Federal Court of Appeal | Cour d'appel fédérale

Date: 20251209

Docket: A-315-24

Citation: 2025 FCA 223

CORAM: **STRATAS J.A.**
RENNIE J.A.
MONAGHAN J.A.

BETWEEN:

IGOR VIKTOROVICH MAKAROV

Appellant

and

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

Respondents

Heard at Toronto, Ontario, on December 9, 2025.

Judgment delivered from the Bench at Toronto, Ontario, on December 9, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 9, 2025).

STRATAS J.A.

[1] In the discharge of its responsibility over foreign affairs and international relations and in reaction to Russia's war against Ukraine, the Government of Canada sanctioned the Government of Russia and those associated with it: see the *Special Economic Measures Act*, S.C. 1992, c. 17

and the *Special Economic Measures (Russia) Regulations*, S.O.R./2014-58. The Government of Canada, specifically the Governor in Council, was "of the opinion that the actions of [the Government of Russia] constitute a grave breach of international peace and security that has resulted or is likely to result in a serious international crisis": Regulations, preamble.

[2] Mr. Makarov became a billionaire from his business activities in Russia, some of which were state assisted, or state associated, with connections, some close, to Russian governmental officials. Thus, the Governor in Council added him to the sanctions list.

[3] Under the Act and the Regulations, Mr. Makarov can ask the Minister of Foreign Affairs to recommend to remove him from the sanctions list, with evidence and submissions in support. This, Mr. Makarov did. The Minister refused.

[4] Mr. Makarov challenged that refusal in the Federal Court. The Federal Court dismissed Mr. Makarov's challenge, finding the Minister's decision reasonable: 2024 FC 1234 (*per* Brown J.). Now Mr. Makarov appeals to this Court. We must dismiss Mr. Makarov's appeal.

[5] Mr. Makarov contests the considerable deference the Federal Court showed to the Minister given the significant personal impact upon him. We agree with Mr. Makarov that a reviewing court should not be unduly deferential: in this regulatory regime, the Minister must consider, evaluate and weigh both sides' evidence, decide the matter based on a reasonable view of the legislative standards, and provide reasons responsive to the important personal and state interests at stake. In our view, as the Federal Court found, the Minister did this.

[6] That being said, the Minister's decision under this legislation—particularly her appreciation of the meaning of an "associate" in subsection 2(c) of the Regulations viewed in light of the other subsections, the purposes behind including "associates" in this sanctions regime, and whether there are reasonable grounds to believe Mr. Makarov is no longer an "associate" and should be delisted—calls at least in part upon intangible, policy-based appreciations resting right at the bullseye of the executive's high responsibility to manage Canada's foreign relations, international interests and global affairs. These are fields that draw upon sensitive, impressionistic and imprecise evaluations and assessments that are complex, ever-changing and fraught with expertise. Here, we are in the realm of the quintessentially executive, a matter beyond the ken of the Courts. Thus, overall, the Minister's decision is rather unconstrained. See *Portnov v. Canada (Attorney General)*, 2021 FCA 171, [2021] 4 F.C.R. 501; *Canada v. Boloh 1(A)*, 2023 FCA 120, at para. 67, citing *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, at para. 39; *Singh Brar v. Canada (Public Safety and Emergency Preparedness)*, 2024 FCA 114 at para. 17; see also *Canadian National Railway Company v. Halton (Regional Municipality)*, 2024 FCA 160.

[7] This is buttressed by the text of the legislation, always binding upon us absent constitutional concern. The Minister can recommend that a person be listed on the relatively low standard of "reasonable grounds to believe" the person is currently an associate of the regime (section 2 of Schedule 1 of the Regulations), the Minister can recommend to the senior policy body in the Government of Canada (the Governor in Council) the delisting of a person only on "reasonable grounds to recommend" (Regulations, subsection 8(2)), and the Governor in Council can act on its "opinion" (subsection 4(1) of the Act).

[8] This is not to say that the Minister has anything close to an absolute and untrammelled discretion and is somehow exempted from the rule of law: *Roncarelli v. Duplessis*, [1959] S.C.R. 121, 16 D.L.R. (2d) 689 at p. 140. But it is to say that the discretion to recommend that sanctions be imposed under a legislative regime like this in circumstances like these, while subject to legal standards, is very wide indeed. Thus, judicial intervention will be rare.

[9] Many of Mr. Makarov's submissions use the language of legal principle. But, in reality, Mr. Makarov asks us to reweigh the evidence and redo the Minister's job. Indeed, Mr. Makarov goes further. He asks us to make our own decision and impose it on the Minister. Under reasonableness review and the granting of remedies, this is not our normal task: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 125.

[10] In this case, we cannot say that the Minister's decision is unreasonable, especially given the ample and detailed record supporting the Minister's decision. Among other things, Mr. Makarov was heavily involved in Russian gas sectors through his company, ITERA. He was connected to Russian oligarchs and controllers of Russian state-sponsored and state-owned companies. As well, he was a senior sports official in Russia and had dealings with the Russian President, Vladimir Putin.

[11] Before the Minister, Mr. Makarov adduced limited evidence and argued that he is no longer an associate of the Russian regime. He says he was forced to sell his oil and gas business, ITERA; he renounced his Russian citizenship; his relationship with certain figures was

adversarial. He also says he has never been politically involved and that he does not currently support President Vladimir Putin. He says he has spoken against the Ukraine war and has made humanitarian contributions to vulnerable Ukranians.

[12] Given the limited evidence, the Minister considered Mr. Makarov's attempts to distance himself from the Russian regime to be superficial, not meaningful. The Minister found that nothing really changed between the decision to list Mr. Makarov, which was supported by a constellation of evidence of association, and his application to be delisted. The Minister did not consider Mr. Makarov's renunciation of citizenship a genuine effort to separate himself from the regime. He had not publicly denounced the Government of Russia or President Vladimir Putin, something that might help to rebut his past associations and activities. As well, the Minister found the extent of Mr. Makarov's humanitarian efforts difficult to substantiate. The Minister considered the purposes of this sanctions regime, drew upon an appreciation of international affairs, noted the decisions of other states to sanction Mr. Makarov, and concluded that Mr. Makarov had not made out a case for delisting. On the evidence, bearing in mind the nature of the decision and this legislative regime, this was open to the Minister.

[13] As well, we note that Mr. Makarov has properly admitted (at para. 83 of his memorandum) that "evidence of a past association could be circumstantial evidence of a current association". Viewing the entire record, we consider that this idea was very much part of the Minister's decision that in the circumstances Mr. Makarov had to do more to distance himself from the regime to be delisted.

[14] Mr. Makarov asks this Court to interpret the word “associate” in the Regulations narrowly and precisely. In this Court, he argues that “associate” requires a closeness that the Minister cannot demonstrate in this case and he relies mainly on dictionary definitions of “associate”.

[15] But Mr. Makarov, then represented by different counsel, did not make submissions to the Minister on the interpretation of “associate”, including its text, context and purpose. Under this legislative framework, the Minister—not the reviewing courts—is the merits-decider on all issues, including issues of legislative interpretation: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297; *Delios v. Canada (Attorney General)*, 2015 FCA 117. For that reason, as the Federal Court said, reviewing courts lean against hearing legislative interpretation arguments for the first time on judicial review: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 24-25. Here, to interfere with the Federal Court's discretion not to hear Mr. Makarov's legislative interpretation arguments, we must find palpable and overriding error, a high standard indeed: see, *e.g.*, *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 144. Here, Mr. Makarov has fallen way short of the mark. Indeed, we would have exercised our discretion like the Federal Court did. However, were we to consider the issue of legislative interpretation, we would not be persuaded that the Minister adopted and applied an unreasonable interpretation of “associate”.

[16] Mr. Makarov also submits that the Minister ignored the harsh consequences of his listing. But the mere non-mention of something in the Minister's reasons does not necessarily mean the

Minister did not consider it. In any event, the Minister's reasons viewed in light of the record show due appreciation of the important interests at stake.

[17] The Minister's decision was made based on evidence existing at the time of this decision. If there is new evidence such that the legislative threshold of a "material change in circumstances" is met, Mr. Makarov can apply again to the Minister and the Minister must consider the matter afresh: Regulations, subsection 8(5).

[18] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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