

Court File No. T-2450-23

FEDERAL COURT

BETWEEN:

REYNOLD DEEB



- and -

MINISTER OF FOREIGN AFFAIRS and
THE ATTORNEY GENERAL OF CANADA

Respondents

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, R.S.C.,
1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant, Reynold Deeb. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY
BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO
YOU.**

**NICOLE HRADSKY
REGISTRY OFFICER
AGENT DU GREFFE**

November 21, 2023

Issued by: _____

Address of local office: 1800 Queen Street West
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TO: MINISTER OF FOREIGN AFFAIRS

AND TO: THE ATTORNEY GENERAL OF CANADA

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Solicitor for the Respondents

APPLICATION

This is an application for judicial review of the failure of the Minister of Foreign Affairs (“the **Minister**”) to consider the application of the Applicant, Reynold Deeb (“**Mr. Deeb**”), to be removed from the schedule of the *Special Economic Measures (Haiti) Regulations*, S.O.R., 2022-226 (the “**Regulations**”), made pursuant to subsections 4(1) to (3) of the *Special Economic Measures Act*, S.C. 1992, c. 17 (“**SEMA**”).

The Applicant makes an application for the following relief:

- (a) an order compelling the Minister to decide, without further delay, whether there are reasonable grounds to recommend to the Governor in Council that Mr. Deeb’s name be removed from the schedule of the *Regulations*, as required by subsections 8(1) and (2) of the *Regulations*;
- (b) an order compelling the Minister to inform Mr. Deeb if she has (or conversely has not) recommended to the Governor in Council that Mr. Deeb’s name be removed from the schedule of the *Regulations*;
- (c) costs of this application; and
- (d) such further and other relief as this Honourable Court deems just.

The grounds for the application are:

Overview

1. If the Minister has “reasonable grounds” to believe a person falls within the criteria of section 2 of the *Regulations*, she can recommend to the Governor in Council that that person be listed under the schedule of the *Regulations*. Individuals that may fall within the scope of section 2 are, generally, persons that the Minister alleges are involved with armed gangs in Haiti.
2. A person listed by the Minister under the schedule of the *Regulations* faces consequences akin to criminal penalties. They are subject to severe restrictions that have extensive and far-reaching impacts on their daily lives, even if they are not resident nor

have assets in Canada. These include the denial of access to ordinary services from banks and other financial institutions, exclusion from employment opportunities, severe reputational damage and the inability to travel to Canada.

3. The *Regulations* include a safety valve. If a person believes they were erroneously listed under the schedule of the *Regulations*, they are entitled to make an application under subsection 8(1) of the *Regulations* to the Minister to have their name removed from the schedule (a “**Delisting Application**”). Subsection 8(2) stipulates that the Minister “must” decide whether there are reasonable grounds to recommend the removal to the Governor in Council.

4. Mr. Deeb was listed in the schedule of the *Regulations* on December 2, 2022, almost one year ago. Mr. Deeb believes that this listing was erroneous as he did not meet any of the criteria for listing set out under section 2 of the *Regulations*.

5. Mr. Deeb submitted a Delisting Application to Global Affairs Canada (“GAC”) on February 17, 2023.

6. As set out in further detail below, despite multiple requests from Mr. Deeb, the Minister has refused to provide any reasons for Mr. Deeb’s listing.

7. More than 270 days have passed since Mr. Deeb submitted his Delisting Application and the Minister has not yet considered his application. The Minister’s unreasonable and undue delay in considering Mr. Deeb’s application is a refusal by the Minister to fulfill her statutory duties, violates Mr. Deeb’s right to procedural fairness, and is having a significant detrimental impact on his daily life.

8. Accordingly, Mr. Deeb now seeks an order for a writ of *mandamus* pursuant to paragraphs 18(1)(a), 18(1)(b), 18.1(3)(a), and 18.1(4)(a) and (b) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, compelling the Minister to fulfill her duties as set out in subsections 8(1) to 8(2) of the *Regulations*. Specifically, the Minister “must decide whether there are reasonable grounds to recommend the removal to the Governor in Council.”

SEMA and the Regulations' statutory framework

9. *SEMA* gives the Governor in Council the authority to promulgate regulations that impose economic sanctions on foreign countries, or on entities or individuals of a targeted state. *SEMA*'s purpose is to enable the Government of Canada to take economic measures against foreign states when a grave breach of international peace and security has occurred, gross and systematic human rights violations have been committed in a foreign state or acts of significant corruption involving a national of a foreign state have been committed.

10. The *Regulations* were enacted in November 2022 in response to conflict in Haiti involving armed gangs. The *Regulations* have been amended from time to time to identify additional "listed persons".

11. A "listed person" is defined in the *Regulations* as:

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

(a) a person engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti;

(a.1) a person who has participated in gross and systematic human rights violations in Haiti;

(b) a current or former senior official of the Government of Haiti;

(c) an associate of a person referred to in any of paragraphs (a) to (b);

(d) a family member of a person referred to in any of paragraphs (a) to (c) and (g);

(e) an entity owned — or held or controlled, directly or indirectly — by a person referred to in any of paragraphs (a) to (d);

(f) an entity owned — or held or controlled, directly or indirectly — by Haiti; or

(g) a senior official of an entity referred to in paragraph (e) or (f).

12. The *Regulations* impose a severe asset freeze and related prohibitions on dealings with those listed in the schedule of the *Regulations*. Pursuant to section 3 of the *Regulations*, no person in Canada or any Canadian outside of Canada may:

- (a) deal in any property, wherever situated, that is owned — or that is held or controlled, directly or indirectly — by a listed person;
- (b) enter into or facilitate any transaction related to a dealing referred to in paragraph (a);
- (c) provide any financial or related services in respect of a dealing referred to in paragraph (a);
- (d) make available any goods, wherever situated, to a listed person or to a person acting on behalf of a listed person; or
- (e) provide any financial or related services to or for the benefit of a listed person.

13. Moreover, listing by a reputable country like Canada has far-reaching impacts even where the listed individual resides in another jurisdiction and is not a citizen of Canada, due to the international nature of many financial institutions and businesses, and their blanket internal sanctions compliance policies.

14. A listed person has the statutory right to challenge the listing through a Delisting Application. Subsection 8(1) entitles a listed person to “apply to the Minister in writing to have their name removed from the schedule.”

15. The Minister must consider the Delisting Application. Subsection 8(2) states that on “receipt of an application, the Minister must decide whether there are reasonable grounds to recommend the removal to the Governor in Council” (emphasis added).

Applications Removal from list	Demandes 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.

<p>Reasonable grounds</p> <p>(2) On receipt of an application, the Minister must decide whether there are reasonable grounds to recommend the removal to the Governor in Council.</p> <p>New application</p> <p>9 If there has been a material change in circumstances since the last application was submitted, a listed person may submit another application under section 8.</p>	<p>Motifs raisonnables</p> <p>(2) À la réception de la demande, le ministre décide s'il existe des motifs raisonnables de recommander la radiation au gouverneur en conseil.</p> <p>Nouvelle demande</p> <p>9 La personne dont le nom figure sur la liste peut, si la situation a évolué de manière importante depuis la présentation de sa dernière demande au titre de l'article 8, en présenter une nouvelle.</p>
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There are no grounds for listing Mr. Deeb

16. On December 2, 2022, the Minister listed Mr. Deeb in the schedule of the *Regulations*, without providing any grounds.

17. Mr. Deeb believes his listing under the *Regulations* was an error.

18. The United Nations, United States, United Kingdom and European Union have not listed Mr. Deeb under their sanctions laws.

The Minister has ignored her statutory duties and violated Mr. Deeb's right to procedural fairness

19. Since the Minister listed Mr. Deeb under the schedule of the *Regulations*, Mr. Deeb has made multiple requests to understand the rationale for his listing. No explanation has been provided. Mr. Deeb has also made a Delisting Application, but the Minister has failed to render a decision.

20. On December 14, 2022, Mr. Deeb submitted an access to information request (the "**First Access Request**") to GAC pursuant to the *Access to Information Act*, R.S.C., 1985, c. A-1 requesting information related to his listing.

21. On, December 16, 2022, Mr. Deeb made a request for information and reasons for his listing to the Minister of Foreign Affairs. This correspondence also alerted the Minister of Mr. Deeb's intent to file a delisting application.

22. On January 13, 2023, GAC sent a letter indicating that the original 30 day deadline to respond to the First Access Request was being extended by 120 days.

23. On February 2, 2023, Mr. Deeb submitted a second access to information request under the *Access to Information Act* (the "**Second Access Request**"). This request was prompted by an article in the *Globe and Mail* that discussed how the Canadian government shares "confidential dossiers" on persons listed under the *Regulations* with other countries to convince them to join Canada's efforts in listing Haitian individuals.

24. On February 17, 2023, Mr. Deeb submitted a Delisting Application in accordance with subsection 8(1) of the *Regulations*.

25. On February 21, 2023, Mr. Deeb submitted a complaint to the Office of the Information Commissioner (the "**OIC**") regarding the length of the extension GAC implemented to respond to the First Access Request.

26. On March 1, 2023, Mr. Deeb submitted a third access to information request under the *Access to Information Act* (the "**Third Access Request**") on recommendation of officials at GAC — this time with the Department of Justice.

27. On March 2, 2023, GAC responded to the Second Access Request indicating that there were no responsive records.

28. On March 31, 2023, the Department of Justice responded to the Third Access Request with heavily redacted correspondence between officials at the Department of Justice. The correspondence provided seemed to relate to listings under the *Regulations* generally and did not appear to relate specifically to Mr. Deeb.

29. On May 2, 2023, GAC informed Mr. Deeb that all records responsive to the First Access Request were subject to the Cabinet Confidence Exemption and so none could be released.

30. On June 5, 2023, counsel for Mr. Deeb spoke with Safeena Alarakhia, who was the Deputy Director of GAC responsible for Delisting Applications. She acknowledged that GAC's review of Delisting Applications was slow and that there was a need for the information on the rationale used for listing persons to be released to delisting applicants. She expressed hope that GAC would begin releasing information to delisting applicants soon, particularly for those such as Mr. Deeb who were not listed under sanctions regulations related to Russia's invasion of Ukraine, but she would not commit to any timelines. Ms. Alarakhia also stated that a decision would not be made on a Delisting Application without the reasons for the listing being shared with the applicant.

31. On June 29, 2023, Mr. Deeb submitted a complaint to the OIC regarding the response to the First Access Request.

32. On July 5, 2023, the OIC confirmed that it was opening an investigation into GAC's claim of the Cabinet Confidence Exemption over all records responsive to the First Access Request. Mr. Deeb has not received any further communication from the OIC and understands that the its investigation is continuing.

33. Over 270 days have passed since Mr. Deeb submitted his Delisting Application and the Minister still has not considered it.

34. In addition to being a breach of her statutory duties, the Minister's refusal to render a decision has the effect of denying Mr. Deeb access to the courts to challenge his listing. Mr. Deeb has the right to seek judicial review of an adverse decision from the Minister, and would exercise that right, but cannot do so until there is actually a decision from the Minister.

35. By failing to provide reasons for Mr. Deeb's listing and failing to render a decision as required under the *Regulations*, the Minister has violated her statutory duties and procedural fairness obligations.

36. This Court should order, through a writ of *mandamus*, that the Minister consider Mr. Deeb's Delisting Application and inform Mr. Deeb of her decision because, among other reasons:

- (a) The Minister is under a public legal duty to consider Mr. Deeb's application.
- (b) This duty is owed to Mr. Deeb.
- (c) There is a clear right to the performance of this duty. Mr. Deeb has satisfied all conditions precedent giving rise to this duty by submitting the Delisting Application. The Minister's unreasonable delay in considering Mr. Deeb's application is an implied refusal to comply.
- (d) The duty is not discretionary.
- (e) There are no other adequate remedies available to Mr. Deeb.
- (f) The order sought will be of practical value or effect. Among other benefits, it will cause the Minister to uphold her statutory duties in the *Regulations*. It will also either (a) remove Mr. Deeb from the schedule of the Regulations or (b) give Mr. Deeb his right to challenge the Minister's decision on his Delisting Application through other mechanisms, including judicial review.
- (g) There is no equitable bar to the relief sought. Mr. Deeb has conducted himself in good faith. Mr. Deeb, through counsel, engaged in good faith discussions with the Minister's office and other government agencies until he had no choice but to take legal action to compel the Minister to carry out her statutory duties.
- (h) The balance of convenience favours issuing the *mandamus*. Among other considerations, the Minister will not suffer any prejudice by fulfilling her statutory duty to consider Mr. Deeb's Delisting Application. Mr. Deeb, on the other hand, continues to be deprived of his statutory right to have his application considered.


THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. Supporting affidavits and documentary evidence, to be filed.
2. Such further and other evidence as counsel may advise and this Honourable Court may permit; and

The Applicant relies on the following statutory provisions:

- (a) *The Federal Court Act*, R.S.C. 1985, c. F-7.
- (b) *The Federal Courts Rules*, SOR/98-106.
- (c) *Special Economic Measures Act*, S.C. 1992, c. 17.
- (d) *Special Economic Measures (Haiti) Regulations*, S.O.R., 2022-226.

November 21, 2023



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Solicitors for the Applicant

Court File No. _____

FEDERAL COURT

Reynold Deeb

Applicant

- and -

MINISTER OF FOREIGN AFFAIRS and
THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
(Filed this 21 day of November, 2023)

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Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of NOV 21 2023 A.D. 20 _____

Dated this _____ day of NOV 21 2023 20 _____

