the absence of notice and opportunity to respond before listing are not without foundation, as is the Respondent's position of the process underpinning an effective sanctions regime, ultimately the choice of the scheme is a question of policy, and its reform is better pursued through the legislative process, rather than the courts (at para 34). Furthermore, he found in *Mobile 2025*,

where the same argument was proffered by the Applicant, that "offering the Senate Report as evidence on a disputed issue is incompatible with parliamentary privilege" (at para 32).

D. *Did the AJ err in failing to balance the expeditiousness, timeliness, convenience and costs of the alternative remedy with the suitability of judicial review?*

[37] The Applicant contends that the evidence presented in the applications annexed to the Kellaway affidavit that forms part of the Applicant's motion record filed in this matter, demonstrates that decisions made for individuals who have filed section 8 requests are ineffective and do not constitute an adequate alternate remedy. The Applicant relies on *Boogaard v Canada (Attorney General)*, 2013 FC 267 [*Boogaard*] at para 28 and *Boulachanis v Canada (Attorney General)*, 2019 FC 456 [*Boulachanis*] at para 57 in this regard. In a similar vein, the Applicant argues that having to pursue a delisting application would be inefficient, costly, and a waste of judicial resources, without being able to address the procedural defects inherent in the initial decision.

[38] Some of these submissions revisit arguments that have already been made in previous issues, and for those I will not repeat findings already made. Regarding the timing, suffice it to say that it is speculative to prejudge the time that it will take the Minister to decide a prospective section 8 application from Mr. Braun. Simply because certain applications have taken longer than those applicants would have preferred does not undermine the effectiveness of the remedy in this case (*Mobile 2025* at para 29; *Xanthopoulos v Canada (Attorney General), 2022 FCA 79* at para 6). As other judges of this Court have pointed out, given that the legislation creates a public duty for the Minister to act, the Applicant can file a mandamus application if unsatisfied with undue delay in the section 8 process (*Bigio 2025* at para 31; *Saint-Rémy* at para 42).

[39] In addition, the principles enunciated in *Boogard* and *Boulachanis* arise from different circumstances. In the former, the delay related to the alternate (grievance) recourse that had been available to Mr. Boogard. Here of course the Applicant chose not to pursue the alternate recourse. *Boulachanis* involved the test for injunctive relief, where the grievance process available to the inmate formed part of the consideration of the "serious issue to be tried" component of the tri-partite test (see *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] SCJ No 17, [1994] 1 SCR 311 for instance).

[40] I note that the various procedural and substantive criticisms levelled at the process (both listing and delisting), have successfully made it through to judicial reviews in several cases. These cases did not result in any findings of procedural unfairness regarding the section 8 procedures alleged to be ineffective and untimely in this motion (*Makarov v Canada (Attorney General)*, 2024 FC 1234 at paras 35-44; *Fridman v Canada (Foreign Affairs)*, 2025 FC 493; *Melnichenko v Canada (Foreign Affairs)*, 2025 FC 1185).

[41] I find that the AJ did not make any error – let alone any palpable or overriding one – in concluding that the section 8 process provides an adequate alternative remedy. This finding is despite evidence that there had been delay in certain other cases, and the allegation that the Minister cannot, through the section 8 process, grant the relief that the Applicant seeks on judicial review (*Strickland* at para 48).

[42] Ultimately, the fact that these judicial reviews have been filed and litigated before this Court demonstrates that the Minister's decisions have been made under the delisting process, and

they have then been judicially reviewed at this Court. This shows that the process which has been upheld on several occasions by this Court as being an adequate alternate remedy works, and to bring a judicial review first without pursuing that remedy, is premature. This was thus a correct conclusion for the AJ to have made.

III. Costs

[43] The parties advised at the conclusion of the hearing that they had agreed in advance to costs in the amount of $4,500 for the successful party. The costs award will thus be made in favour of the Respondent.

JUDGEMENT in T-2195-23

THIS COURT'S JUDGMENT is that the appeal is dismissed. Costs of $4,500 inclusive are payable by the Applicant to the Respondent.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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