Federal Court Cour fédérale

Date: 20240807

Docket: T-2382-23

Citation: 2024 FC 1234

Ottawa, Ontario, August 7, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

IGOR VIKTOROVICH MAKAROV

Applicant

and

CANADA (MINISTER OF FOREIGN AFFAIRS)
AND THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

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I. Nature of the matter

[1] This is an application for judicial review pursuant to sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] of a decision dated October 20, 2023 by the Minister of Foreign Affairs [Minister] not to recommend removing the Applicant from the sanction list under Schedule I, Part I of the *Special Economic Measures (Russia) Regulations*, SOR/2014-58 [*Russia Regulations*] [Decision]. The *Russia Regulations* were enacted under the *Special Economic Measures Act*, SC 1992, c 17 in response to the Russian Federation's [Russia's] unlawful 2014 invasion of Crimea, and amended after Russia's unlawful 2022 invasion of Ukraine.

[2] The Applicant was originally listed under predecessor sanction regulations. However, those regulations applied only to Russian citizens, which the Applicant was. The Applicant asked Russian authorities to cancel his Russian citizenship. Russian authorities complied. The Applicant then applied to the Minister to have his name removed from the predecessor regulations because he was no longer a Russian citizen.

[3] While the Minister recommended and the Governor in Council agreed to remove him from the sanctions list because he was no longer a Russian citizen, the Governor in Council revised the regulations to close that loophole so as to apply the sanction regulations to former Russian citizens, and then by further Order in Council, the Governor in Council relisted the Applicant and placed him back on the sanctions list under the *Russia Regulations*.

[4] A few days later, the Applicant re-applied to the Minister to recommend he be removed from the sanctions list. The Minister refused the Applicant's request because there were no reasonable grounds to recommend he be delisted. The Applicant challenges the Minister's Decision in this application for judicial review.

[5] As more particularly set out below, this application for judicial review will be dismissed because among other things: (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, (4) absent fundamental error or exceptional circumstances, reweighing and reassessing the evidence and inferences forms no part of judicial review, and (5) because viewed holistically the Decision meets the tests of reasonableness established by the Supreme Court of Canada in that it is justified, transparent and intelligible.

[6] Given the widest deference the Court finds is owed to the Minister, I conclude the record and the Minister's expert assessment of it support the express conclusions in the Decision concerning the Applicant and his association with Russian officials and business interests including Alexei Miller, Sergei Chemezov and President Putin. There is no reviewable error.

II. Background

A. *Context: Russia's invasion of the Ukraine and the Russia Regulations*

[7] The Court accepts the following submission of the Respondents which were not materially disputed and which are set out in Regulatory Impact Assessment Statements relating to the Orders in Council sanctioning the Applicant:

> 7. The [*Special Economic Measures Act*] provides the GIC with authority to impose sanctions against foreign states, entities and individuals in prescribed circumstances, including when there has been a breach of international peace and security, or when gross and systemic human rights violations have been committed. In March 2014, pursuant to the SEMA, the GIC adopted the Regulations in response to Russia's illegal occupation and attempted annexation of Crimea. The GIC was and continues to be of the opinion that the actions of Russia constitute a grave breach of international peace and security that has resulted or is likely to result in a serious international crisis.
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> 8. Over the last decade, Russia has continued to play a destabilizing role in Ukraine and to violate human rights in a systematic fashion. On February 24, 2022, Russian forces launched a full-scale invasion of Ukraine. The Russian military has committed atrocities against civilians, killed thousands and devastated Ukraine's infrastructure. Canada, in tandem with its partners and allies, has responded with more comprehensive sanctions through amendments to the Regulations. Since 2014, Canada has imposed sanctions on more than 2,700 individuals and entities who have been involved in and/or profited from the ongoing conflict.
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> 9. The primary objective of the sanctions regime is to undermine Russia's ability to conduct its military aggression in Ukraine by imposing substantial economic consequences on Russia, including influential individuals and entities. The Regulations also seek to signal Canada's condemnation of Russia's unlawful conduct, and to align Canada's measures with those taken by its international partners.
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> 10. Economic sanctions are a crucial tool to respond to breaches of international peace and security and systemic human rights

> violations. Over the years, Canada's sanctions regime has been amended to more effectively isolate Russia's economy, in a context where capital flows with ease and influential persons help Russia to evade or circumvent sanctions measures.
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> ….
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> 13. While the Regulations target specific current and former Russian nationals whose names are on the Sanctions List, the Regulations achieve this by regulating the actions of Canadians and individuals within Canada in relation to the listed persons. Specifically, Canadians and individuals within Canada are prohibited from dealing in the property of, entering into transactions with, providing services to, or otherwise making goods available to persons whose names are on the Sanctions List. These prohibitions serve to effectively freeze the assets of a listed person that could otherwise be dealt with by a Canadian or anyone in Canada.

B. *The Applicant*

[8] The Applicant was a major gas commodity trader in Russia and former professional cyclist. He was born in Turkmenistan when it was part of the former USSR. He later moved to Russia, and is now a citizen of Cyprus and Moldova. During his dealings with Canada, he also declared himself a citizen of Turkmenistan. After he was first sanctioned as a citizen of Russia, as noted above, Russian authorities agreed to let him renounce his Russian citizenship.

[9] The Respondents reasonably submit and I agree that the associations between the Applicant and some of the most substantial Russian state and business entities are twofold: those in the oil and gas sector, and those in the cycling sector.

(1) The Applicant and Russian regional energy interests

[10] On August 4, 2023, the Applicant was relisted under the *Russia Regulations* because of his close associations with Russian government officials while brokering opaque non-transparent Russian-Turkmenistan energy deals, and as an associate of individuals also currently listed under the *Russia Regulations* namely Alexei Miller [Miller] and Sergei Chemezov [Chemezov]. These associations helped generate significant revenues that the Kremlin has relied on to lay the groundwork for its aggressions including its war in Ukraine.

[11] In the Respondents' submission the record before the Minister establishes reasonable grounds to believe the Applicant was a close associate of senior officials of the Government of Russia, including Chemezov (the Chief Executive Officer of Rostec) and Miller (the Chief Executive Officer of Gazprom), both of whom are also sanctioned by the *Russia Regulations*.

[12] Gazprom and Rostec appear to be the two largest Russian state-owned enterprises.

[13] The largest player in the Russian gas sector is Gazprom, as noted above. Gazprom is owned by the Russian state. Gazprom is run by Miller, who like the Applicant is also sanctioned by the *Russia Regulations*.

[14] Rostec is a "sprawling defense and technology giant comprising more than 700 enterprises controlled by 14 holding companies." The CEO of Rostec is Chemezov, who like the Applicant and Miller is also sanctioned by the *Russia Regulations*.

[15] Notably, Rostec and Rosneft have collaborated in the past.

[16] Also notably, both Rostec and Rosneft are sanctioned by Canada. Indeed, Rosneft and the CEO of Rostec (Chemezov) were sanctioned by Canada in February 2015 in response to Russia's invasion of Ukraine.

[17] It is not disputed the Applicant has a very long involvement in Russia's oil and gas sector. It is not disputed he amassed very great wealth (billions of dollars) through opaque business dealings in Russia and elsewhere in the region. From 1992 until 2013, the Applicant owned ITERA Oil and Gas [ITERA], which operated in Russia, Turkmenistan and elsewhere. ITERA was the third largest natural gas trading company in the world in the late 1990s and early 2000s. In 2013, the Applicant sold ITERA to Rosneft, another Russian state-owned enterprise. Since then, he has been the President of ARETI (ITERA backwards), which also operates in the regional energy sectors.

[18] More specifically, in 1992, the Applicant founded and until 2013 owned ITERA. Beginning in the early to mid 1990s, the Applicant through ITERA began brokering Turkmen (from Turkmenistan) natural gas. By the late 1990s, ITERA had a monopoly on the sale of Turkmen natural gas to Ukraine. In the early 2000s, ITERA's gas was transported through Gazprom's pipelines. Gazprom is the largest Russian state-owned gas company.

[19] In 2012 and 2013, the Applicant sold ITERA to Rosneft (51% in 2012 and 49% in 2013). The Applicant alleges the 2013 sale (the 49% sale) was forced on him.

[20] Whether forced or not, the sale price was between $2.8 and $3.0 billion, making the Applicant a billionaire. Notably the Applicant did not disclose the sale price(s).

[21] Rosneft (which bought ITERA from the Applicant) is a very large Russian state-owned oil company. Rosneft is the second-largest Russian state-owned enterprise. Rosneft is also the largest player in the Russian oil sector.

[22] As noted, in 2015, the Applicant established and became President of ARETI.

[23] The ARETI group also operates in the fuel and energy sectors in Europe and Central Asia, including Turkmenistan where the Applicant had extensive Turkmen gas contracts with Gazprom in his capacity as the owner of ITERA.

[24] While and according to the Applicant, ARETI does not operate in Russia itself, ARETI does have dealings in Turkmenistan where the Applicant's previous company ITERA had extensive business gas dealings including as monopoly supplier to Ukraine, as noted.

(2) The Applicant's extensive relationships with Russians in relation to cycling and energy

[25] With respect to cycling, the Applicant was a professional cyclist from 1979-1986. He created and sponsored Katusha, a Russian cycling team, between 2008 and 2017 and was President of the Russian Cycling Federation from 2010 to 2016.

[26] Since 2011, the Applicant has been an honorary member of the Management Committee of the Union Cycliste Internationale [UCI], a governing body of international cycling.

[27] The record also establishes: (1) the Applicant was associated with Chemezov and Miller through the sponsorship of the professional cycling team Katusha between 2009 and 2017 (or 2019); and (2) in June 2015, in his capacity as President of the Russian Cycling Federation, the Applicant took part in a meeting of the Council for the Development of Physical Culture and Sport, chaired by Russian President Vladimir Putin.

[28] The Respondents submit and I agree that in his Delisting Application, the Applicant concedes he has had interactions with these individuals (i.e., Chemezov, Miller and President Putin). However, in essence the Applicant disputes the "closeness" of these associations.

[29] In response, the Respondents say and the Applicant essentially acknowledges that:

a) The Applicant, Chemezov and Miller were initiators of the establishment of the All-Russian Cycling Development Project, and from that project emerged a professional cycling team, Katyusha, that the Applicant was a sponsor of from 2009 to 2019;

b) The Applicant was President of the Russian Cycling Federation ("RCF") from 2010 to 2016 and from 2016 onwards, he continued to be the Honorary President of the RCF; and

c) In his capacity as the President of the RCF, the Applicant attended a 2015 meeting of the Russian Council for the Development of Physical Culture and Sport, chaired by President Putin. The Applicant made a speech recognizing the contributions of Chemezov to Russian cycling, and asking President Putin to resolve issues relating to funding.

[30] It is also the case, quite notably that (1) Chemezov acted as the Chairman of the Russian Cycling Federation at the time when the Applicant was its President, (2) that Chemezov

continues to be a trustee of the federation. Furthermore, (3) Chemezov's wife was an ITERA shareholder, and (4) Chemezov's son was employed by one of ITERA's companies.

> (3) The Applicant is removed from and relisted on the *Russia Regulations* sanction list August 4, 2023

[31] The following explanation for the Applicant's relisting, which the Court finds reasonable in all the circumstances, is set out in the Regulatory Impact Analysis Statement issued together with the Governor in Council's Order relisting him dated August 4, 2023 per SOR/2023-176:

> Issues
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> Russian billionaire Igor Viktorovich Makarov, founder and president of private energy company ARETI International Group, benefited from close associations with top government officials while brokering non-transparent Russian-Turkmen energy deals. This helped generate significant revenues that the Kremlin has relied on to lay the groundwork for its aggressions in the near abroad, including Ukraine.
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> Background
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> Following Russia's illegal occupation and attempted annexation of Crimea in March 2014, the Canadian government, in tandem with partners and allies, enacted sanctions through the *Special Economic Measures (Russia) Regulations* (the Regulations) under the *Special Economic Measures Act* (SEMA). These sanctions impose dealings prohibitions (an effective asset freeze) on designated individuals and entities in Russia and Ukraine supporting or enabling Russia's violation of Ukraine's sovereignty. Any person in Canada and Canadians outside Canada are thereby prohibited from dealing in the property of, entering into transactions with, providing services to, or otherwise making goods available to listed persons.
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> On February 24, 2022, Russian President Putin announced a "special military operation" as Russian forces launched a full-scale invasion of Ukraine from Russian and Belarusian territory. The war has become a grinding war of attrition, which sees little prospect of a quick victory for either side, and both continue to incur heavy losses. The Russian military has committed horrific

atrocities against civilians, including in Izium, Bucha, Kharkiv and Mariupol. Experts, including the Organization for Security and Cooperation in Europe (OSCE) Moscow Mechanism fact-finding missions, the Independent International Commission of Inquiry on Ukraine and the United Nation's (UN) Office of the High Commissioner for Human Rights (OHCHR), have concluded that Russia is committing serious human rights violations, war crimes, possible crimes against humanity, and conflict-related sexual violence. These studies have linked Russian external aggression with systematic repression and human rights abuses domestically. According to Ukraine's State Emergency Department, 30% of Ukrainian territory (approximately the size of Austria) is mined. President Putin's military invasion has been paired with significant malicious cyber operations and disinformation campaigns that falsely portray the West as the aggressor; and claim Ukraine is developing chemical, biological, radiological and/or nuclear weapons with North Atlantic Treaty Organization (NATO) support. The deterioration of Russia's relations with Ukraine has paralleled the worsening of its relations with the United States and the NATO, which has led to heightened tensions.

International response

The coalition of countries supporting Ukraine includes, but is not limited to, G7 and European countries and some of Ukraine's neighbours. This group is working to support Ukraine across a number of areas, including energy security, nuclear safety, food security, humanitarian assistance, combatting Russian disinformation, sanctions and economic measures, asset seizure and forfeiture, military assistance, accountability, recovery and reconstruction. Canada and G7 countries are engaged in intense diplomacy with the broader international community to encourage support for Ukraine and counter false Russian narratives. Key votes in multilateral forums have effectively isolated Russia, including resolutions in the UN General Assembly condemning Russian aggression against Ukraine (March 2022), deploring the humanitarian consequences of Russian aggression against Ukraine (March 2022), suspending Russian membership in the UN Human Rights Council (April 2022) and condemning Russia's illegal annexation of Ukrainian territories (October 2022). Many developing countries have refrained from openly criticizing Russia or imposing penalties due to geopolitical considerations, commercial incentives, or simply fear of retaliation, with some also arguing the conflict is less of a priority for their regions. Russia continues to use its position as a permanent member of the UN Security Council (UNSC) to block UNSC action on its war on Ukraine and its corrosive disinformation policies.

Canada's response

Since February 2022, Canada has committed or delivered over Can$5 billion in assistance to Ukraine. This includes military aid, cyber defence and training to Ukrainian troops in the United Kingdom and Poland under the aegis of Operation UNIFIER. Economic resilience support includes new loan resources, a loan guarantee, and Ukraine Sovereignty Bonds. Canada is helping Ukraine repair its energy infrastructure and has temporarily removed trade tariffs on Ukrainian imports. Canada has also committed development and humanitarian assistance, and is countering disinformation through the G7 Rapid Response Mechanism. Canada is also providing security and stabilization programming, including support for civil rights organizations and human rights defenders. Canada announced two new immigration streams for Ukrainians coming to Canada: the temporary Canada Ukraine Authorization for Emergency Travel and a special permanent residence stream for family reunification.

Since 2014, in coordination with its allies and partners, Canada has imposed sanctions on more than 2 600 individuals and entities in Russia, Belarus, Ukraine and Moldova who are complicit in the violation of Ukraine's and Moldova's sovereignty and territorial integrity. In addition, Canada implemented targeted restrictions against Russia and Belarus in financial, trade (goods and services), energy and transport sectors. Canada is part of the Oil Price Cap Coalition, which limits the provision of maritime services to Russian crude oil and petroleum products above a price set by the coalition. These amendments to the Regulations build upon Canada's existing sanctions by further impeding Russian dealings with Canada. Canada seeks to align its measures with its partners, including the United States, the United Kingdom, the European Union, Australia, New Zealand, Japan and Ukraine.

Conditions for imposing and lifting sanctions

Pursuant to SEMA, the Governor in Council may impose economic and other sanctions against foreign states, entities and individuals when, among other circumstances, a person has contributed to a grave breach of international peace and security or participated in gross and systematic human rights violations in Russia.

The duration of sanctions by Canada and like-minded partners has been explicitly linked to the peaceful resolution of the conflict, and the respect for Ukraine's sovereignty and territorial integrity, within its internationally recognized borders, including Crimea, as

well as Ukraine's territorial sea. The United States, the United Kingdom, the European Union and Australia have continued to update their sanction regimes against individuals and entities in both Ukraine and Russia.

Objective

1. Undermine Russia's ability to conduct its military aggression against Ukraine.

2. Align Canada's measures with those taken by international partners.

3. Signal Canada's condemnation of this individual's actions given that they relate to Russia's illegal war in Ukraine.

4. Restrict this individual from accessing Canada's financial system via sanctions.

Description

The amendments add Igor Viktorovich Makarov to Schedule 1 of the Regulations.

….

Rationale

The Regulations seek to impose a direct economic cost on Russia and Russia-backed actors and signal Canada's strong condemnation of Russia's violation of the sovereignty and territorial integrity of Ukraine. As the conflict in Ukraine continues in its second year, the Regulations seek to further degrade Russia's capabilities that are being used to invade Ukraine. The Regulations also align Canada's efforts with those of our international partners and expose individuals and entities engaged in activities that undermine international peace and security.

Igor Viktorovich Makarov has been added to Schedule 1 of the Regulations because he is a person who has amassed enormous wealth from close associations with top Russian officials, as an associate of individuals that are currently listed under the Regulations. He has brokered opaque energy deals that helped generate significant revenues that the Kremlin has relied on to lay the groundwork for its aggressions in the near abroad, including Ukraine. This individual was listed under the Regulations in the past.

III. Applicant's requests to be delisted in more detail

[32] Russia invaded Ukraine on February 24, 2022.

[33] Six or seven weeks later, on April 1, 2022, the Applicant asked Russian officials to allow him to renounce his Russian citizenship. It is the case as the Applicant submits that he made this request before he was subject to sanctions by Canada or any other country.

[34] Shortly thereafter, on April 19, 2022, the Applicant was listed by Canada in Part 1, Schedule 1 of Canada's sanctions list on the predecessor of the current *Russia Regulations*.

[35] On June 27, 2022, the Applicant asked the Minister to remove him from this sanctions list as permitted by section 8 of the *Russia Regulations*.

[36] A series of communication between the Applicant's counsel and Global Affairs Canada ensued. The following are examples. On August 15, 2022, the Applicant sent a letter to Global Affairs Canada making bare allegations of harm he claimed he was experiencing as a result of the sanctions. There was little actual evidence of the alleged harm. On August 31, 2022, he sent a further letter to Global Affairs Canada addressing a media article dated August 17, 2022, which he alleged was premised on false allegations and inaccuracies. On November 7, 2022, the Applicant sent another letter to Global Affairs Canada addressing additional information found on the internet, and requesting a decision on the First Delisting Application by November 21, 2022.

[37] On November 14, 2022, the Applicant received one of several notice letters from the Sanctions Policy and Operations Coordination Division of the Minister's department requesting additional information from the Applicant. The Applicant responded on December 9, 2022.

[38] On April 19, 2023, the Applicant filed a notice of application for judicial review (Court File No. T-846-23) seeking *mandamus* to compel the Minister to make a decision. He alleged the Minister was outside the 90-day time limit outlined by subsections 8(3) and (4) of the *Russia Regulations*.

[39] On May 23, 2023, the Applicant received a procedural fairness letter from the Sanctions Policy and Operations Coordination Division of Global Affairs Canada identifying open-source information relied upon by the Minister, and requested additional information from the Applicant. The Applicant responded on May 31, 2023.

[40] On June 8, 2023, the Applicant advised the Sanctions Policy and Operations Coordination Division that Russian authorities agreed to permit him to renounce his Russian citizenship.

[41] On August 4, 2023, on the Minister's recommendation the Applicant was removed from the predecessor *Russia Regulations* by the Governor in Council, (*Regulations Amending the Special Economic Measures (Russia) Regulations*, SOR/2023-174) because he was no longer a Russian citizen.

[42] However, on the same date, the Governor in Council further amended the *Russia Regulations* through the *Regulations Amending the Special Economic Measures (Russia)*

Regulations, SOR/2023-175 to include former Russian citizens in the definition of "designated person." The Governor in Council by a third Order in Council relisted the Applicant as Item 1315 of the new sanctions list through a third set of amendments (under the *Regulations Amending the Special Economic Measures (Russia) Regulations*, SOR/2023-176).

[43] The Applicant received a letter from the Minister of this date informing him of his delisting, and subsequent relisting pursuant to the amended regulation. The Minister invited the Applicant to file a new delisting application in accordance with the *Russia Regulations* should he choose to do so.

[44] On August 8, 2023, the Applicant submitted a new delisting application that included all previous submissions.

[45] On October 20, 2023, the Minister sent a letter to the Applicant, rejecting the Applicant's second delisting application.

[46] On November 10, 2023, the Applicant filed this application for judicial review of the Minister's Decision refusing his request that the Minister recommend the Governor in Council delist him.

IV. Decision under review

[47] The Minister's Decision letter, dated October 20, 2023, states:

> I am writing with regard to the delisting application you submitted under subsection 8(1) of the Special Economic Measures (Russia) Regulations (the Russia Regulations) on August 8, 2023.

You were designated on August 4, 2023, under Schedule 1, Item 1315 of the Russia Regulations under paragraph 2(c) as an associate of a person referred to in paragraphs (a) to (b) on my recommendation to the Governor in Council.

I have considered the information and arguments put forth in your submission of August 8, 2023, to Global Affairs Canada, and have decided not to make a recommendation to the Governor in Council to remove you from Schedule 1 of the Russia Regulations.

Based on a review of the materials that you submitted and available open-source information, I do not believe that there are reasonable grounds to conclude that you are no longer an associate of senior officials of the Government of Russia, including Mr. Sergei Chemezov and Mr. Alexei Miller. You were associated with Mr. Chemezov and Mr. Miller through the sponsorship of a professional cycling team between 2009 and 2019. In June 2015, in your capacity as President of the Russian Cycling Federation, you took part in a meeting of the Council for the Development of Physical Culture and Sport, chaired by President Vladimir Putin.

I have considered your claims that you have taken steps to distance yourself from Russia and the regime. In the circumstances, I do not consider the act of renouncing citizenship to be sufficient to demonstrate a genuine effort to distance yourself from the regime. While you claim to be opposed to Russia’s illegal invasion of Ukraine, you have not issued any public statements denouncing the war in Ukraine or President Putin’s regime.

On March 17 and August 17, 2023, the United Kingdom published a Financial Sanctions Notice indicating that you have been and may continue to be involved in obtaining a benefit from or supporting the Government of Russia by owning or controlling, or working as a director or equivalent of one or more entities, which have been carrying on business in a sector of strategic significance to the Government of Russia, namely the Russian energy sector.

Canada’s autonomous sanctions aim to denounce Russia’s breach of international security and apply pressure on the Russian regime, including to limit Russia’s ability to fund its war against Ukraine and shine a light on Russia’s unlawful actions. These sanctions include listings that target individuals whom the Government of Canada considers to have ties to the Russian regime. Maintaining your listing is consistent with Canada’s foreign policy goals with regard to Russia and with Canada’s approach to sanctions implementation.

[48] The Minister's Decision letter was contained in and formed part of a Memorandum for Action [Memorandum] containing a summary recommendation from the Deputy Minister of Foreign Affairs.

[49] The Memorandum also contained an extensively footnoted and detailed submission document setting out bases for sanctioning the Applicant including background and other considerations. It also contained well over a thousand pages of supporting material. All of this material is in the public record with the exception of brief solicitor-client redactions. All of the material in the Memorandum comprise the record in this case, in addition to the signed version of the Decision Letter, and the Minister's signed approval of the summary recommendation from the Deputy Minister of Foreign Affairs.

[50] Specifically, the Memorandum was titled *Application for Delisting – Igor Viktorovich Makarov*, and included:

- Memorandum to the Minister from the Deputy Minister of Foreign Affairs
- Draft letter to the Applicant
- Annex A: Supporting Information (14 pages)
- Annex B: Supporting Evidence (PDF documents of open-source links included in the Supporting Information document) (544 pages)
- Annex C: Application for Delisting (551 pages)

V. Relevant legislative provisions

[51] Paragraph 4(1)(a) of the *Special Economic Measures Act* grants the Governor in Council authority to make Orders in Council such as that of sanctioning the Applicant. The Applicant did not challenge the Governor in Council's decision to place him on the current *Russia Regulations* sanctions list. Nor did he challenge the *Russia Regulations* on jurisdictional, *Charter*, division of power or any other grounds in his submissions to the Minister. Paragraph 4(1)(a) provides:

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; and	**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);
(b) by order, cause to be seized or restrained in the manner set out in the order any property situated in Canada that is owned — or that is held or controlled, directly or indirectly — by a foreign state or a person who is identified in an order or regulation made under paragraph (1)(a).	**b)** par décret, faire saisir ou bloquer, de la façon prévue par le décret, tout bien qui se trouve au Canada et qui appartient à un État étranger ou à une personne visée par un décret ou un règlement pris en vertu de l'alinéa (1)a) ou tout bien qui est détenu ou contrôlé, même indirectement, par cet État ou cette personne.

[52] As may be seen, a person may be named in the Sanctions list if the Governor in Council, on the recommendation of the Minister, is satisfied there are reasonable grounds to believe the person falls into one of the categories of section 2 of the *Russia Regulations*:

List	**Liste**
Schedule 1	**Annexe 1**
2 A person whose name is listed in Schedule 1 is a person 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 1 le nom de personnes à l'égard desquelles le gouverneur en conseil est convaincu, sur recommandation du ministre, qu'il existe des motifs raisonnables de croire qu'elles sont l'une des personnes suivantes :
(a) a person engaged in activities that directly or indirectly facilitate, support, provide funding for or contribute to a violation or attempted violation of the sovereignty or territorial integrity of Ukraine or that obstruct the work of international organizations in Ukraine;	**a)** une personne s'adonnant à des activités qui, directement ou indirectement, facilitent une violation ou une tentative de violation de la souveraineté ou de l'intégrité territoriale de l'Ukraine ou procurent un soutien ou du financement ou contribuent à une telle violation ou tentative ou qui entravent le travail d'organisations internationales en Ukraine;
(a.1) a person who has participated in gross and systematic human rights violations in Russia;	**a.1)** une personne ayant participé à des violations graves et systématiques des droits de la personne en Russie;
(b) a former or current senior official of the Government of Russia;	**b)** un cadre supérieur ou un ancien cadre supérieur du gouvernement de la Russie;

(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, held or controlled, directly or indirectly, by a person referred to in any of paragraphs (a) to (d) or acting on behalf of or at the direction of such a person;	**e)** une entité appartenant à une personne visée à l'un des alinéas a) à d) ou détenue ou contrôlée, même indirectement, par elle ou pour son compte ou suivant ses instructions;
(f) an entity owned, held or controlled, directly or indirectly, by Russia or acting on behalf of or at the direction of Russia; or	**f)** une entité appartenant à la Russie ou détenue ou contrôlée, même indirectement, par elle ou pour son compte ou suivant ses instructions;
(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).

[53] Section 3 of the *Russia Regulations* sets a range of restrictions and prohibitions on transactions and activities of those on the sanctions list:

Prohibited transactions and activities	**Opérations et activités interdites**
3 It is prohibited for any person in Canada and any Canadian outside Canada to	**3** Il est interdit à toute personne au Canada et à tout Canadien à l'étranger :
(a) deal in any property, wherever situated, that is owned, held or controlled by or on behalf of a person whose name is listed in Schedule 1;	**a)** d'effectuer une opération portant sur un bien, où qu'il se trouve, appartenant à une personne dont le nom figure sur la liste établie à l'annexe 1 ou

	détenu ou contrôlé par elle ou pour son compte;
(b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph (a);	**b)** de conclure, directement ou indirectement, une transaction relativement à une opération visée à l'alinéa a) ou d'en faciliter, directement ou indirectement, la conclusion;
(c) provide any financial or other related service in respect of a dealing referred to in paragraph (a);	**c)** de fournir des services financiers ou des services connexes à l'égard de toute opération visée à l'alinéa a);
(d) make available any goods, wherever situated, to a person listed in Schedule 1 or to a person acting on their behalf; or	**d)** de rendre disponibles des marchandises, où qu'elles se trouvent, à une personne dont le nom figure sur la liste établie à l'annexe 1 ou à une personne agissant pour son compte;
(e) provide any financial or related service to or for the benefit of a person listed in Schedule 1.	**e)** de fournir des services financiers ou des services connexes à toute personne, dont le nom figure sur la liste établie à l'annexe 1, ou pour son bénéfice.

[54] Section 8 of the *Russia Regulations* outlines the process for persons seeking to have their named removed from the sanctions list. The Applicant followed this process here, as he did in his earlier request, by asking the Minister to recommend to the Governor in Council that he be delisted:

Application to no longer be listed	**Demande de radiation**

8 (1) A person may apply in writing to the Minister to have their name removed from Schedule 1, 2 or 3.	**8 (1)** Toute personne dont le nom figure sur la liste établie aux annexes 1, 2 ou 3 peut demander par écrit au ministre d'en radier son nom.
Recommendation	**Recommandation**
(2) On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant's name be removed from Schedule 1, 2 or 3.	**(2)** Sur réception de la demande, le ministre décide s'il a des motifs raisonnables de recommander la radiation au gouverneur en conseil.
Decision	**Décision**
(3) The Minister must make a decision on the application within 90 days after the day on which the application is received.	**(3)** Il rend sa décision dans les quatre-vingt-dix jours suivant la réception de la demande.
Notice	**Avis**
(4) The Minister must give notice without delay to the applicant of the decision taken.	**(4)** Il donne sans délai au demandeur un avis de sa décision.
New application	**Nouvelle demande**
(5) If there has been a material change in circumstances since the last application was submitted, a person may submit another application under subsection (1).	**(5)** Si la situation du demandeur a évolué de manière importante depuis la présentation de sa dernière demande, il peut en présenter une nouvelle.

VI. Issues

[55] The Applicant raises the following issues:

1. Has the Minister relied upon news articles of little to no evidentiary value, irrelevant considerations, an unlawful request to prove a negative, and fabricated facts and failed to take into account credible evidence?

2. Has the Minister failed to reasonably interpret and apply the text, context, and purpose of the *Russia Regulations*?

[56] The Respondents raise the following issues:

1. Was the Minister's Decision reasonable?

2. Should the Court exercise its discretion to consider the Applicant's statutory interpretation arguments raised for the first time in this judicial review?

3. If the Decision was not reasonable, what is the appropriate remedy?

   i. If so, is the Minister's interpretation of the Regulations reasonable?

   ii. Is the Applicant's listing consistent with the purpose and object of the Regulations?

[57] No issue of procedural fairness is raised.

[58] Respectfully, the issue is whether the Minister's Decision is reasonable.

VII. Analysis

A. *Standard of review*

[59] The parties agree, as do I, that the applicable standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*], issued at the same time as the Supreme Court of Canada's decision in *Canada*

(Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[60] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
>
> [Emphasis added]

[61] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies." *Vavilov* provides further guidance that a reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[62] Furthermore, *Vavilov* instructs that the role of this Court on judicial review is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada states:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[63] The Federal Court of Appeal likewise held in *Doyle v Canada (Attorney General),* 2021 FCA 237 [*Doyle*], that the role of this Court is not to reweigh and reassess the evidence unless there is a fundamental error:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
>
> [Emphasis added]

[64] As the Supreme Court of Canada held in *Mugesera v Canada (Citizenship and Immigration)*, 2013 SCC 40 at paragraph 114, the "reasonable grounds" standard used in subsection 8(2) of the *Russia Regulations*, requires "something more than mere suspicion, but less than the standard applicable in civil matters of proof on a balance of probabilities." Because this is a judicial review based on reasonableness, the issue is whether the Minister's Decision on "reasonable grounds" is itself reasonable.

[65] It is also the law that judicial review is doctrinally different from and must not be transformed into civil or criminal proceedings before ordinary courts. For example, in *Chshukina v Canada (Attorney General)*, 2016 FC 662, my colleague Justice Roy at paragraph 43 concludes: "[43] As has been said many times before, administrative proceedings must not be transformed into civil or criminal proceedings before ordinary courts." This encompasses the conclusion reached by the Federal Court of Appeal in *Turcotte v Commission de l'Assurance-Emploi du Canada*, (26 February 1999), Montréal A-186-98 (FCA) at paragraph 5, to the effect that this Court is not to import criminal law principles into administrative law:

> [5] As Marceau J.A. said in *The Attorney General of Canada and Cou Lai*,[1] we are not in a criminal law context but in an administrative law one. It does not seem desirable to import the principles applicable to one into the other.

[66] To the same effect is *Canada (Attorney General) v Lai*, (25 June 1998), Vancouver A-525-97, where the Federal Court of Appeal held:

> [4] …. In any event, we are not in a criminal law context, but in an administrative law one. The sanctions provided by the Act must be viewed not so much as punishment, but as a deterrent necessary to protect the whole scheme whose proper administration rests on the truthfulness of its beneficiaries. And the Commission's practices, like the one involved here, are established not as limitations of

> discretion, but as a means of determining guidelines that will assure some consistency. The position adopted by the umpire, if upheld, would limit the discretion to impose penalties conferred on the Commission by section 33 of the Act. That would defeat the will of Parliament.
>
> [Emphasis added]

B. *The Minister's Decision is reasonable*

[67] The Applicant submits the Minister's Decision is unreasonable because the Minister relied upon: (i) news articles as evidence; (ii) irrelevant considerations; (iii) an unlawful request to prove a negative; (iv) fabricated facts, and furthermore (v) failed to take into account credible and compelling evidence.

[68] The Respondents disagree, submitting the Minister's Decision meets the standards of justification, transparency and intelligibility required by *Vavilov* and *Canada Post*, and is reasonably supported by the record.

[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.

[70] As set out in more detail below, given the profound opaqueness of Russian (and Turkmenistan and other regional) public and business decision-making relevant to this case,

coupled with the record including the Applicant's submissions, and given the nature and purpose of the *Russia Regulations*, the Court will afford the widest deference to the Minister's conclusion that the Applicant did not establish reasonable grounds to recommend his removal from the sanctions list as required by subsection 8(2) of the *Russia Regulations*.

[71] Also by way of introduction, the Court finds the Minister's Decision is a "factually suffused determination" per the Federal Court of Appeal in *Portnov v Canada (Attorney General)*, 2021 FCA 171, which holistically drew on the records of both parties. This Court gives the widest deference to the Minister's weighing and assessing of the facts and inferences available, particularly given the Minister's expert role and her knowledge obtained at the apex of Canada's foreign policy, the Minister's consideration of Canada and the world's response to Russia's invasion of Ukraine, together with the context and Canada's implementation of the *Russia Regulations'* sanctions regime in the Applicant's circumstances.

[72] All of these considerations are at play in the Decision which includes the Memorandum including the Minister's Decision Letter, the various relevant Regulatory Impact Analysis Statements, the Memorandum from her Deputy Minister, and the very detailed, and thoroughly footnoted well-documented supporting departmental submissions and material contained in the record.

[73] Also as will be seen, I decline the Applicant's repeated and numerous invitations to reweigh, reassess and second-guess the Minister's conclusions on the record filed in this case. To engage in the proposed reweighing and second guessing of the Minister's informed conclusions, with respect, would offend basic governing principles of administrative law and judicial review

established by both the Supreme Court of Canada and Federal Court of Appeal in *Vavilov* and *Doyle*. This governing jurisprudence is fatal where, as here, the Applicant does not establish the errors he alleges, either individually or collectively, constitute exceptional circumstances or fundamental error on the Minister's part. Indeed, almost all the Applicant's arguments invite the Court to impermissibly substitute the Court's opinions for those of the Minister.

[74] In my respectful view, the Minister reasonably performed the duty required of her in these most certainly opaque geopolitical, foreign affairs, and business circumstances.

[75] It is also important to recall that the burden lies squarely on the Applicant to persuade this Court that the Minister made errors warranting judicial intervention. This he has failed to discharge.

[76] With respect, in the general context of Russian and regional foreign and business policy and decision making, the Minister in my view was entitled to consider and rely on open-source and other relevant information collected by Global Affairs Canada (the Department over which the Minister presides), including corporate websites and annual reports, and reports from non-government organizations and credible news sources, together with her own judgment and experience, as bases on which to conclude the Applicant failed to establish reasonable grounds to recommend delisting.

[77] The Minister was also entitled to consider and rely upon the advice of her Departmental and other relevant officials (including her Deputy Minister who signed the Memorandum and officials participating in its preparation) in addition to the Minister's own judgment, knowledge

and experience among other things; the list is not closed given the Minister's central role at the apex of Canada's foreign affairs.

[78] Notably in this connection, the Federal Court of Appeal confirms the federal Cabinet (Governor in Council) stands at the apex of decision-making by the Government of Canada. Notably also, the Applicant was added to the sanctions list by the Governor in Council. The Applicant does not attack that Order in Council. Instead, as permitted by section 8 of the *Russia Regulations*, he unsuccessfully asked the Minister to find reasonable grounds to recommend to the Governor in Council to delist him.

[79] In this context, the Minister and Cabinet are Canada's senior and expert foreign affairs and policy advisors. As such, as noted already, the Minister's conclusions on matters such as this must be afforded the widest deference. I will explain as follows.

[80] The roles of the Minister and the Governor in Council are set out in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72:

> [37] The Governor in Council is the "Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada": *Interpretation Act*, R.S.C., 1985, c. I-21, subsection 35(1), and see also the *Constitution Act, 1867*, 30 & 31 Vict., c. 3 (U.K.) (as am. By *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1 [R.S.C., 1985, Appendix II, No. 5], sections 11, 13 and 91. All the ministers of the Crown, not just the Minister, are active members of the Queen's Privy Council for Canada. They meet in a body known as Cabinet. Cabinet—sitting at the apex of the executive of the Canadian government—is "to a unique degree the grand co-ordinating body for the divergent provincial, sectional, religious, racial and other interests throughout the nation" and, by convention, it attempts to represent different geographic, linguistic, religious, and ethnic groups:

> Norman Ward, *Dawson's The Government of Canada*, 6th ed. (Toronto: University of Toronto Press, 1987), at pages 203–204; Richard French, "The Privy Council Office: Support for Cabinet Decision Making" in Richard Schultz, Orest M. Kruhlak and John C. Terry, eds., *The Canadian Political Process*, 3rd ed. (Toronto: Holt Rinehart and Winston of Canada, 1979) at pages 363-394. All the levers of government are present at the Cabinet table.
>
> [Emphasis added]

[81] In my respectful view, much of what the jurisprudence says of the Governor in Council as a collective, is also true of individual Cabinet Ministers with very specialized knowledge and expertise in their relevant portfolio responsibilities, such as the Minister of Foreign Affairs in this case. In my view the following jurisprudence supports the proposition that the Minister in this case is entitled to the widest deference.

[82] Affording the Minister the widest deference in this case aligns with the judgment of the Federal Court of Appeal in *Raincoast Conservation Foundation v Canada (Attorney General)*, 2019 FCA 224 [*Raincoast Conservation Foundation*] at paragraphs 18-19:

> [18] In reviewing the reasonableness of the Governor in Council's approval decision, the Court must give the Governor in Council the "widest margin of appreciation" over the matter: *Gitxaala Nation,* at paragraph 155; *Tsleil-Waututh Nation,* at paragraph 206. The level of deference is high.
>
> [19] The Governor in Council's approval decision is a "discretionary [one] … based on the widest considerations of policy and public interest assessed on the basis of polycentric, subjective or indistinct criteria and shaped by its view of economics, cultural considerations, environmental considerations, and the broader public interest": *Gitxaala Nation*, at paragraphs 140–144 and 154; see also *Tsleil-Waututh Nation*, at paragraphs 206–223. Only the Governor in Council—not this Court—is equipped to evaluate such considerations with precision: *Gitxaala Nation,* at paragraphs 142–143, citing *League for Human Rights of*

> *B'Nai Brith Canada v. Canada*, 2010 FCA 307, [2012] 2 F.C.R. 312, at paragraphs 76–77. …..
>
> [Emphasis added]

[83] Indeed, the Federal Court of Appeal specifically addresses the deference owed to Ministerial decisions – such as the Decision in the case at bar – that are "very much unconstrained" when made on "polycentric, subjective or indistinct criteria and shaped by the administrative decision makers' view of economics, cultural considerations and the broader public interest." In my view these words describe the Decision under review in this case. See *Mikisew Cree First Nation v Canadian Environmental Assessment Agency*, 2023 FCA 191, per Justice Gleason at paragraph 118:

> [118] Further, decisions that can be considered executive in nature—because they involve public interest determinations based on wide considerations of policy and public interest, assessed on "polycentric, subjective or indistinct criteria and shaped by the administrative decision makers' view of economics, cultural considerations and the broader public interest"— are very much unconstrained: *Vavilov* at para. 110; *Raincoast Conservation Foundation v. Canada (Attorney General)*, 2019 FCA 224, [2020] 1 F.C.R. 362 at paras. 18–19, leave to appeal to SCC refused, 38892 (5 March 2020) [*Raincoast Conservation Foundation*]; *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79, [2018] 2 F.C.R. 573 [*Emerson Milling*] at paras. 72–73; *Gitxaala Nation* at para. 150; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226 at paras. 30 and 31.
>
> [Emphasis added]

[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 is this case is justiciable, the bar the Applicant must overcome to succeed is exceedingly high.

[86] With these principles in mind I will assess the Applicant's submissions in more detail.

(1) News articles as evidence

[87] The Applicant submits the facts relied upon by the Minister emanating from news articles is unreasonable in contrast to the evidence submitted by the Applicant in his effort to be delisted.

In this connection, the Applicant relies on a sworn attestation that submissions and information in his delisting applications are accurate.

[88] He further emphasizes he offered to meet Canadian officials to clarify as needed.

[89] On the other hand, the Respondents submit that as part of the relevant factual matrix, the Minister's consideration of open-source information is reasonable. The Respondents submit the evidentiary record must be considered in light of the sanctions regime, which it seems to me includes the undoubtedly opaque factual context within which Russian and Turkmenistan policy makers and business leaders make decisions.

[90] Further, the Respondents submit and I accept the "reasonable grounds" standard found in the *Russia Regulations* reflects the fact the Minister and her officials lack investigative powers under the *Russia Regulations*. As a result, they may not have direct evidence of a foreign national's involvement in Russian military or business affairs. In this connection I should add it is not up to the Minister to establish the Applicant was properly added to the *Russia Regulations* sanctions list by the Governor in Council. That decision was made by the Governor in Council and is not before the Court. What is before the Court is the Applicant's allegation the Minister unreasonably erred in not finding reasonable grounds to recommend the Governor in Council delist him.

[91] The Minister's Decision was based in part on extensive open-source information, in addition to the advice of the Department of Foreign Affairs, her specialized knowledge and expertise, and the submissions of the Applicant. As part of the extensive factual matrix the

department of Foreign Affairs laid before the Minister, the Court gives the widest deference to the Minister's consideration of credible and probative news articles, along with other supporting evidence such as corporate websites and annual reports, photographs and reports from reliable and or credible non-government organizations. These considerations properly fall within the Minister purview.

[92] It also seems to me the record supporting the Minister's Decision was reasonably considered in the context of purpose and objectives of the *Russia Regulations* in the circumstances of the Applicant. The Applicant is a foreign national who has never resided in Canada.

[93] Notwithstanding what some if not many of the Applicant's submissions suggest, the Minister's Decision is not one tested on criminal law standards, or even the standards of ordinary courts: see *Chshukina v Canada (Attorney General)*, 2016 FC 662, *Turcotte v Commission de l'Assurance-Emploi du Canada*, (26 February 1999), Montréal A-186-98 (FCA) and *Canada (Attorney General) v Lai*, (25 June 1998), Vancouver A-525-97 (FCA) cited above. With respect, it is not enough to pull a string here or tug a thread there for the Applicant to succeed. 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*.

[94] In this respect, the Minister's Decision is one made in the course of an administrative law process, in which this Court may and should apply principles from other administrative contexts, and accept that the Minister is fully entitled to rely on evidence which may not normally be

admissible in criminal or civil courts, so long as the decision-maker determines the sources credible, reliable or trustworthy.

[95] In this, the Respondents rely on *Akanbi v Canada (Citizenship and Immigration)*, 2023 FC 309 at paragraph 53:

> [53] In making its determination, the ID "is not bound by any legal or technical rules of evidence" and "may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances" (IRPA paragraphs 173(c) and (d)). Thus, the ID may consider evidence from sources that may not be acceptable in a court (*Bruzzese v Canada (Public Safety and Emergency Preparedness*), 2014 FC 230 at para 50; *Pascal* at para 15). This can include police reports (*Pascal* at paras 20-37), newspaper articles (*Bruzzese* at paras 57-58) and even a "true crime" book by a journalist (*Pascal* at paras 53-62), as long as the decision maker determines that the source is credible or trustworthy. Of course, this discretion to receive evidence must be exercised reasonably (*Pascal* at para 15; *Stojkova v Canada (Citizenship and Immigration)*, 2021 FC 368 at para 15) and any exercise of discretion "must accord with the purposes for which it was given" (*Vavilov* at para 108).

[96] While the foregoing refers to a statutory evidentiary scheme, I am of the view the same general principles apply in the context of the Minister's assessment of the record and her conclusion that the Applicant did establish reasonable grounds to recommend his removal from the *Russia Regulations*. I start by noting that nothing in the *Special Economic Measures Act* or the *Russia Regulations* indicates otherwise.

[97] The Respondents also rely, as do I, on *Gomez v Canada (Attorney General)*, 2021 FC 1300 [*Gomez*], per Justice Kane, where the Court acknowledges the use of reliable open-source information is a proper basis for a Ministerial decision not to recommend the repeal of a

sanctions listing under the *Justice for Victims of Corrupt Foreign Officials Regulations*, SOR/2017-233, at paragraph 125. This Court concluded not only that the Minister was entitled to rely on reliable open source information, but that in the circumstances the claimant was not entitled to notice of such information (which he could have found himself):

> [125] Mr. Rangel Gomez noted that the reasons for his listing provided by GAC were taken as a general guide and that he supplemented the reasons with the details provided by the US government, details from public news and other sources that fit the "general category of issues raised" in the reasons. Moreover, the Minister's grounds for recommending that Mr. Rangel Gomez be listed pursuant to paragraph 4(2)(c) of the Act were based on reliable open-source information, which Mr. Rangel Gomez had similar access to and which he acknowledged that he consulted in order to make his submissions. The Minister and GAC were not obliged to disclose open-source information that Mr. Rangel Gomez would have had access to (see, for example, *Azizian v Canada (Minister of Citizenship and Immigration)*, 2017 FC 379 at para 29; *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461, 1998 CanLII 9066).

[98] This jurisprudence is supported by the Federal Court of Appeal in *Canadian Recording Industry Association v Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322. There in language I adopt as applicable to this Minister in this case, the Federal Court of Appeal held certain if not all administrative tribunals are entitled to act on material that is logically probative, even though such material is not evidence in a court of law, because administrative tribunals are not bound by the rules of evidence. Simply put, the normal rules of evidence do not apply to administrative tribunals and agencies such as the Minister in this case. See paragraphs 20 and 21:

> [20] In any event, the Board is not a court; it is an administrative tribunal. <u>While many tribunals have specific exemptions from the obligation to comply with the rules of evidence, there is authority that even in the absence of such a provision, they are not bound, for example, to comply with the rule against hearsay evidence.</u> The

Alberta Court of Appeal put the matter as follows in *Alberta (Workers' Compensation Board) v. Appeals Commission*, 2005 ABCA 276, [2005] A.J. No. 1012, at paras. 63-64:

> This argument departs from established principles of administrative law. As a general rule, strict rules of evidence do not apply to administrative tribunals, unless expressly prescribed: *Toronto (City) v. CUPE, Local 79* (1982), 1982 CanLII 2229 (ON CA), 35 O.R. (2d) 545 at 556 (C.A.). See also *Principles of Administrative Law* at 289-90; Sara Blake, *Administrative Law in Canada*, 3rd ed., (Markham, Ont.: Butterworths, 2001) at 56-57; Robert W. MacAulay, Q.C. & James L.H. Sprague, *Practice and Procedure before Administrative Tribunals*, loose-leaf (Toronto: Carswell, 2004) at 17-2. While rules relating to the inadmissibility of evidence (such as the Mohan test) in a court of law are generally fixed and formal, an administrative tribunal is seldom, if ever, required to apply those strict rules: *Practice and Procedure before Administrative Tribunals* at 17-11. "Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law": *T.A. Miller Ltd. v. Minister of Housing and Local Government*, [1968] 1 W.L.R. 992 at 995 (C.A.); *Trenchard v. Secretary of State for the Environment*, [1997] E.W.J. No. 1118 at para. 28 (C.A.). See also *Bortolotti v. Ontario (Ministry of Housing)* (1977), 1977 CanLII 1222 (ON CA), 15 O.R. (2d) 617 (C.A.).
>
> This general rule applies even in the absence of a specific legislative direction to that effect. While many statutes stipulate that a particular tribunal is not constrained by the rules of evidence applicable to courts of civil and criminal jurisdiction, "these various provisions do not however alter the common law; rather they reflect the common law position: in general, the normal rules of evidence do not apply to administrative tribunals and agencies": *Administrative Law*, supra, at 279-80.

[21] This principle has been a feature of Canadian jurisprudence for some time. In *Canadian National Railways Co. v. Bell Telephone Co. of Canada*, 1939 CanLII 34 (SCC), 1939 S.C.R. 308, at p. 317, 50 C.R.T.C. 10, (*Canadian National Railways*) a

> case dealing with the Board of Railway Commissioners, the Supreme Court described the powers of that Board in the following terms:
>
> > The Board is not bound by the ordinary rules of evidence. In deciding upon questions of fact, it must inevitably draw upon its experience in respect of the matters in the vast number of cases which come before it as well as upon the experience of its technical advisers. Thus, the Board may be in a position in passing upon questions of fact in the course of dealing with, for example, an administrative matter, to act with a sure judgment on facts and circumstances which to a tribunal not possessing the Board's equipment and advantages might yield only a vague or ambiguous impression.
> >
> > *Cambie Hotel*, cited above, at paras. 28-36, is to the same effect. In my view, even in the absence of a specific exemption, the Board was not bound by the rules of evidence.
>
> [Emphasis added]

[99] For these reasons, I respectfully defer to the Minister's determination whether and to what extent the open source information in this case is probative, reliable or credible. On judicial review, those findings may only be set aside on showing exceptional or fundamental error per *Vavilov* and *Doyle*. The Court is not persuaded of reviewable error in this regard.

[100] I certainly do not agree the Minister's weighing and assessing of open-source material concerning the profoundly opaque regional geopolitical and business dealings in Russia or Turkmenistan in the context of Russia's invasion and its war in Ukraine, or Canada's or its allies' sanctioning of those such as the Applicant under the *Russia Regulations*, should be assessed by yardsticks of the Court's manufacture. Such weighing and assessing in this case

must be left to those with the specialized knowledge and experience, i.e., the Minister, because such assessments lie far outside the "ken of the courts."

[101] The Applicant argues otherwise. However he provided no persuasive authority to support this submission, which is inconsistent with the jurisprudence affording the widest deference to the Minister just reviewed.

[102] In my respectful view there is no merit to any of the claims advanced by the Applicant in this respect. As but one example, while the Applicant emphasized a single article containing a fake photo of the Applicant, this one photo (in 1,137 pages) formed no part of the Minister's Decision Letter, nor was it referred to in the Deputy Minister's Memorandum. If anything, the single fake photo is the exception that makes the Minister's case, namely that the record was probative and could be relied upon. With respect, this submission is a treasure hunt for error which is not a legitimate part of judicial review per *Vavilov* at paragraph 102.

(2) Irrelevant considerations

[103] The Applicant argues the Minister's Decision, in whole or in part, was made by favouring public opinion and Parliamentary politics, over the merits of the Applicant's submissions. This submission has no merit. In the first place it is entirely speculative. Moreover, this argument is based on the fact that as part of the thousand plus pages submitted to the Minister, a short portion deals with Parliamentary Implications/Actions, and a further three paragraphs deal with Communications/Actions. There is no evidence these submissions are anything other than what

would be expected in public service advice provided to a Minister in the Canada's parliamentary democracy.

[104] Frankly, it would be surprising if Ministers in Canada's Parliamentary democracy were asked to decide matters without input from government or other staff on political, parliamentary and communication issues. Nothing suggests these comments were unreliable, and nothing indicates they were material one way or the other. As the Court recently held in *Cold Lake (City) v Canada (Attorney General)* 2024 FC 432:

> [121] It seems to me Ministers in their capacity as politicians require and are entitled to receive and consider political advice, otherwise decision-making would have been left with non-political entities such as the public service or the DAP or another quasi-judicial entity.
>
> [122] I therefore am of the view that the same reasoning set out by Justice de Montigny (as he then was) in *Violator no. 10* approving the receipt by Ministers of advice from public servants applies to Ministers receiving political advice, because it is unreasonable to expect Ministers to perform their political functions personally:
>
> > [42] In a modern and complex state like ours, as the Supreme Court reiterated more than forty years ago in *Harrison*, it is unreasonable to expect that the person designated in the legislation to perform certain duties will perform all of them personally. Such a requirement would cause chaos, lead to interminable delays and be inefficient. Justice Rothstein (then of the Federal Court) stated the following in *Armstrong v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 1994 CanLII 3459 (FC), [1994] 2 FC 356 at paragraph 59, 73 F.T.R. 81 (affirmed by this Court in 1998 CanLII 9041 (FCA), [1998] 2 FC 666):
> >
> > > Fourth, it is not realistic for the Commissioner to make appeal decisions in discharge matters without delegating to his subordinates some of the work involved in preparing the material in a manner to enable him to expeditiously perform his function.

[105] The Applicant also alleges the Minister unreasonably relied on two legally irrelevant factors: (i) the fact that the Applicant had not issued public statements denouncing the war; and (ii) the fact that the UK had sanctioned the Applicant. The Applicant submits that since the issuance of the Decision, he has publicly "expressed his opposition to the war in Ukraine and his fall-out with the Russian government." Furthermore, on March 5, 2024, the UK revoked all sanctions as against the Applicant.

[106] While the Applicant did express his opposition to the war in Ukraine, he did so in a confidential submission to the Minister which he tried unsuccessfully to keep from the public record in this very case. It is obvious to me that a confidential claim to oppose Russian aggression and its war in Ukraine may reasonably be counted for less than an open and public denunciation in a case like this. The Minister cannot be faulted for unreasonableness in this regard.

[107] In addition, while the UK sanctioned the Applicant and subsequently revoked its decision, no persuasive reason was offered why Canada should follow suit. The Court does not know the UK's sanction regime nor does this Court have the record of either the original sanctioning of the Applicant nor subsequent proceedings. In this respect, the political and geopolitical context in the UK and its foreign affairs policy are matters for determination by the UK government, and frankly, on this record they are not relevant in this case. In this connection, the Respondents asked the Applicant to provide his submissions to the UK government and their subsequent decision. He refused. I am not persuaded the Minister's consideration in this respect is unreasonable.

[108] The context to the Applicant's next issue is that the Decision letter and Memorandum are supported by three annexes totalling over 1,100 pages of evidence assembled by Foreign Affairs and Applicant's counsel. All were before the Minister. In this context the Applicant takes issue with five points, claiming the Minister relied on articles that are irrelevant to his request essentially because they do not name him: (i) Opaque 1990s Transactions and Turkmenistan Regime Links, (ii) Gazprom's Child, (iii) Gas Pressure, (iv) Benefitting from the Oligarchy System, and (v) EU Naturalization Controversy.

[109] Here again the Applicant invites the Court to reweigh and second guess not just the extracts of the record he complained about, but and by doing so he asks the Court to reweigh and reassess his complaint in relation to the totality of the record. This is not permitted by *Vavilov* and *Doyle* (as noted already) unless the Applicant establishes exceptional circumstances or fundamental error. As my colleague Justice Heneghan put it so well, "The Officer not the Court was mandated to weigh the evidence." See *Safaeian v Canada (Citizenship and Immigration)* 2024 FC 846 at paragraph 25.

[110] It seems to me the Minister's determinations in this respect were reasonably open particularly given the opaque and complex foreign policy, personal and business relationships between the Applicant and various state and other actors in Russia and Turkmenistan going back almost two decades, as evidenced by the record as assessed by the Minister given the widest deference to her specialized knowledge and expertise. I am not persuaded these submissions are anything more than additional treasure hunts for error. They are do not constitute reviewable errors.

(3) Unlawful request to prove a negative

[111] The Applicant further argues the Memorandum amounts to a request he prove a negative to overcome a lack of evidence of any interaction between the Applicant, Chemezov and Miller. The Memorandum states:

> In particular, [Mr. Makarov's] response claimed some of the sources shared by the department were inaccurate and offered counter narratives to depict his past association with known close associates of the Putin regime as only transactional and "unfriendly". He claims he no longer maintains any association with these individuals [Chemezov, Miller]. However, the department has been unable to find any public sources that corroborate Mr. Makarov's claims.

[112] The Applicant relies on *Canada (Public Safety and Emergency Preparedness) v Rooney*, 2016 FC 1097 where Justice Diner at paragraphs 45-46 discusses the "Catch-22" that arises when an obligation is imposed on an individual to prove a negative. I am not at all persuaded Justice Diner's decision is applicable; it dealt with assessing credibility in terms of childhood memory in a wholly different context.

[113] I appreciate some argue it is difficult to prove a negative. However in my view this is a red herring because to frame the issue that way is to avoid the central issue, which is whether the Minister unreasonably determined the Applicant failed to establish reasonable grounds for her to recommend his delisting from the *Russia Regulations*. Moreover there is no impossibility in requiring the Applicant to establish to the Minister's satisfaction that there are reasonable grounds to recommend he be delisted. While he was unable to satisfy the Minister in his particular case, that is not a marker of impossibility. There is no merit in this argument.

[114] Given the widest deference owed to the Minister, I conclude the record and the Minister's expert assessment of it support the Decision to the effect that the Applicant benefitted immensely over a very long period of time from a number of long-standing relationships as an associate of many Russian officials and business interests including Miller, Chemezov and President Putin. In my view it was reasonably open to the Minister to note the Applicant's failure to corroborate his central assertion that while he knew these individuals he was not sufficiently close to them. There is no unreasonableness in this respect.

(4) Fabricated facts

[115] The Applicant submits the Minister's Decision relied on information in the Memorandum that is "pure fabrication," notably, that after the launching of the war in Ukraine, President Putin summoned Russian billionaires to the Kremlin, including the Applicant. The Applicant argues this is a false statement that "mishmashes" two events: one was the 2015 Sport Meeting the Applicant admittedly attended, and the other was a meeting in March 2023 the Applicant says he did not attend. That said, the websites attached in an Annex to the Memorandum referring to the 2023 meeting do not mention the Applicant. The Respondents submit and I agree that here again the Applicant is impermissibly engaging in a "treasure hunt for error" contrary to the instructions in *Vavilov* at paragraph 102.

[116] Moreover, references in the Annex to the meeting of the Russian Union of Industrialists and Entrepreneurs may reasonably be said to refer to Russian billionaires. The group of Russian billionaires is widely known and understood; indeed the Applicant admits he belonged to it for many years. This, with respect, once again reasonably speaks to close connections and

associations between President Putin, influential Russian oligarchs and, reasonably, the Applicant.

[117] I also note neither the Minister's Letter nor the Deputy's Memorandum allege the Applicant attended the 2023 "Billionaires Meeting." I am not persuaded the Applicant's attendance or otherwise points to either a central or fundamental error or flaw in the Decision.

[118] The Applicant also argues the allegation he controls Turkmenistan natural gas exports that form part of Russia's current energy security is false. He says gas supplies from Turkmenistan are exclusively in the hands of Gazprom. I am not persuaded this line of argument warrants judicial intervention because this fact-suffused determination by the Minister must be given the widest deference. In addition, it seems to me the Minister's assessment is reasonable given the essentially opaque nature of transactions and policy making as between those two and other governments in the regional business and political environments. It was for the Applicant to satisfy the Minister on reasonable grounds of this point. He disagrees with the Decision, but there is no case for judicial intervention in this respect.

(5) Failed to consider credible evidence

[119] The Applicant further argues the Minister failed to consider credible evidence submitted by his lawyer. Once again the Applicant takes issue with the Minister's weighing and assessment of the evidence, which in the absence of fundamental error, misapprehension or fatal flaw the Court must avoid. That said, I will briefly canvass his submissions which, and with respect are without merit.

[120] Two examples are, first that the Applicant provided information on his humanitarian aid and support to Ukraine, which was not considered by the Minister. I agree this evidence was provided and indeed it was before the Minister. However, the answer to this argument is established administrative law that decision-makers are deemed to have considered all material and submissions put before them. In addition, decision makers are under no obligation to recite all the submissions advanced by either side. These principles are fatal to the Applicant.

[121] The Applicant also argues the Memorandum selectively quotes news articles to conclude the Applicant's highly successful company, ITERA, during the 1990s flowed profits to "powerful interests in Russia" and that "[b]illions of dollars appeared to have been stolen as a result of these opaque deals." The Applicant says this ignores another article in the Memorandum confirming "all the audits conducted by the Russian Auditing Chamber, as well as the professionals of PWC found the ITERA-Gazprom relationship to be legal."

[122] This line of argument impermissibly invites the Court to reweigh and reassess the record and substitute its decision for the conclusions of the Minister where there is no fundamental error or exceptional circumstance. Moreover, I am not satisfied that the opaque arrangements between differing entities that might have been found "legal" for audit purposes, could not also be reasonably seen as having benefitted powerful interests in Russia.

C. *Minister's interpretation of the Russia Regulations not properly raised on judicial review*

[123] Finally, the Applicant submits the Minister erred in interpreting the term "associate" in the *Russia Regulations*, failed to consider whether there exists a sufficient link between the

Applicant and his alleged associates, improperly relied on allegations of "past association" and failed to identify any "current association", and also failed to consider whether there exists a sufficient link between the Applicant and Russia's actions targeted by the *Russia Regulations*.

[124] In response, the Respondents submit the Applicant is improperly raising new arguments on the interpretation of subsection 2(c) of the *Russia Regulations* for the first time on judicial review.

[125] It is not disputed this line of argument formed no part of the Applicant's Delisting Applications. He was well aware this could be an issue, but and with respect he chose to ignore it. Now, he asks to add this new argument on judicial review.

[126] The Respondents submit the Court should not hear and consider these submissions on judicial review. With respect, I agree. The jurisprudence is settled by the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 24-25:

> [24] There are a number of rationales justifying the general rule. One fundamental concern is that the legislature has entrusted the determination of the issue to the administrative tribunal (*Legal Oil & Gas Ltd.*, at paras. 12-13). As this Court explained in *Dunsmuir*, "[c]ourts . . . must be sensitive . . . to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures" (para. 27). Accordingly, courts should respect the legislative choice of the tribunal as the first instance decision maker by giving the tribunal the opportunity to deal with the issue first and to make its views known.
>
> [25] This is particularly true where the issue raised for the first time on judicial review relates to the tribunal's specialized functions or expertise. When it does, the Court should be

> especially careful not to overlook the loss of the benefit of the tribunal's views inherent in allowing the issue to be raised. (See *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 89, per Abella J.)

[127] As determined already, in my respectful view the Minister must be afforded the widest deference in applying her experience, knowledge, judgment and specialized expertise to the interpretation and application of the *Russia Regulations* as informed by their language, context and purposes, also given her responsibility at the apex of the Government of Canada's conduct of foreign affairs in relation to Russia's invasion of and its war in Ukraine. Yet in this case the Minister was not asked for her views on this interpretation issue.

[128] With respect, I will not consider this new argument because that would engage the Court in a highly foreign policy-infused and nuanced matter without what I consider the necessary benefit of the Minister's input. And it asks the Court to do so contrary to binding jurisprudence from our highest court.

[129] In this, I also rely on *Gomez* where this Court likewise declined to consider interpretation arguments not raised before the decision-maker:

> [4] The Court declines to exercise its discretion to consider whether the Regulations are *ultra vires* as they apply to Mr. Rangel Gomez. This issue is in essence about statutory interpretation. Mr. Rangel Gomez should have made submissions to the Minister regarding the interpretation of the Act and Regulations, or their *vires*, as the Act and Regulations apply to him, in his application to be delisted [Delisting Application]. Mr. Rangel Gomez could have then sought judicial review of the Minister's decision if unfavourable to him. The Court could have then reviewed the reasonableness of the Minister's decision with the benefit of the Minister's reasons and considered the appropriate remedy. In the present circumstances, the Court finds that there are no compelling

> reasons that favour the Court's exercise of discretion to consider this issue for the first time on this Application.

VIII. Conclusion

[130] The application for judicial review will be dismissed.

IX. Costs

[131] The parties agreed the successful party should be awarded all-inclusive costs of $12,500.00. I agree this is a reasonable sum and the Court will therefore make that award in favour of the Respondents.

JUDGMENT in T-2382-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The Applicant shall pay the Respondents the sum of $12,500.00 as their all-inclusive costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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