



[2022] 2 F.C.R. D-9

**SECURITY INTELLIGENCE**

Appeal from decision by Associate Deputy Minister, delegate for respondent Minister of Public Safety and Emergency Preparedness (Minister's delegate) to maintain appellant on no-fly list pursuant to *Secure Air Travel Act*, S.C. 2015, c. 20, s. 11 (SATA), ss. 15, 16 — Minister's delegate having reasonable grounds to suspect appellant would either (1) engage or attempt to engage in act that would threaten transportation security or (2) travel by air to commit certain terrorism offences pursuant to SATA, ss. 8(1)(a),(b) — Appellant's name included on no-fly list in 2018 — Appellant later prevented from boarding flight pursuant to direction under SATA, s. 9(1)(a) — Applied to Passenger Protect Inquiries Office (PPIO) for administrative recourse in which he sought removal of his name from SATA list — In response, PPIO provided appellant with two-page unclassified summary of information supporting decision to place his name on SATA list — On January 30, 2019, Minister advised appellant of decision to maintain his status as listed person under SATA — Appellant argued information, evidence before Court not establishing reasonable grounds to suspect that he will travel by air to commit terrorism offence — Maintained not having sufficient disclosure to know critical evidence against him — Issue whether Minister's delegate's decision of January 30, 2019, reasonable based on information available — Summary of allegations against appellant including connection to individuals within Sikh extremist milieu — Based on incompressible minimum disclosure<sup>1</sup> doctrine, *amici curiae* argued there were irreconcilable tensions, that some of the unknown information should be ordered withdrawn — Disclosed, undisclosed information in question relating to appellant — Information not only reliable, appropriate, but also material to appeal — Evidence presented as whole not containing any conclusion that appellant would engage or attempt to engage in act that would threaten transportation security, as per SATA, s. 8(1)(a) — Therefore, first portion of Minister's delegate's conclusion dealing with transportation security evidently unreasonable — Focus of terrorist activities located abroad — At next 90-day review of appellant's case, Minister should consider findings herein when determining what SATA, s. 9 directions should apply to appellant, in particular with respect to flying domestically — Public Safety Canada having to ensure that any decision relating to air transportation adequately documented, especially when such decisions having significant impact on mobility rights — Despite finding with respect to SATA, s. 8(1)(a), decision to maintain appellant on no-fly list pursuant to SATA, ss. 8(1)(b)(i),(ii) reasonable — Appellant created pattern of behaviour over time that, on basis of reasonable reasons to suspect, links him to ss. 8(1)(b)(i),(ii) — Six allegations deemed to be within realm of possibility in light of discernible facts in evidence — Suggestions to potentially improve procedure to ultimately fulfill SATA's objectives, officially establish legislative fairness in proceedings presented for consideration, including that attention should be given to incorporating some protection of appellants' identities within legislation, subject to open court principle; Minister's decision pursuant to SATA, s. 15 should give some explanation for listing of individual, specifically state whether s. 8(1)(a) or s. 8(1)(b) applies, or both — Withdrawing information would fail to adequately portray case against appellant, would potentially render SATA legislation ineffective — This would neither respect legislation's objective nor be in interest of justice — Appellant was heard, was able to respond to case brought against him, offer adequate instruction to his counsel — Despite national security

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<sup>1</sup> The concept of incompressible minimum disclosure allows the named person to receive sufficient disclosure to know and respond to the case against them.

constraints, proceedings fair — Appeal allowed in part.

DULAI V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (T-670-19, 2022 FC 1164, Noël J., reasons for judgment dated August 10, 2022, 66 pp. + 37 pp.)