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Court File No. T-

-23

FEDERAL COURT

B E T W E E N :

FRANTZ CARL BRAUN

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

**Application for Judicial Review under Section 18.1 of the
*Federal Courts Act***

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

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

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

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

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

October 17, 2023

Issued by: _____

Address of local office: 180 Queen Street West,
Suite 200
Toronto, ON M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa ON K1A 0H8

APPLICATION

THIS IS AN APPLICATION for judicial review of the decision (the “**Decision**”) of the Governor General in Council (the “**GIC**”), on the recommendation of the Minister of Foreign Affairs (the “**Minister**”), made on September 20, 2023, to add the applicant, Frantz Carl Braun (“**Braun**” or the “**Applicant**”), to Part 2 of the schedule (the “**Schedule**”) to the *Special Economic Measures (Haiti) Regulations* SOR/2022-226 (the “**Regulations**”), pursuant to the *Regulations Amending the Special Economic Measures (Haiti) Regulations* SOR/2023-192.

A. THE APPLICANT MAKES APPLICATION FOR:

- a. an order quashing the Decision to add the Applicant to the Schedule to the Regulations;
- b. an order directing the GIC and the Minister to remove the Applicant’s name from the Schedule to the Regulations;
- c. a declaration that the Decision is deficient, unreasonable, and does not comply with the principles of natural justice and procedural fairness;
- d. in the alternative, an order:
 - i. setting aside the Decision and referring it back to the GIC and the Minister for redetermination in accordance with such instructions as this Court deems appropriate and just;

- ii. compelling the GIC and the Minister to disclose to the Applicant all documents and information considered by the GIC and the Minister leading to and resulting in the Decision;
- iii. that the Applicant be given an opportunity to respond to the disclosures and productions ordered to be made pursuant to subparagraph (ii) above;
- iv. extending the time provided by Rule 306 of the *Federal Courts Rules*, affording the Applicant a period of thirty (30) days following the release of the disclosures and productions ordered to be made pursuant to subparagraph (ii) above within which to serve and file his supporting affidavits and documentary exhibits; and
- v. requiring the GIC and the Minister to undertake a reconsideration of the Decision in light of the response provided by the Applicant pursuant to subparagraph (iii) above;
- e. an interim order under s. 18.2 of the *Federal Courts Act*, including staying the effect of the Decision pending final determination of this application;
- f. the costs of this application; and
- g. such further and other relief as this Honourable Court may deem just.

B. THE GROUNDS FOR THE APPLICATION ARE:

The Parties

1. The Applicant is a Haitian citizen, a banker, and an entrepreneur. He holds a Master of Business Administration delivered jointly by New York University, the London School of Economics, and HEC School of Management. He is the founder and former Chairman and Chief Executive Officer of Unibank S.A., Haiti's largest financial services group.¹ As a business leader in Haiti, Mr. Braun was a founding member, advisor, and director of various private sector associations, including the Haitian Manufacturers Association (ADIH), the American Chamber of Commerce in Haiti (AMCHAM-HAITI), and the Private Sector Economic Forum (FESP). In 2005, Mr. Braun was named by the Inter-American Development Bank to its "Private Sector Advisory Council". In 2007, Mr. Braun was honoured with the Haitian National Order of Labor (*Ordre National du Travail*) and given the rank of Chevalier.
2. The Attorney General of Canada represents the GIC, who made the Decision on the recommendation of the Minister.

The Adoption of the Regulations

3. On November 3, 2022, the GIC, on the recommendation of the Minister, made the Regulations in response to the "breach of international peace and security that has resulted or is likely to result in a serious international crisis" in Haiti.

¹ The Applicant was forced to resign from his positions with Unibank due to the Decision.

4. The Regulations prohibit any person in Canada or any Canadian outside of Canada from engaging in any of the following activities with any individual or entity listed in the Schedule to the Regulations (hereinafter referred to as a **“Listed Person”**):

- (a) dealing in any property, wherever situated, that is owned – or that is held or controlled, directly or indirectly - by a Listed Person;
- (b) entering into or facilitating any transaction related to such a dealing;
- (c) providing any financial or other related services in respect of such a dealing;
- (d) making available any goods, wherever situated, to a Listed Person or to a person acting on behalf of a Listed Person; or
- (e) providing any financial or related service to, or for the benefit of, a Listed Person.

The Sanctions Imposed on “Listed Persons”

5. The term “Listed Person” is defined in the Regulations to include any individual who is in Haiti, or who is or was a national of Haiti who does not ordinarily reside in Canada, and in respect of whom the GIC, on the recommendation of the Minister, is satisfied that there are “reasonable grounds to believe” is, among other things:

- (a) a person engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti;
 - (b) a person who has participated in gross and systematic human rights violations in Haiti;
 - (c) a current or former senior official of the Government of Haiti; or
 - (d) an associate or family member of a person referred to in subparagraphs (a), (b) and (c) above.
6. The adoption of the Regulations was announced publicly by way of a Global Affairs Canada News Release issued on November 4, 2022.
7. The Regulations have been amended from time to time to add individuals to the Schedule, and, after those amendments, news releases announcing the amendments are published.

The Amendment

8. On September 20, 2023, the Regulations were amended to add the name of the Applicant, as well as two other individuals, to the Schedule, pursuant to the *Regulations Amending the Special Economic Measures (Haiti) Regulations* (SOR/2023-192) (hereinafter referred to as the “**Amendment**”).
9. The Amendment was announced to the public by way of a Global Affairs Canada News Release issued on September 21, 2023 (the “**News Release**”).

10. The News Release identifies the Applicant as a “Haitian economic elite” and an individual believed to be “fuelling the violence and instability in Haiti through corruption and other criminal acts and by enabling the illegal activities of armed gangs that terrorize the population and threaten peace and security in Haiti”, without any further explanation or elaboration.
11. On October 11, 2023, Global Affairs Canada published a Regulatory Impact Analysis Statement (the “**RIAS**”) in relation to the Regulations. Among other things, the RIAS alleges that there are reasonable grounds to believe that Braun has engaged in “significant acts of corruption” leveraging his influence and resources, including through money laundering, obstructing justice and embezzlement of public funds.
12. The Amendment, the News Release and the RIAS are entirely devoid of particulars. They make blanket allegations against the Applicant without any specificity whatsoever. They are rote recitations, written en masse, and fail to differentiate the specific allegations made against Mr. Braun.
13. Neither the Amendment, the News Release nor the RIAS allows the Applicant to fairly appreciate the case against him. There are no allegations specific to him, nor is there any information to substantiate the vague and ambiguous claim that he is “fuelling the violence and instability in Haiti through corruption and other criminal acts and by enabling the illegal activities of armed gangs that terrorize the population and threaten peace and security in Haiti.” Among other things, the Amendment, the News Release and the RIAS

fail to cite any documents that support the conclusions asserted in the Amendment and fail to particularize or in any way substantiate:

- (a) the nature of the “corruption”, “money laundering”, “obstructing justice”, “embezzlement of public funds” and/or “other criminal acts” that he is alleged to have committed;
- (b) the manner and circumstances in which he is alleged to have engaged in “corruption”;
- (c) the manner and circumstances in which he is alleged to have engaged in “other criminal acts”;
- (d) the identity of any purported “armed gangs”;
- (e) the type of support he allegedly provided to such gangs;
- (f) the manner and circumstances in which he is alleged to have provided such support; and
- (g) how he is alleged to have gone about “enabling the illegal activities of armed gangs”.

The Applicant Was Not Provided Information or Reasons for His Inclusion

14. The Applicant was not provided with a hearing (or any opportunity to respond, participate or intervene, whatsoever) before the Decision was made to add his name to the Schedule by way of the Amendment.

15. The Applicant was not provided any advance notice or warning that he was at risk of having his name placed on the Schedule.
16. The GIC and the Minister did not provide the Applicant with any documentary support for the case against him.
17. The GIC and the Minister did not provide the Applicant with the opportunity to otherwise know the case against him or any chance to respond.
18. The Decision to add the Applicant's name to the Schedule was not communicated to him by the GIC, Minister or Respondent.
19. The Applicant first learned that his name was added to the Schedule after the publication of the Decision in the News Release.
20. The Decision to add the Applicant's name to the Schedule by way of the Amendment is of great importance to the Applicant personally. It was known by the GIC and Minister (or, alternatively, it ought to have been known) that the Decision would result in considerable damage to the Applicant's reputation and would significantly impact his livelihood and business dealings, which it has.

Denial of Natural Justice

21. The GIC and Minister failed to provide procedural fairness to the Applicant and failed to observe the principles of natural justice by, among other things:

- (a) failing to ensure that the Applicant was afforded an opportunity to present his case before an independent and unbiased decision maker;
- (b) failing to provide a hearing to the Applicant, for which the Applicant had a reasonable expectation;
- (c) failing in their duty to provide appropriate (or any) information to the Applicant about the evidence that was required from him and/or the evidence that resulted in the Decision being made;
- (d) failing to sufficiently articulate a justification for the Decision;
- (e) failing to consider all relevant (or any) evidence provided by the Applicant;
- (f) failing to provide the Applicant a fair and meaningful (or any) opportunity to respond to the allegations made against him (which remain unknown) before making the Decision to add his name to the Schedule;
- (g) failing to advise the Applicant of any significant facts or evidence that were likely to affect the outcome of the Decision to add his name to the Schedule, and failing to give him a reasonable opportunity to respond;
and/or
- (h) basing the Decision on irrelevant considerations.

No Reasonable Basis to Add Applicant's Name to Schedule

22. Furthermore, in rendering the Decision, the GIC and Minister made errors of law and/or mixed fact and law and based the Decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before them.
23. As noted above, it is a precondition to the decision to add an individual to the Schedule that there be “reasonable grounds” to believe that the individual is: (i) “engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti”; (ii) “a person who has participated in gross and systematic human rights violations in Haiti”; (iii) “a current or former senior official of the Government of Haiti”; or (iv) the associate and/or family member of such an individual. This requires more than just speculation, conjecture, suspicion, or apprehension — there must be an objectively reasonable belief based on compelling and credible information.
24. The Applicant is not now, nor has he ever been, engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti. The Applicant has not participated in gross and systematic human rights violations in Haiti. The Applicant has not engaged in money laundering, obstructing justice or the embezzlement of public funds. The Applicant is also not now, nor has he ever been, a senior official of the Government of Haiti. None of the Applicant’s associates or family members fall within the definition of “Listed Persons” as that term is defined in the Regulations.

25. The Minister has stated in the News Release that the Applicant is a “Haitian economic elite” and a businessman believed to be “fuelling the violence and instability in Haiti through corruption and other criminal acts and by enabling the illegal activities of armed gangs that terrorize the population and threaten peace and security in Haiti.” There are no reasonable grounds for this belief.
26. Specifically, the Applicant is not “fuelling the violence and instability in Haiti through corruption and other criminal acts and by enabling the illegal activities of armed gangs that terrorize the population and threaten peace and security in Haiti” as alleged.
27. There are thus no reasonable grounds to justify the Decision to add the Applicant’s name to the Schedule (and, as noted above, no such grounds have been expressed and/or communicated to him). There is no basis to substantiate the claim that the Applicant has engaged in any of the activities alluded to in the Amendment.
28. In light of the foregoing, the Decision to add the Applicant’s name to the Schedule:
 - (a) is based on erroneous findings of fact;
 - (b) is not supported by a sufficient (or any) evidentiary foundation;
 - (c) is not justified or intelligible;
 - (d) overlooks and/or otherwise ignores credible and relevant information;

(e) is not based on a rational chain of analysis; and

(f) is unreasonably based on facts and/or allegations not elaborated in the Decision and not known to the Applicant or the public.

29. As a result of the deficiency of the Decision, including its lack of justiciability, transparency, reasonableness and intelligibility, as well as the significant breaches of the Applicant's right to natural justice and procedural fairness, the only proper and appropriate outcome in this case is to quash the Decision and remove the Applicant's name from the Schedule of the Regulations on an immediate basis. In the alternative, the Decision should be quashed and remitted to the GIC and the Minister for redetermination with an opportunity for the Applicant to be heard, and adequate reasons should be provided for any new decision made.
30. The Applicant requests that this application be heard on an expedited basis given the significant damage to his reputation resulting from the Decision.

Rule 317 Request

31. The Applicant requests that the GIC and the Minister send to the Applicant and to the Registry a certified copy of any and all records relied upon by the GIC and/or the Minister or in any way used, referred to, reviewed, considered or created, prior to, at the point of or following the Decision to add the Applicant to the Schedule, including all internal documentation and communications pertaining or relevant to the Decision, taking appropriate steps to maintain

confidentiality. This information is not in the possession of the Applicant but is in the possession of the GIC and/or the Minister.

Statutes and Regulations Relied On

32. Sections 18.1 and 18.2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.
33. Rules 3, 8, 317 and 318 of the *Federal Courts Rules*.
34. Such other grounds as counsel may advise and this Honourable Court may permit.

C. THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

35. The affidavit(s) of one or more individuals to be filed;
36. The GIC and Minister's record of decision, including the materials received pursuant to Rule 317; and
37. Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 17, 2023



Anthony Prenol

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