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T-669-19

2022 FC 1163

Bhagat Singh Brar (*Appellant*)

v.

Canada (Minister of Public Safety and Emergency Preparedness) (*Respondent*)

INDEXED AS: BRAR V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS)

Federal Court, Noël J.—Ottawa and Vancouver, October 5, 14-16, 19, 20 and 22, 2020, June 16, 17, August 31, September 23 and December 7, 2021, April 19-22 and 27, 2022; Ottawa, August 10, 2022.

Security Intelligence — Secure Air Travel Act — Appeal from administrative decision made by Associate Deputy Minister and delegate (delegate) for Minister of Public Safety and Emergency Preparedness (Minister or respondent) to maintain appellant on no-fly list pursuant to Secure Air Travel Act (SATA), ss. 15, 16 — Appellant's name added to no-fly list as reasonable grounds existed to suspect that appellant would (1) engage or attempt to engage in act threatening transportation security (SATA, s. 8(1)(a)), (2) travel by air for purpose of committing act or omission that is offence under Criminal Code (SATA, s. 8(1)(b)(i)) — Minister maintaining appellant's status as listed person — Appellant asking Court to order removal of his name from SATA list, to declare that SATA, ss. 8, 9(1)(a), 15, 16 unconstitutional — Arguing Minister's decision unreasonable, SATA procedures violating his rights to procedural fairness — Appellant rejecting allegations of terrorism-related activities — Minister asserting decision containing rational chain of analysis, tenable on record before Court — Whether delegate's decision reasonable based on information available — SATA, s. 16(4) requiring that appellate judge "determine whether the decision is reasonable on the basis of the information available to the judge" — Decision to list evaluated on reasonable grounds to suspect threshold, i.e. a lower standard than "reasonable and probable grounds to believe" — Totality of evidence must be considered — Procedural fairness not requiring perfect process when national security disclosure considerations involved — Here, combination of summaries, additional disclosures, amici curiae, public hearings resulting in fairness of proceedings — Delegate's decision reasonable in reference to s. 8(1)(b)(i), (ii), but unreasonable in relation to s. 8(1)(a) — Evidence not containing any conclusion that appellant would engage or attempt to engage in act that would threaten transportation security — Nevertheless, decision to maintain appellant on no-fly list reasonable — This conclusion based on standard of reasonable grounds to suspect — Appellant's

pattern of behaviour linking him to s. 8(1)(b)(i),(ii) — Reliability, credibility of each side assessed, independent corroboration examined — Allegations meeting criteria that supported triggering of s. 8(1)(b)(i),(ii) — Appeal allowed in part.

Administrative Law — Judicial Review — Standard of Review — Secure Air Travel Act — Decision by Associate Deputy Minister and delegate (delegate) for Minister of Public Safety and Emergency Preparedness (Minister or respondent) to maintain appellant on no-fly list pursuant to Secure Air Travel Act (SATA), ss. 15, 16 — Appellant's name added to no-fly list as reasonable grounds existed to suspect that appellant would (1) engage or attempt to engage in act threatening transportation security (SATA, s. 8(1)(a)), (2) travel by air for purpose of committing act or omission that is offence under Criminal Code (SATA, s. 8(1)(b)(i)) — Minister maintaining appellant's status as listed person — Appellant asking Court to order removal of his name from SATA list — Legislature not intending to apply reasonableness standard by using word "reasonableness" in SATA, s. 16(4) — Appellate standard of review applying, requiring designated judge to evaluate, based on appeal record, whether reasonable to find reasonable grounds to suspect appellant will engage in acts described in SATA, s. 8 — Designated judge having to remain cognizant that decision to list must be evaluated on reasonable grounds to suspect threshold — This standard lower than "reasonable and probable grounds to believe" — Totality of evidence must be considered — Findings must be based not on single set of facts but rather on consistent indicators — Decision must be reasonable in light of evidence available to judge.

This was an appeal from an administrative decision made by the Associate Deputy Minister and delegate (delegate) for the Minister of Public Safety and Emergency Preparedness (Minister or respondent) to maintain the appellant on the no-fly list pursuant to sections 15 and 16 of the *Secure Air Travel Act* (SATA). This appeal consisted of a multi-pronged case in which the appellant's claims pertaining to his rights under the *Canadian Charter of Rights and Freedoms* and constitutional issues were addressed in a separate decision (2022 FC 1168).

The appellant's name was included on the no-fly list in 2018, as there were reasonable grounds to suspect that he would (1) engage or attempt to engage in an act that would threaten transportation security (paragraph 8(1)(a) of SATA) and/or (2) travel by air for the purpose of committing an act or omission that is an offence under sections 83.18, 83.19 or 83.2 of the *Criminal Code* or an offence referred to in paragraph (c) of the definition "terrorism offence" in section 2 of that Act (subparagraph 8(1)(b)(i) of SATA). The appellant submitted an application for administrative recourse to be removed from the SATA list. The Minister advised the appellant of his decision to maintain his status as a listed person under SATA. In his notice of appeal, the appellant asked the Court to order the removal of his name from the SATA list and to declare that sections 8, 15, 16 and paragraph 9(1)(a) of SATA are unconstitutional. More specifically, the appellant argued that the Minister's decision was unreasonable and the procedures set out in SATA violate his common law rights to procedural fairness, seeing as SATA deprived him of his right to know the case against him and the right to answer that case. The appellant rejected the allegation that he met someone who was a member of a militant group during his travels in Pakistan. He also denied that he was a member of the International Sikh Youth Federation, or that he planned a terrorist attack in India or elsewhere. The appellant opined that he was never granted an opportunity to meaningfully respond to what he calls "unsourced allegations" levied against him. His primary position was that the information provided did not meet the incompressible minimum standard established by the Supreme Court in *Canada (Citizenship and Immigration) v. Harkat*. The appellant also submitted that the application of the reasonable grounds to suspect standard to the totality of the information available leads to the conclusion that his listing was unreasonable because the objectively discernible facts did not establish a reasonable basis upon which to suspect that he would travel by air for the purpose of

committing a terrorism-related offence. The Minister asserted that the recourse decision contains a rational chain of analysis, was tenable on the record before the Court and in the context of the applicable factual and legal context.

At issue was whether the delegate's decision was reasonable based on the information available.

Held, the appeal should be allowed in part.

By using the word "reasonable" in subsection 16(4) of SATA, it was not the legislature's intent to apply a reasonableness standard, as understood in the administrative law context, to the appellate review. Subsection 16(4) specifies that the appellate judge must "determine whether the decision is reasonable on the basis of the information available to the judge". The SATA regime could lead to a situation where the factual foundation for the Minister's decision is refuted during the appeal proceedings, but that new reliable and appropriate evidence received by the designated judge would be sufficient to justify a decision for an appellant to remain on the no-fly list. The rationale for a decision cannot be reviewed on a reasonableness standard when the record on appeal is no longer the same. This analysis is reflected in Parliament's choice in opting for an appellate scheme over a judicial review framework. The appellate standard of review is that the designated judge must determine whether the outcome of the decision under review is reasonable in light of the evidentiary record on appeal. In essence, this requires that the designated judge evaluate, based on the appeal record, whether it is reasonable to find that there are reasonable grounds to suspect the appellant will engage in the acts described in section 8 of SATA. The legislatively prescribed standard constitutes a robust review, and is coherent with the active role a designated judge must play in a SATA appeal. In assessing whether the overall evidence is sufficient to find that the decision to list the individual is reasonable, a designated judge must remain cognizant that the decision to list must be evaluated on the reasonable grounds to suspect threshold. The standard "reasonable grounds to suspect," applicable in the present appeal, represents a lower standard than "reasonable and probable grounds to believe." The totality of the evidence must be considered. Findings must not be based on a single set of facts but rather on some consistent indicators. The challenge is to analyze whether the Minister's decision is reasonable in light of the evidence available to the judge.

The determinations in this case dealt with 16 public allegations against the appellant that he was aware of. However, there was also information in relation to some of them that could not be disclosed, partially disclosed, or summarized. Nevertheless, the appellant knew the essence of the allegations levelled against him.

When national security disclosure considerations are involved in proceedings, procedural fairness does not require a perfect process. The appeal scheme in the SATA legislation reflects this reality. The concept "incompressible minimum disclosure", used multiple times in this case, is defined as allowing the named person to receive sufficient disclosure to know and respond to the case against them. The appellant was able to obtain information that had initially been redacted because evidence that did not meet the criteria for being deemed injurious to national security was made public through lifts and summaries. The combination of summaries, additional disclosure of information, participation of *amici curiae* and public hearings resulted in fairness of the proceedings.

The decision of the Minister's delegate was reasonable in reference to subparagraphs 8(1)(b)(i) and (ii), but unreasonable in relation to paragraph 8(1)(a). The evidence presented as a whole did not contain any conclusion that the appellant would engage or attempt to engage in an act that would threaten transportation security, as per paragraph 8(1)(a). Nevertheless, the decision to maintain the appellant on the no-fly list was reasonable. Keeping in mind that this was not a criminal matter but rather an administrative decision made in accordance with SATA, this conclusion was based on the standard of reasonable grounds to suspect. The appellant created a pattern of

behaviour over time that, on the basis of reasonable reasons to suspect, linked him to subparagraphs 8(1)(b)(i) and (ii) of SATA. On one side, the appellant denied the claims levelled against him and on the other side, there was evidence that provides conflicting and serious explanations. The reliability and credibility of each side was assessed and independent corroboration was examined. As a consequence of this thorough exercise, 11 allegations met the criteria that supported the triggering of subparagraphs 8(1)(b)(i) and (ii). The decision of the Minister's delegate to add the appellant's name on the no-fly list pursuant to those subparagraphs was reasonable. However, the decision of the Minister's delegate to add the appellant's name on the no-fly list pursuant to paragraph 8(1)(a) was unreasonable. Therefore, at the subsequent 90-day review, this finding was to be taken into consideration and the various boarding directions for domestic flights that could apply to listings pursuant to subsection 9(1) of SATA could be considered.

STATUTES AND REGULATIONS CITED

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], ss. 6, 7.

Criminal Code, R.S.C., 1985, c. C-45, ss. 2 "terrorism offence", 83.18, 83.19, 83.2.

Federal Courts Rules, SOR/98-106, rr. 151, 343.

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

Secure Air Travel Act, S.C. 2015, c. 20, s. 11, ss. 8, 9, 15, 16, 20.

CASES CITED

APPLIED:

Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37, [2014] 2 S.C.R. 33; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220.

CONSIDERED:

Brar v. Canada (Public Safety and Emergency Preparedness), 2021 FC 932; *Dulai v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 933; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350; *Brar v. Canada (Public Safety and Emergency Preparedness*, 2020 FC 729, [2020] 4 F.C.R. 557; *Almrei (Re)*, 2009 FC 1263, [2011] 1 F.C.R. 163; *Jaballah (Re)*, 2010 FC 79, [2011] 2 F.C.R. 145; *R. v. Ahmad*, 2011 SCC 6, [2011] 1 S.C.R. 110.

REFERRED TO:

Brar v. Canada (Public Safety and Emergency Preparedness), 2022 FC 1168; *Dulai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2022 FC 1164.

AUTHORS CITED

National Security and Intelligence Committee of Parliamentarians. *Special report into the allegations related to the Prime Minister's official visit to India in February 2018*, December 3, 2018.

APPEAL from an administrative decision made by the Associate Deputy Minister and delegate for the Minister of Public Safety and Emergency Preparedness to maintain the appellant on the no-fly list pursuant to sections 15 and 16 of the *Secure Air Travel Act*. Appeal allowed in part.

APPEARANCES

Karin Blok and *Eric Purtzki* for appellant.

Helen Park, *Courtenay Landsiedel*, *Stéphanie Morin*, *Nathalie Benoit* and *Michelle Lutfy* for respondent.

Gib van Ert and *Colin Baxter* as *amici curiae*.

SOLICITORS OF RECORD

Fowler and Blok Criminal Defense Lawyers, Vancouver, for appellant.

Deputy Attorney General of Canada for respondent.

Gib van Ert and *Colin Baxter* as *amici curiae*.

The following are the reasons for judgment and judgment rendered in English by

NOËL J.:

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JUDGMENT in T-669-19

Annex A

Annex B

I. Overview [Back to TABLE OF CONTENTS]

[1] This appeal consists of a multi-pronged case in which the Appellant's claims that pertain to the reasonableness of the Minister's decision and his claims relating to sections 6 and 7 of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act*, *1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44] (Charter), are addressed in separate decisions; this judgment and reasons deal with reasonableness and a concurrent decision addresses the

constitutional issues (*Brar v. Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1168). Confidential reasons on the reasonableness of the Minister's decision, which are complementary to this decision, include specific findings on this appeal and its companion case (see *Dulai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2022 FC 1164). These are the first appeals filed pursuant to the *Secure Air Travel Act*, S.C. 2015, c. 20, s. 11 (SATA) since its enactment in 2015. The parties to these appeal proceedings have contested parts of the legislation which therefore requires that the Court examines the legislation and provides clarity and guidance where deemed necessary.

[2] This judgment and reasons (hereinafter "the decision") address the appeal of an administrative decision dated December 21, 2018, and made by Mr. Vincent Rigby, Associate Deputy Minister and delegate (delegate) for the Minister of Public Safety and Emergency Preparedness (the Minister or Respondent), to maintain Mr. Bhagat Singh Brar (Mr. Brar or Appellant) on the no-fly list pursuant to sections 15 and 16 of the SATA.

[3] The Appellant remains a listed individual pursuant to section 8 of the SATA given the Minister's delegate's decision to deny his application for administrative recourse under section 15 of the SATA, by which the Appellant had sought to have his name removed from the list.

[4] The Minister's delegate made the decision on the basis that he had reasonable grounds to suspect that the Appellant would either "engage or attempt to engage in an act that would threaten transportation security" or "travel by air for the purpose of committing an act or omission that (i) is an offence under sections 83.18, 83.19 or 83.2 of the *Criminal Code* [R.S.C., 1985, c. C-46 (*Criminal Code*)] or an offence referred to in paragraph (c) of the definition ***terrorism offence*** in section 2 of that Act, or (ii) if it were committed in Canada, would constitute an offence referred to in subparagraph (i)" (see paragraphs 8(1)(a) and 8(1)(b) of the SATA).

[5] As a result, the Appellant filed a statutory appeal of the Minister's delegate's decision to dismiss his administrative recourse application, as permitted by section 16 of the SATA. In his appeal, Mr. Brar submits that the procedure set out in the SATA for determining the reasonableness of the Minister's delegate's decision whether to designate him as a listed person, and thereafter maintain that designation, violates his common law right to procedural fairness because it deprives him of the right to know the case against him and the right to answer that case.

[6] As mentioned above, another appeal brought by Mr. Parvkar Singh Dulai (Mr. Dulai or, together with Mr. Brar, Appellants), raises similar issues regarding the reasonableness of the Minister's decision in addition to constitutional matters.

[7] Confidential reasons complementary to this judgment address classified evidence made available to assist me, the designated judge, in rendering a judgment in both appeals. This decision, which is contained in Annex C, is not publicly available as it

contains information that, if revealed, would injure national security or endanger the safety of any person. This tension between the rights of individuals and the collective interests in security was discussed at length in two related decisions published in October 2021 (*Brar v. Canada (Public Safety and Emergency Preparedness),* 2021 FC 932 (*Brar 2021*) and *Dulai v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 933 (*Dulai 2021*)).

[8] In those decisions, I considered whether disclosing the redacted information and other evidence adduced during *ex parte* and *in camera* hearings would be injurious to national security or endanger the safety of any person. Upon finding in the affirmative with respect to certain information, I then asked if the protected information and other evidence could be disclosed to the Appellant in the form of a summary or otherwise in a way that would not jeopardize national security or endanger the safety of any person. The outcome of those decisions was that some redactions were confirmed by the Court, some were fully or partially lifted, and the information underneath other redactions was summarized. The delicate balance between protecting sensitive information and the right of the person to know the case against them is not uncommon in national security matters, as demonstrated by *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350 (*Charkaoui I*) [at paragraphs 55 and 58]:

> Confidentiality is a constant preoccupation of the certificate scheme. The judge "shall ensure" the confidentiality of the information on which the certificate is based and of any other evidence if, in the opinion of the judge, disclosure would be injurious to national security or to the safety of any person: s. 78(*b*). At the request of either minister "at any time during the proceedings", the judge "shall hear" information or evidence in the absence of the named person and his or her counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person: s. 78(*e*). The judge "shall provide" the named person with a summary of information that enables him or her to be reasonably informed of the circumstances giving rise to the certificate, but the summary cannot include anything that would, in the opinion of the judge, be injurious to national security or to the safety of any person: s. 78(*h*). Ultimately, the judge may have to consider information that is not included in the summary: s. 78(*g*). In the result, the judge may be required to decide the case, wholly or in part, on the basis of information that the named person and his or her counsel never see. The named person may know nothing of the case to meet, and although technically afforded an opportunity to be heard, may be left in a position of having no idea as to what needs to be said.
>
> …
>
> More particularly, the Court has repeatedly recognized that national security considerations can limit the extent of disclosure of information to the affected individual. In *Chiarelli*, this Court found that the Security Intelligence Review Committee could, in investigating certificates under the former *Immigration Act, 1976*, S.C. 1976-77, c. 52 (later R.S.C. 1985, c. I-2), refuse to disclose details of investigation techniques and police sources. The context for elucidating the principles of fundamental justice in that case included the state's "interest in effectively conducting national security and criminal intelligence investigations and in protecting police sources" (p. 744). In *Suresh*, this Court held that a refugee facing the possibility of deportation to torture was entitled to disclosure of all the information on which the Minister was basing his or her decision, "[s]ubject to privilege or similar valid reasons for reduced disclosure, such as safeguarding confidential

public security documents" (para. 122). And, in *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3, 2002 SCC 75, the Court upheld the section of the *Privacy Act*, R.S.C. 1985, c. P-21, that mandates *in camera* and *ex parte* proceedings where the government claims an exemption from disclosure on grounds of national security or maintenance of foreign confidences. The Court made clear that these societal concerns formed part of the relevant context for determining the scope of the applicable principles of fundamental justice (paras 38-44).

[9] Reasons dealing with the SATA were also issued in July 2020 (*Brar v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 729, [2020] 4 F.C.R. 557 (*Brar 2020*)). They answered a number of questions raised by the parties and explained at length the process to be followed.

[10] In these judgment and reasons, to which the complementary and confidential reasons in Annex C add, I assess the overall evidence presented by both parties in relation to whether there are reasonable grounds to suspect that the listed person, in this case, Mr. Brar, will engage or attempt to engage in an act that would threaten transportation security, or travel by air to commit certain terrorism offences.

[11] In order to ensure fairness, I appointed two *amici curiae* (*Amici*) with the mandate of representing the interests of the Appellant. I expand on the impact of their role in the concurrent decision on the constitutional issues.

[12] For the following reasons this appeal is allowed in part.

II. Background [Back to TABLE OF CONTENTS]

A. *Facts in Mr. Brar's Appeal* [Back to TABLE OF CONTENTS]

[13] On April 23, 2018, Mr. Brar's name was included on the no-fly list. It was concluded that there were reasonable grounds to suspect that he would (1) engage or attempt to engage in an act that would threaten transportation security and/or (2) travel by air for the purpose of committing an act or omission that is an offence under sections 83.18, 83.19 or 83.2 of the *Criminal Code* [R.S.C., 1985, c. C-46], or an offence referred to in paragraph (c) of the definition "terrorism offence" in section 2 of that Act.

[14] The following day, Mr. Brar was scheduled to take two flights that would eventually have transported him from Vancouver to Toronto, but each time a written denial of boarding under the Passenger Protect Program (PPP) was issued pursuant to paragraph 9(1)(a) of the SATA. This resulted in both WestJet and Air Canada denying Mr. Brar boarding at the Vancouver International Airport on that day.

[15] On June 2, 2018, Mr. Brar submitted an application for administrative recourse to the Passenger Protect Inquiries Office (PPIO) that sought the removal of his name from the SATA list pursuant to section 15 of the SATA. In response, the PPIO provided him with a two-page unclassified summary of the information supporting the decision to place his name on the SATA list. The PPIO further advised that the Minister would

consider additional classified information when assessing his application under section 15 of the SATA. Pursuant to subsection 15(4) of the SATA, Mr. Brar was provided with the opportunity to make written representations in response to the unclassified information disclosed to him, which he submitted to the PPIO on December 3, 2018.

[16] On December 21, 2018, the Minister advised Mr. Brar of his decision to maintain his status as a listed person under the SATA. Following a review of the classified and unclassified information provided, including Mr. Brar's written submissions, the Minister's delegate "concluded that there [were] reasonable grounds to suspect that [Mr. Brar would] engage or attempt to engage in an act that would threaten transportation security, or travel by air to commit certain terrorism offences."

[17] On April 18, 2019, Mr. Brar filed a notice of appeal with this Court pursuant to subsection 16(2) of the SATA. In this notice of appeal, Mr. Brar asks this Court to order the removal of his name from the SATA list pursuant to subsection 16(5) of the SATA, or to order the remittance of the matter back to the Minister for redetermination. Mr. Brar also asks this Court to declare that sections 8, 15, 16 and paragraph 9(1)(a) of the SATA are unconstitutional and are therefore of no force and effect, or to read-in such procedural safeguards that would cure any constitutional deficiencies in the SATA.

[18] More specifically, Mr. Brar argues the following as the grounds of his appeal: the Minister's decision was unreasonable and the procedures set out in the SATA violate his common law rights to procedural fairness seeing as the SATA deprives him of his right to know the case against him and the right to answer that case. In his notice of appeal, Mr. Brar also requested that the Respondent disclose all material related to his application for recourse, all material related to the Minister's decision to designate him as a listed person, all material before the Minister's delegate on the application for recourse, and all other materials relating to the Minister's delegate decision to confirm his status as a listed person under the SATA.

B. *Procedural history covering both appeals (Mr. Brar and Mr. Dulai)* [Back to TABLE OF CONTENTS]

[19] Since these appeals have been initiated, several documents have been exchanged, case management conferences (both public and *ex parte*) have been held, public and *ex parte* hearings took place in both Ottawa, Ontario, and Vancouver, British Columbia, and three decisions applicable to each case were published (*Brar 2020*, *Brar 2021* and *Dulai 2021*).

[20] Navigating the SATA legislation has been laborious, lengthy, and complex. The appeals required that the Appellants, counsel, *Amici* and this Court think about and test many areas of the law. Due to its length, the complete judicial history of these two appeals is available at Annex A. It includes information on every procedural step taken over the last three years and reflects both parties' dedication to these matters, and the great level of detail with which each step was handled.

III. Legislation [Back to TABLE OF CONTENTS]

[21] As part of the reasons in *Brar 2020*, it was essential to review and analyze the SATA (see *Brar 2020*, at paragraphs 58 to 89, in particular with respect to the appeal provisions at paragraphs 80 to 89). It is not necessary to duplicate what has already been written except to note that the SATA sets out specific rules governing the appeal process.

[22] Subsection 16(6) of the SATA reads as follows:

> *Secure Air Travel Act*, S.C. 2015, c. 20, s. 11
>
> **Appeals**
>
> **16 (1)** …
>
> …
>
> **Procedure**
>
> **(6)** The following provisions apply to appeals under this section:
>
> > **(a)** at any time during a proceeding, the judge must, on the request of the Minister, hear information or other evidence in the absence of the public and of the appellant and their counsel if, in the judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person;
> >
> > **(b)** the judge must ensure the confidentiality of information and other evidence provided by the Minister if, in the judge's opinion, its disclosure would be injurious to national security or endanger the safety of any person;
> >
> > **(c)** throughout the proceeding, the judge must ensure that the appellant is provided with a summary of information and other evidence that enables them to be reasonably informed of the Minister's case but that does not include anything that, in the judge's opinion, would be injurious to national security or endanger the safety of any person if disclosed;
> >
> > **(d)** the judge must provide the appellant and the Minister with an opportunity to be heard;
> >
> > **(e)** the judge may receive into evidence anything that, in the judge's opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence;
> >
> > **(f)** the judge may base a decision on information or other evidence even if a summary of that information or other evidence has not been provided to the appellant;
> >
> > **(g)** if the judge determines that information or other evidence provided by the Minister is not relevant or if the Minister withdraws the information or evidence, the judge must not base a decision on that information or other evidence and must return it to the Minister; and
> >
> > **(h)** the judge must ensure the confidentiality of all information or other evidence that the Minister withdraws.

[23] In summary, section 16 of the SATA establishes the role of the designated judge in an appeal and sets out how information related to national security must be handled. The designated judge is given the responsibility to ensure the confidentiality of sensitive information (paragraph 16(6)(b)). At the same time, if the protection of information is justified on national security grounds, the designated judge must provide the appellant with summaries of this redacted information. This will reasonably inform the appellant of the Minister's case against them, but does not include anything that, in the judge's opinion, would be injurious to national security or endanger the safety of any person (paragraph 16(6)(c)). This is a challenging task. The objective is to be as informative as possible while respecting the national security parameters enunciated in the SATA appeal scheme. As articulated in *Brar 2020*, at paragraph 112:

> …. Like an elastic, designated judges must stretch their statutory and inherent powers to ensure that as much disclosure is provided to the appellant while stopping short of the breaking point. A designated judge must feel satisfied that the disclosure (through summaries or by other means) is, in substance, sufficient to allow an appellant to be "reasonably informed" (paragraph 16(6)(e)) of the case made against them and be able to present their side of the story, at the very least via the assistance of a substantial substitute (*Harkat (2014)*, at paragraphs 51–63 and 110). Only then will the designated judge have the necessary facts and law to render a fair decision.

[24] In addition to determining if disclosing the redacted information would be injurious, the designated judge must also establish whether any additional evidence introduced during the *ex parte* and *in camera* hearings is reliable and appropriate, and whether it can be communicated to the appellant in the form of summaries or otherwise. The judge must then ascertain if the appellant is reasonably informed of the Minister's case.

IV. The public evidence presented by the Appellant [Back to TABLE OF CONTENTS]

[25] In an affidavit dated January 27, 2022, Mr. Brar provides information about himself, his family, religion, beliefs, business, volunteer activities, travel history and how being placed on the SATA list has affected his and his family's life.

[26] He rejects the allegation whereby he would have met with someone he knew was the leader, or a member, of Lashkar-e-Tayyiba or any other militant group during his travels in Pakistan.

[27] While Mr. Brar supports an independent Sikh homeland (Khalistan), he says he does not support violence or an armed movement as a means of achieving a Khalistan state. He mentions having contributed to Sikhs for Justice, an organization dedicated to supporting the creation of an independent homeland; however, he asserts that he does not provide financial support to the movement. Rather, he works with the community to organize protests within Canada in support of these issues. He also affirms having worked to contact politicians and supported letter writing campaigns in the past aimed at supporting Khalistan and holding the Government of India accountable for the "atrocities

it commits against those who express support for Khalistan" (affidavit of Mr. Brar, January 27, 2022, at paragraph 25).

[28] Mr. Brar denies being a member of the International Sikh Youth Federation (ISYF), of which his father was once a leader. According to Mr. Brar, his father "is not the leader of the ISYF and to [his] knowledge he has not been involved with the ISYF since 2002" (affidavit of Mr. Brar, January 27, 2022, at paragraph 28). He states that he is not, nor has he ever been, knowingly associated with Sikh extremism. Mr. Brar says that he has no connection to Canadian or internationally-based Sikh extremists, as alleged by CSIS [Canadian Security Intelligence Service] (revised appeal book, at page 9).

[29] In reference to allegations that he and Gurjeet Singh Cheema had been planning an India-based terrorist attack, and that during his visit to Pakistan in 2015 he planned for the attack at the behest of the Pakistan Inter-Services Intelligence Directorate (Pak ISI) by making arms and ammunition available in India, Mr. Brar replies that he has no association with Gurjeet Singh Cheema and has never planned a terrorist attack, either in India or elsewhere. He affirms never having done anything at the behest of the Pak ISI and never having made arms or ammunition available to anyone anywhere (affidavit of Mr. Brar, January 27, 2022, at paragraphs 31–33).

[30] Mr. Brar rejects the allegation that while in Pakistan in 2015 he planned for an attack in India and indoctrinated two Punjab (Indian) based Sikh youths and motivated them to conduct terrorist acts. He refutes what the two Sikh youths allegedly said about him, notably that he had visited India in the recent past and imparted theoretical training to them in the handling of arms including AK rifles. Mr. Brar says that he does not know these two Sikh youths, and therefore did not indoctrinate them. He also affirms that he did not provide anyone with arms or ammunition, or provide theoretical training in the handling of such arms. Moreover, Mr. Brar declares that he has not been in India since he immigrated to Canada in 1987.

[31] Mr. Brar says that contrary to allegations against him, he has never cooperated with the Pak ISI to thwart community outreach or reconciliation efforts by the Government of India. He is also not, and never has been, a member, let alone the President of the ISYF's youth wing in Canada or elsewhere. His understanding is that the ISYF no longer exists and has not existed for many years.

[32] Mr. Brar denies the allegation that he is collecting funds from members of the Canadian Sikh community in order to renovate some Gurdwaras in Pakistan or that he has been diverting a major part of the funds for anti-India activities. The only times he recalls having sent money overseas in the last ten years was for advertising and Google ads payment for his company, Yellow Car Rental.

[33] While Mr. Brar acknowledges knowing and doing business with Mr. Dulai, he is not aware of any connection that Mr. Dulai may have to terrorism or terrorist entities and

does not believe these allegations to be true, otherwise he would not associate with him.

[34] Mr. Brar does not hide the fact that he has openly supported the worldwide movement to hold the Government of India accountable for the treatment of Mr. Johal and the denial of his basic human rights. However, he indicates that he does not know, nor has he ever met, Jagtar Singh Johal. He says he never collected any funds on Mr. Johal’s behalf, nor sent his father funds for any purpose except for his open-heart surgery in 2018. Mr. Brar says he paid for the surgery and medication, but those funds were paid directly to the hospital and not to his father.

[35] In response to the allegation that he is a Canada-based Sikh extremist who has been engaged in, and will continue to be engaged in terrorist activities, particularly fundraising in support of terrorist attacks overseas, promoting extremism, including the radicalization of youth, with the aim of achieving Khalistan independence, and attack planning and facilitation, including weapons procurement, to conduct attacks in India, Mr. Brar replies that he has never engaged in, or facilitated terrorist-related activities within or outside of Canada. He has never been a part of a terrorist organization or facilitated such activities. He has never engaged in fundraising in support of terrorist attacks overseas or anywhere. He has never promoted extremism. He has never engaged in or promoted the radicalization of youth.

[36] While he supports an independent Khalistan, Mr. Brar claims he has never engaged in extremist activities in support of an independent Khalistan. He has never planned or facilitated attacks in India by means of weapons procurement or otherwise and has never contributed financially, either directly or indirectly, to extremist movements.

[37] Mr. Brar refutes the allegation that he was supposed to travel to Fort Lauderdale on April 24, 2018. Rather, he states that the intention was to depart Vancouver for Toronto and stay there. He says he purchased his flight with the assistance of a website called *skiplagged.com*. The website searches for connecting flights with stopovers in the intended destination that are cheaper than fares for direct flights. When he purchased the ticket, it was cheaper to purchase a flight to Fort Lauderdale, with a connection in Toronto, than it was to fly to Toronto alone. Therefore, he purchased that flight with the intention of disembarking in Toronto and not catching the connecting flight.

[38] Mr. Brar acknowledges that he had regular interactions with CSIS personnel throughout his childhood and until his father left Canada in 1991. However, based on these talks, he never got the impression that he was the subject of an investigation.

[39] Mr. Brar believes he was first contacted by a CSIS agent, as an adult, in the mid-1990s when he lived in Brampton. After that first contact, various CSIS agents would come speak to him to gather information about his community. Mr. Brar was asked and agreed to work with CSIS on one occasion, but the agent never followed up. Mr. Brar

estimates that between the mid-1990s and 2018, CSIS agents approached him between 15 to 20 times.

[40] In his affidavit, Mr. Brar also details his last encounter with CSIS, which took place in 2018 when he came back from Pakistan. He says he was pulled out for a secondary customs inspection, cleared, and then a supervisor indicated another agency was waiting to talk to him. When the Customs supervisor confirmed that it was a CSIS agent, Mr. Brar declined to meet with them. He explained that he had just gotten off a 16-hour flight and wanted to go home. He indicated that CSIS knew where he lived and could contact him there. The next morning, he travelled to Vancouver. It was several days later, when he was attempting to fly back to Ontario from Vancouver, that he was denied boarding.

[41] Mr. Brar mentions that while he was in Vancouver in April 2018, someone who identified himself as being a CSIS agent named Norman Lau attended his home and gave his business card to his wife. Upon his return to Ontario, Mr. Brar contacted Mr. Lau and told him that he had been denied boarding in Vancouver. Mr. Lau replied that he did not know why and directed Mr. Brar to the application for recourse. Mr. Lau also inquired about how the media managed to publish a copy of Mr. Brar's passport photo and visa. Mr. Brar explained that he did not know. He affirms this was the last contact he had with anyone he knows to have been working with CSIS.

[42] Mr. Brar asserts that being placed on the no-fly list has had a tremendous physical, psychological and financial effect on him. He owns and manages a business with branches in Ontario and British Columbia and his intention was to expand into other provinces by 2019 (Calgary, Edmonton, Montréal). Because of his listed status, Mr. Brar had to abandon those plans for the time being, which resulted in significant financial losses.

[43] Moreover, Mr. Brar states that he was the target of various news agencies and reporters in Canada who have written about him and his business in national newspapers. Reporters like Tom Blackwell and columnist Tarek Fateh have publicly called him a terrorist based on the allegations against him. Because he is involved in the community on the frontlines, this has hurt his image. Mr. Brar says that Google searches for his business or personal name lead to negative stories that are readily available in the public domain. He alleges that CSIS agents have been going to his family and friends, "feeding them lies, quoting Indian media and telling them that [he] will be arrested and deported to India in the near future." He says that this is all very disturbing to him and deeply affects his psychological wellbeing.

[44] Aside from suffering business losses, Mr. Brar mentions that he has had to travel by car from Toronto to Vancouver approximately ten times in the last four years. Where a normal air ticket costs around $400–$500, he has had to spend between $7 000–$10 000 for each road trip, in addition to having to take someone with him every time he travels. He says it takes three to four days each way, compared to four or five hours when he travels by air and each trip is three weeks to a month long. He deplores the

fact that he has had to miss many functions, which he was to attend with family and friends, as he cannot travel in the winter because of the road conditions.

[45] In addition to his personal affidavit, Mr. Brar filed an affidavit from Dongju Zhao on January 31, 2022. This affidavit includes a number of documents addressing the legality of self-determination for Sikh peoples, the reliability of Indian media sources, the prevalence of torture in Indian police custody, the banning of Indian officials from Canadian and international Gurdwaras, and Prime Minister Trudeau's trip to India in February 2018. The affidavit also includes the following:

> (1) A legible colour copy of the News18 Article referenced in the unclassified summary and memorandum (Zhao Affidavit, p. 324);
>
> (2) A May 2017 India Today News article which states, in part, that Mann and Singh Sher were arrested with a "huge cache of arms", and, under interrogation, they told police that they were indoctrinated by "Canada-based Sikh hardliner, Gurjivan Singh", who arranged the arms and ammunition through his Khalistani contacts in Pakistan and "imparted them theoretical training in handling arms, including AK- 47 riles" (Zhao Affidavit, p. 334);
>
> (3) A May 23, 2017 Sikh24 News article noting the arrest of Mann and Sher Singh and stating that at a court appearance after their arrest, Mann Singh "seemed to have been tortured" (Zhao Affidavit, p. 340);
>
> (4) A decision of the Court of Sh.Sarbjit Dhaliwal in Amristar, India, dated October 26, 2020 detailing the evidence led in the case against Sher and Mann Singh. While the judgment refers to evidence that "Gurjit Singh @ Gurjiwan Singh @ Baghel Singh son of Inderjit Singh, resident of village Jogi Cheema" was involved in the allegations before the court, there is no reference to Mr. Brar at any point in the 117-page judgment. In fact, the actions attributed to Mr. Brar in the unclassified summary were, according to the evidence before the court, carried out by Gurjit Singh (Zhao Affidavit, p. 363);
>
> (5) A screengrab of the first page of the results of a Google search for Bhagat Sing Brar (Zhao Affidavit, p. 483);
>
> (6) A November 15, 2017 letter from NPD MP Cheryl Hardcastle to then Minister Freeland regarding Mr. Jagtar Singh Johal (Zhao Affidavit, p. 486)

V. The public evidence presented by the Minister [Back to TABLE OF CONTENTS]

[46] On September 13, 2019, a first appeal book was produced in the current proceeding. A revised version of the material was filed on October 12, 2021. Public evidence that the Minister relied on to support Mr. Brar's inclusion on the SATA list may be found in both appeal books.

[47] An affidavit dated September 12, 2019, from Lesley Soper, the Acting Director General of the National Security Directorate within the National and Cyber Security Branch at the Department of Public Safety Canada, is available at pages 22–30 in both the original and the revised appeal book. Her affidavit describes the PPP and the legislative framework that supports the SATA process. It also states that the Passenger Protect Advisory Group (PPAG), which is comprised of several departments and

chaired by Public Safety Canada, is responsible for determining who will be placed on the SATA list based on names and supporting information provided by its members.

[48] Ms. Soper refers to the decision rendered in exigent circumstances by the delegated decision maker, on or about April 23, 2018, to place Mr. Brar on the SATA list. This was the result of information obtained from the PPAG to the effect that there were reasonable grounds to suspect that Mr. Brar may present a threat to transportation security or seeking to travel by air for certain terrorism-related purposes.

[49] The events that followed the listing of the Appellant on the SATA list are also described in the affidavit. Among others is the fact that Mr. Brar was denied boarding on two flights on April 24, 2018, pursuant to a direction under subsection 9(1) of the SATA. The decision by the Senior Assistant Deputy Minister to leave Mr. Brar's name on the SATA list on May 10, 2018, and August 21, 2018, is also mentioned.

[50] Ms. Soper's affidavit details Mr. Brar's recourse application that began on May 27, 2018, when he first applied for recourse requesting that his name be removed from the SATA list. In his recourse application, Mr. Brar referred to the denial to board a flight from Vancouver to Toronto on April 24, 2018. The recourse application was received by the PPIO on June 8, 2018.

[51] On August 10, 2018, the PPIO provided an unclassified summary to Mr. Brar to allow him to be reasonably informed of the information to be relied on and to provide an opportunity for him to make submissions or present information in support of his recourse application. Mr. Brar sought extensions of time to make submissions in email correspondence with the PPIO.

[52] On December 3, 2018, Mr. Brar provided written submissions and supporting documents including reference letters and information obtained from his access to information requests to government agencies. On December 18, 2018, the Minister's delegate decided to maintain Mr. Brar's status as a listed person on the SATA list.

[53] Ms. Soper also explains that pursuant to subsection 8(2) of the SATA, the Minister's delegate has continued to review the SATA list every 90 days to determine whether the grounds for which Mr. Brar's name was added to the list still existed and whether his name should remain on the list. At the time when Ms. Soper affirmed the affidavit (September 12, 2019), Mr. Brar's name remained on the SATA list.

[54] A number of documents relating to the listing of Mr. Brar are attached to Ms. Soper's affidavit, as are additional media reports that were not included in the case brief that was before the PPAG and the Minister's delegate in making the decision to list and to maintain Mr. Brar on the SATA list.

[55] On March 1, 2022, this Court received a supplementary public affidavit from the Minister, signed by Lesley Soper on February 25, 2022. In this document, she provides legislative history and policy documents relating to the SATA, as well as further details

about the PPP, including the processes for administrative and exigent listing, de-listing, and the operations of the Government Operations Centre (GOC).

[56] Ms. Soper clarifies the circumstances surrounding the listing of Mr. Brar by stating that the recommendation to list him in exigent circumstances was approved by a delegate who was acting as Director General on April 23, 2018, the same day the request to list was presented. Mr. Brar was subsequently denied boarding on two scheduled flights from Vancouver to Toronto on April 24, 2018.

[57] Ms. Soper states that Public Safety Canada reported the first denial in an event report referred to in her September 2019 affidavit as document (ii) of Exhibit A (revised appeal book, pages 41–45). It is her understanding from reading the event report dated April 24, 2018, that the GOC was contacted at the time Mr. Brar tried to board the plane. A Senior Operations Officer from the GOC, acting as the section 9 [of the SATA] delegated decision maker, decided to deny boarding after considering the information in the case brief, the information provided by Transport Canada and Air Canada, and information provided by the nominating agency that was contacted on that day.

[58] She also mentions that Public Safety Canada reported a second denial on April 24, 2018. She referred to it in her September 2019 affidavit as document (iii) of Exhibit A (revised appeal book, pages 47–51). It is her understanding from reading the report that the GOC was contacted at the time Mr. Brar tried to board another flight later on that same day. A Senior Operations Officer from the GOC decided to deny boarding after considering the information in the case brief, the information provided by Transport Canada and Air Canada, and information provided by the nominating agency that was contacted again on that day.

[59] Ms. Soper affirms that the PPAG recommended that Mr. Brar be maintained on the SATA list at the next meeting on May 10, 2018. The delegated decision maker, the Senior Assistant Deputy Minister of Public Safety Canada, decided to maintain Mr. Brar's name on the list and approved the recommendation to deny him transportation for inbound and outbound international flights and domestic flights. The PPAG recommendation and decision are referred to in document (iv) of Exhibit A to her September 2019 affidavit (revised appeal book, pages 53–64).

[60] Ms. Soper offered an in-person testimony at the public hearings in Vancouver on April 20, 2022.

VI. The public submissions of the Appellant [Back to TABLE OF CONTENTS]

[61] Mr. Brar presented his written submissions in a document dated March 21, 2022. In the document, he highlights that despite never having been convicted of an offence in Canada or elsewhere, and despite never having been accused of involvement in terrorist-related activities of any kind, on April 23, 2018, his name was added to the no-fly list, which prohibited him from travelling by air pursuant to the SATA. His listing has

since been maintained causing him to suffer psychologically, as well as negatively affecting his family and business.

[62] Mr. Brar is of the opinion that he was never granted an opportunity to meaningfully respond to what he calls “unsourced allegations” levied against him because he believes section 20 of the SATA prohibits identification of individuals who are listed and, by necessary implication, the reasons for their listing. His primary position is that the information provided, in the circumstances of this case, does not meet the incompressible minimum standard established by the Supreme Court of Canada (S.C.C.) in *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, [2014] 2 S.C.R. 33 (*Harkat*) as being required to satisfy the requirements of procedural fairness and compliance with section 7 of the Charter. The failure to provide any information, even in summary form, regarding the source(s) of the allegations against the Appellant leaves him unable to meaningfully challenge the credibility and reliability of that information.

[63] Furthermore, Mr. Brar claims that while classified information was disclosed to the *Amici*, who are permitted to make *ex parte* submissions on the merits, this is of no consolation because the *Amici*, having seen the redacted information, are unable to effectively communicate with the Appellant in order to obtain information from him that would allow them to challenge its reliability. Mr. Brar maintains that, in accordance with *Harkat*, much of the information relied upon by the Minister must be withdrawn, or a stay of proceedings must be entered. If the information is withdrawn, there remains no basis upon which the Minister’s decision can be sustained. Even if the information is not withdrawn, Mr. Brar believes that the decision to place his name on the list, and to maintain his listing, is unreasonable. He stresses that the reasonableness of the Minister’s decision only arises if the Court concludes that the information disclosed to the Appellant satisfies the incompressible minimum standard.

[64] Mr. Brar submits that the application of the reasonable grounds to suspect standard to the totality of the information available leads to the conclusion that his listing is unreasonable because the objectively discernible facts do not establish a reasonable basis upon which to suspect that he will travel by air for the purpose of committing a terrorism-related offence.

[65] Mr. Brar argues that there are no objectively discernible facts capable of supporting the assertion that he is funding terrorism-related activities, or that he is a member of a terrorist organization, facilitates terrorist activities or knowingly associates with individuals involved in terrorism, or that he was involved in planning an India-based terrorist attack. Mr. Brar has submitted what he believes to be credible and corroborated information in response to what he qualifies to be “baseless, uncorroborated, unsourced allegations” contained in the case brief. He states that some of the information appears to have been disavowed, for undisclosed reasons, and none of the information can be subject to scrutiny with the benefit of any insight he may have as to the reliability or credibility of the sources.

[66] Mr. Brar argues that although the Court may consider information undisclosed to him, it must do so with the following caveats in mind. The reasonable suspicion standard is robust and must be applied in keeping with the competing interests at stake in the SATA context. It requires objectively discernible facts, and not vague suspicions reported by persons or organizations of unknown reliability and credibility.

[67] Mr. Brar claims that many of the allegations against him are devoid of detail and consequently he can do little more than offer a bare denial of them. He cannot challenge the credibility or reliability of the allegations because the sources have not been disclosed. However, he states that there is independent information that raises serious concerns as to the reliability and credibility of the sources of much of the information regardless of who or what those sources are (by way of example, he references allegations of torture and mistreatment, and that actions attributed to Mr. Brar in the case brief were—according to the evidence led before the Court of Sh.Sarbjit Dhaliwal in Amristar, India, on October 26, 2020—attributed to someone else (Gurjiwan Singh/Gurjit Singh)).

[68] While he cannot say with certainty because the sources of allegations have not been disclosed to him, Mr. Brar believes that the factual lead up to his listing may be significant to an assessment of the allegations levied against him. Indeed, through his work with the Ontario Gurdwara Committee (OGC), Mr. Brar became aware that members of the Government of India and consulate officials attended Gurdwaras and collected information about people who were openly expressing support for Khalistan. Because of the information collected, people were having visas denied or cancelled by the Indian Consulate. In response, the OGC instituted a ban in December 2017 against members of the Indian Consulate attending Gurdwaras in their official capacity. The “Consulate Ban,” as it became known, was communicated through a press release in early January 2018, and Mr. Brar was listed as a contact. In February 2018, Prime Minister Trudeau visited India where the Punjab Chief Minister Amarinder Singh allegedly provided a list of “Canada-based” supporters of Khalistan and urged him to “initiate stern action against such elements.” Indian media have reported that both Mr. Brar and Mr. Dulai’s names were on the list. It was only after the Prime Minister’s trip to India, and only after he was allegedly provided a list by a member of the Indian Government with Mr. Brar’s name on it, that the Appellant became a SATA nominee.

[69] Mr. Brar states that the final point that must be made in assessing the reasonableness of the Minister’s delegate’s decision is the tendency in the case briefs to equate support for Sikh self-determination, sometimes expressed as the desire for an independent Sikh homeland—Khalistan—with extremism or terrorism. To the extent that expressing support for Khalistan is equated with being a terrorist or supporting terrorism, the information contained within the case briefs must be rejected outright. Just as not all Quebec, Irish or Basque separatists are terrorists, not all those who support Sikh self-determination support violence as a means of achieving that end. Mr. Brar supports an independent Sikh homeland. He is vocal about his support and argues that voicing support for Khalistan is a constitutionally protected form of expression in Canada. He submits that the means by which he seeks to support this goal are non-

violent and not extremist. He engages in activism by bringing attention to human rights abuses in India, advocating for a referendum on Khalistan and contributing to Sikhs for Justice by organizing protests in Canada. While Mr. Brar supports Khalistan, he affirms that he is not a terrorist.

[70] In addition to presenting the above submissions in writing, Mr. Brar presented them in person and orally at the hearing in Vancouver in April 2022.

VII. The public submissions of the Minister [Back to TABLE OF CONTENTS]

[71] The Minister presented his written submissions in a document entitled "Memorandum of Fact and Law," dated April 11, 2022 in which he requests an order that this appeal be dismissed and that Mr. Brar's name be maintained on the SATA list. The Minister argues that SATA proceedings are procedurally fair and consistent with sections 6 and 7 of the Charter and that the recourse decision is reasonable and justified on the evidence and the law.

[72] In the present decision, I shall focus my efforts on the submissions relating to the reasonableness of the Minister's decision. The Minister's submissions supporting the argument that SATA proceedings do not infringe on section 6 rights and are procedurally fair and consistent with section 7 of the Charter are available in the decision dealing with the constitutional questions, issued concurrently.

[73] In his submissions, the Minister raises questions about the standard of review. He acknowledges the Court's obligation to ensure a fair appeal process and agrees that this requires that the Court play a robust, interventionist and gatekeeper function. However, the Minister submits that this function does not extend to the Court conducting a "correctness review" or an inquisitorial, *de novo* determination of whether there are "reasonable grounds to suspect" the person will engage or attempt to engage in an act that will threaten transportation security or travel by air for the purpose of committing a terrorist act or omission. While the wording of subsection 16(4) of the SATA contemplates that the record before the judge on appeal may be different, the Minister is of the opinion that reasonableness is still the review standard that must be applied. Therefore, the focus of the reasonableness review must be on the decision actually made by the decision maker, including the reasoning process and outcome.

[74] The Minister asserts that the recourse decision is rational and tenable. He submits that the reasoning for the recourse decision as set out in the memorandum dated December 18, 2018 specifically addresses the contradictions between Mr. Brar's assertion that he has never facilitated terrorist-related activities or been involved with Sikh extremists with information that demonstrates a pattern of involvement with Sikh extremism and terrorist entities. The reasoning contains a rational chain of analysis, is tenable on the record before the Court and in the context of the applicable factual and legal context. For these reasons, the Minister believes that the recourse decision to maintain Mr. Brar on the SATA list is reasonable.

[75] Both counsel for the AGC and one of the *Amici* made submissions on the incompressible minimum disclosure at the hearing in Vancouver in April 2022. The AGC counsel argued that when applied to the facts, both *ex parte* and open evidence met the reasonable grounds to suspect threshold and were consistent with *Harkat*. The *Amici*, for their part, claimed to have specifically identified undisclosed allegations and evidence that, in their opinion, were within the incompressible minimum. They believe that both appeals still contain allegations and evidence to which the Appellants are unable to respond, instruct their counsel on, or even assist the *Amici* in their endeavours by providing them with information.

VIII. Issue [Back to TABLE OF CONTENTS]

[76] The issue raised in this appeal is as follows:

1. Is the Minister's delegate's decision of December 21, 2018, reasonable based on the information available?

[77] The SATA appeal proceedings (section 16) require the designated judge to evaluate the evidence presented during the public and *ex parte* and *in camera* hearings, the evidence presented by the Appellant during the public hearings, and the *Amici*'s evidence. Thereafter, the designated judge must decide whether the decision to keep Mr. Brar's name on the no-fly list is reasonable.

A. *The applicable standards* [Back to TABLE OF CONTENTS]

(1) Standard of review [Back to TABLE OF CONTENTS]

[78] The SATA provides at subsection 16(2) that a listed person who has been denied transportation as a result of a direction made under section 9 may appeal a decision referred to in section 15 to a judge within 60 days after the day on which the notice of the decision referred to in subsection 15(5) is received. Moreover, the statute mandates that if an appeal is made, the judge must, without delay, determine whether the decision to list the appellant is reasonable on the basis of the information available to the judge (subsection 16(4)).

[79] As outlined above, the Minister submits that based on subsection 16(4) of the SATA, the decision should be reviewed on a reasonableness standard. For his part, the Appellant submits that although the legislation provides for a review on the reasonableness standard, it is not the traditional reasonableness review conducted in a judicial review context. Rather, the intent of the SATA scheme is for an enhanced and robust role of the judge.

[80] As explained by the S.C.C. in *Vavilov* [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*)], "where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision …. Of

course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute" (*Vavilov*, at paragraph 37).

[81] I do not accept the Minister's argument that since the word "reasonable" appears in the subsection 16(4) of the SATA, the legislature intended that a reasonableness standard, as understood in the administrative law context, apply to the appellate review. That standard would entail that "the reviewing court must consider only whether the decision made by the administrative decision maker—including both the rationale for the decision and the outcome to which it led—was unreasonable" (*Vavilov*, at paragraph 83). However, the SATA [at subsection 16(4)] specifies that the appellate judge must "determine whether the decision is reasonable *on the basis of the information available to the judge*" [emphasis added]. Indeed, the SATA allows for fresh evidence to be presented on appeal. As a result, a designated judge hearing a SATA appeal may be of the view that the Minister's rationale, based on the information that was before him, is thoroughly unreasonable even though the judge may agree that the outcome is reasonable based entirely on the fresh evidence presented in the appeal. Put differently, the SATA regime could lead to a situation where the factual foundation for the Minister's decision is refuted during the appeal proceedings, but that new reliable and appropriate evidence received by the designated judge would be sufficient to justify a decision for an appellant to remain on the no-fly list. The rationale for a decision cannot be reviewed on a reasonableness standard when the record on appeal is no longer the same. This analysis is reflected in Parliament's choice in opting for an appellate scheme—which is less concerned with the rationale—over a judicial review framework.

[82] To the extent that the Respondent's position is that the appropriate appellate standard of review is essentially an enhanced reasonableness standard, I cannot agree. As the S.C.C. expressed in *Vavilov*, what is reasonable in a given situation will certainly depend on the constraints imposed by the legal and factual context of the particular decision under review (paragraph 90). As I have explained before, while a designated judge hearing a SATA appeal has a robust role to play, this robust role in conducting the proceedings does not translate into how the decision is reviewed.

[83] Considering the text of subsection 16(4) in conjunction with the S.C.C.'s guidance in *Vavilov*, the appellate standard of review prescribed by statute is that the designated judge must determine whether the outcome of the decision under review—effectively the listing of the individual pursuant to section 8 of the SATA—is reasonable in light of the evidentiary record on appeal. In essence, this requires that the designated judge evaluate, based on the appeal record, whether it is reasonable to find that there are reasonable grounds to suspect the Appellant will engage in the acts described in section 8 of the SATA.

[84] Determining the applicable review standard in the SATA legislation was not a simple endeavour and I benefited from counsel's submissions at the public hearings. I had concerns, expressed during the public hearings, that the applicable standard of review could not simply amount to "rubber-stamping" the administrative recourse

decision given the scheme of the SATA, in particular the fact that I had access to more information than was before the Minister's delegate. I am satisfied that the legislatively prescribed standard, as I have outlined it, constitutes a robust review, and is coherent with the active role a designated judge must play in a SATA appeal.

(2) The threshold standard [Back to TABLE OF CONTENTS]

[85] In assessing whether the overall evidence is sufficient to find that the decision to list the individual, in this case Mr. Brar, is reasonable, a designated judge must remain cognizant that the decision to list must be evaluated on the reasonable grounds to suspect threshold.

[86] Such a threshold implies that the evidentiary record must show grounds that are more than mere suspicion and less than belief, and it must be based on objective evidence that suggests a possibility, but not necessarily a probability.

[87] The S.C.C. explained the standard of reasonable grounds to suspect in *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, a criminal case involving the use of drug-detection dogs. I believe it is informative to quote a portion of that decision as such teachings, I suggest, are applicable to the SATA appeals [at paragraphs 26–27, 29–30, 32–33]:

> Reasonable suspicion derives its rigour from the requirement that it be based on objectively discernible facts, which can then be subjected to independent judicial scrutiny. This scrutiny is exacting, and must account for the totality of the circumstances. In *Kang-Brown*, Binnie J. provided the following definition of reasonable suspicion, at para. 75:
>
> > The "reasonable suspicion" standard is not a new juridical standard called into existence for the purposes of this case. "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity. A "reasonable" suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds.
>
> Thus, while reasonable grounds to suspect and reasonable and probable grounds to believe are similar in that they both must be grounded in objective facts, reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of crime. As a result, when applying the reasonable suspicion standard, reviewing judges must be cautious not to conflate it with the more demanding reasonable and probable grounds standard.
>
> …
>
> Reasonable suspicion must be assessed against the totality of the circumstances. The inquiry must consider the constellation of objectively discernible facts that are said to give the investigating officer reasonable cause to suspect that an individual is involved in the type of criminal activity under investigation. This inquiry must be fact-based, flexible, and grounded in common sense and practical, everyday experience: see *R. v. Bramley*, 2009 SKCA 49, 324 Sask. R. 286, at para. 60. A police officer's grounds for reasonable suspicion cannot be assessed in isolation: see *Monney*, at para. 50.

> A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a "generalized" suspicion because it "would include such a number of presumably innocent persons as to approach a subjectively administered, random basis" for a search: *United States v. Gooding*, 695 F.2d 78 (4th Cir. 1982), at p. 83. The American jurisprudence supports the need for a sufficiently particularized constellation of factors. See *Reid v. Georgia*, 448 U.S. 438 (1980), and *Terry v. Ohio*, 392 U.S. 1 (1968). Indeed, the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches.
>
> …
>
> Further, reasonable suspicion need not be the only inference that can be drawn from a particular constellation of factors. Much as the seven stars that form the Big Dipper have also been interpreted as a bear, a saucepan, and a plough, factors that give rise to a reasonable suspicion may also support completely innocent explanations. This is acceptable, as the reasonable suspicion standard addresses the *possibility* of uncovering criminality, and not a *probability* of doing so.
>
> Exculpatory, neutral, or equivocal information cannot be disregarded when assessing a constellation of factors. The totality of the circumstances, including favourable and unfavourable factors, must be weighed in the course of arriving at any conclusion regarding reasonable suspicion. As Doherty J.A. found in *R. v. Golub* (1997), 34 O.R. (3d) 743 (C.A.), at p. 751, "[t]he officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable". This is self-evident. [Emphasis added; italics in original.]

[88] From these reasons, "reasonable grounds to suspect," applicable in the present appeal, represents a lower standard than "reasonable and probable grounds to believe." The totality of the evidence, which includes exculpatory evidence, public evidence and the confidential evidence presented during *ex parte* and *in camera* hearings must be considered. Findings must not be based on a single set of facts but rather on some consistent indicators, whether in the public or confidential evidence, or both. This does not imply that there must be only one inference drawn from a set of facts; but such a determination must take into account the entirety of all the evidence presented. Overall, the threshold requires determining whether there exists a possibility that the Appellant would engage or attempt to engage in an act that would jeopardize air transportation security or travel by air for the purpose of committing an act or omission related to terrorism elsewhere or in Canada, rather than the probability of him doing so.

[89] I may add that in an appeal where evidence was presented *ex parte* and *in camera* without the presence of the Appellant but with the participation of *Amici*, such evidence must be scrutinized in order for the designated judge to depend solely on what is reliable, factual and serious. In these cases, the principles mentioned above must be applied meticulously, with vigour and consistency.

B. *Conflicting evidence has to be assessed on the basis of the balance of probabilities* [Back to TABLE OF CONTENTS]

[90] As mentioned in the procedural history section, the Minister's witnesses were examined and cross-examined at the first stage of the *ex parte* and *in camera*

proceedings in the matter of *Brar 2021* over six days in October 2020. The Minister submitted new evidence, including some pertaining to the injury to national security resulting from the disclosure of contested redactions and proposed summaries, as well as some on the reliability and credibility of the redacted information. Essentially, the initial burden of justifying why certain information should be kept confidential was on the Minister. Following these hearings, new information was disclosed to the Appellant through lifts of redacted information and the issuance of summaries of redacted information.

[91] Both parties were given the opportunity to be heard; they made written submissions and public hearings were convened to hear oral evidence. The Minister retained the initial burden of proof, but as the Appellant presented his own evidence in response to the charges levelled against him, some contradicting information emerged.

[92] These conflicting factual viewpoints had to be assessed. The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) certificate proceedings, which shares many of the same legal aspects as the SATA (see reasons in *Brar 2020*, at paragraphs 128–139), provide useful guidance in assessing evidence where conflicting points of view on the facts are presented, namely that conflicting facts should be assessed on the balance of probabilities standard. The following IRPA jurisprudence reflects this principle. In *Almrei (Re)*, 2009 FC 1263, [2011] 1 F.C.R. 163, Justice Richard Mosley had this to say [at paragraph 101]:

> I am of the view that "reasonable grounds to believe" in section 33 implies a threshold or test for establishing the facts necessary for an inadmissibility determination which the Ministers' evidence must meet at a minimum, as discussed by Robertson, J.A. in *Moreno*, above. When there has been extensive evidence from both parties and there are competing versions of the facts before the Court, the reasonableness standard requires a weighing of the evidence and findings of which facts are accepted. A certificate can not be held to be reasonable if the Court is satisfied that the preponderance of the evidence is to the contrary of that proffered by the Ministers.

[93] In *Jaballah (Re)*, 2010 FC 79, [2011] 2 F.C.R. 145, Justice Eleanor Dawson (as she then was) adopted a similar view [at paragraph 45]:

> Further, notwithstanding the interpretive rule contained in section 33 of the Act, where there is conflicting evidence on a point, the Court must resolve such conflict by deciding which version of events is more likely to have occurred. A security certificate cannot be found to be reasonable if the Court is satisfied that the preponderance of credible evidence is contrary to the allegations of the Ministers.

[94] In this spirit, the challenge now shifts to analyzing whether the Minister's decision is reasonable in light of the evidence available to the judge (see subsection 16(4) of the SATA and paragraph 117 of *Brar 2020*).

[95] In light of the aforementioned principles, it is appropriate to go over the public evidence submitted by both parties and make necessary determinations. I shall begin

with a description of the Minister's delegate decision before moving on to the public evidence presented.

C. *The Minister's decision under review* [Back to TABLE OF CONTENTS]

[96] The decision dated December 21, 2018 is a nine-page document that includes a one-page letter concluding that there are reasonable grounds to suspect that (1) the Appellant will engage or attempt to engage in an act that would threaten transportation security, or (2) travel by air to commit certain terrorism offences. As a result, the Appellant's status as a listed person under the SATA is maintained.

[97] The document contains eight pages from a redacted PPAG memorandum that was provided to the Minister's delegate to consider before making a decision. The document includes a backgrounder, a five-tab recourse case chronology (four of them relate to Mr. Brar's application and exchanges of public correspondence, and Tab 5 refers to a confidential CSIS case brief), the considerations from both parties (including the Appellant's submissions and a redacted summary of the CSIS case brief), an analysis, and the options offered to the Minister's delegate.

[98] I will now turn to the public disclosure of the information and the case against Mr. Brar as it evolves through the appeal process.

D. *The scope of the public evidence resulting from the appeal proceedings* [Back to TABLE OF CONTENTS]

[99] The appeal proceedings allowed the Appellant to access additional information than what was provided during the administrative review application. On August 10, 2018, the Appellant received a response from the PPIO after sending his administrative review application (pursuant to section 15 of the SATA) on June 8, 2018. It was the first time that Mr. Brar was privy to a public outline of some of the allegations levelled against him. The intent of the response from the PPIO was to provide Mr. Brar with a reasonable understanding of what would eventually be presented to the Minister's delegate, as well as an opportunity to respond to the claims through written submissions. The document made it clear that classified information would be included "for the Minister's delegate's eyes only." The allegations and comments as found in the revised appeal book dated October 12, 2021, at pages 121–126 were summarized by Mr. Brar's counsel as follows:

> 1. Mr. Brar is the son of, and in contact with, Lakhbir Brar who is the leader of the International Sikh Youth Federation, a listed entity in Canada pursuant to subsection 83.05 (1) of the *Criminal Code*.
>
> 2. Mr. Brar returned from Pakistan on April 19, 2018, where he visited his father.
>
> 3. An April 17, 2018 media report from News18, an Indian news source, identifies Mr. Brar as a "Canadian Khalistani extremist" and contains a photograph of his passport and Pakistani Pilgrimage Visa. The report refers to a meeting in Lahore between the leaders of Lashkar-e-Tayyiba and Sikh militancy.

> 4(a). Mr. Brar is a contact and business associate of Parvkar Singh Dulai, a "very vocal supporter of Khalistan" who, according to an April 2007 media report [Globe and Mail], was the organizer of a 2007 Vaisakhi parade in Surrey, B.C., which included a tribute to Babbar Khalsa founder Talwinder Singh Parmar.
>
> 4(b). According to a November 19, 2017 media article, Jagtar Singh Johal (arrested in India on November 4, 2017 for his alleged role in several high profile killings) with an accused in the 2009 murder of Rulda Singh [sic]. Mr. Johal went to Canada in August 2016 and met with Mr. Dulai in Surrey, B.C.
>
> 5. Mr. Brar is suspected to be a facilitator of terrorist-related activities.

[100] Mr. Brar filed his submissions on December 3, 2018, and a decision to maintain his status as a listed person pursuant to section 15 of the SATA was rendered on December 21, 2018. This decision was provided to Mr. Brar on or about January 2, 2019. Mr. Brar subsequently filed an appeal of that decision on April 18, 2019.

[101] An appeal book was prepared in accordance with the *Federal Courts Rules* (SOR/98-106, subsections 343(1) to (5)) and contained more information than had previously been made available. Among the many documents found in the appeal book were those filed by the Appellant to support his delisting application. It also included ten documents originating from Public Safety Canada, one of them being the Minister's delegate's decision to maintain Mr. Brar on the SATA list. Nine other documents, redacted in part, are listed below and can be found at pages 33–78 and 358–378 of the revised appeal book:

> A 7-page document dated April 23, 2018: the decision of the chair of the PPAG for listing Mr. Brar on the *SATA* list in exigent circumstances;
>
> Two event reports dated April 24, 2018: one for an Air Canada flight from Vancouver to Toronto and another for a WestJet flight from Vancouver to Toronto. Each event report mentions that a direction to deny boarding was issued to the concerned air carrier;
>
> Two sets of unsigned handwritten notes on a *SATA* call sheet dated April 24, 2018 and describing the timeline surrounding the issuance of the direction to deny boarding to Mr. Brar for both airlines;
>
> A 12-page document recommending the relisting of Mr. Brar by the PPAG dated May 10, 2018 and mentioning that the Public Safety Senior Assistant Deputy Minister accepted the recommendation on May 18, 2018;
>
> A 13-page document recommending the relisting of Mr. Brar by the PPAG dated August 16, 2018 and mentioning that the Public Safety Senior Assistant Deputy Minister, accepted the recommendation on August 20, 2018;
>
> A 10-page document recommending the relisting of Mr. Brar (among others) by the PPAG dated February 14, 2019, which was approved by the Public Safety Senior Assistant Deputy Minister;
>
> A 10-page document dated February 14, 2019 recommending the updating of the *SATA* list, which included Mr. Brar's name, and was approved by the Senior Assistant Deputy Minister;

An 11-page document recommending the relisting of Mr. Brar (among others) by the PPAG dated May 15, 2019, which was approved by the Public Safety Senior Assistant Deputy Minister on that same date.

[102] As per paragraph 16(6)(a) of the SATA, the Minister asked the Court for *ex parte* and *in camera* hearings to hear information or other evidence that he believed could be injurious to national security or endanger the safety of any person if disclosed. Two witnesses were examined and cross-examined in the presence of the Minister's counsel and the *Amici* over the course of several days of hearings. Throughout the hearings, this Court issued communications to the Appellant, his lawyers, and the Minister's public counsel summarizing the proceedings as they progressed.

[103] In addition to the public summary of the hearings that was communicated to the Appellant (Public Communication No. 7) on November 3, 2020, three additional Public Communications were issued between September 25, 2020, and December 2, 2020. Below is an overview of what was published:

Public Communication (no number assigned), September 25, 2020

Ex parte and *in camera* case management conference was held on September 22, 2020 in the matters of *Brar v Canada* (T-669-19) and *Dulai v Canada* (T-670-19).

Counsel for the AGC and the *Amici* provided an update on the progress of the two appeals. The AGC received the *Amici*'s position on each of the national security redactions on August 31, 2020. The Attorney General counsel and the *Amici* have met three times since then to discuss the redactions. These meetings have been productive – the Attorney General counsel and the *Amici* have largely agreed on which redactions are contentious and which are not, and which redactions can be lifted.

The *Amici* advised the Court, further to this Court's oral Direction dated May 11, 2020, and in light of paragraphs 247-249 of the recent reasons, that no further steps were required regarding the information that the AGC has withdrawn.

The Attorney General counsel filed a replacement *ex parte* affidavit on September 10, 2020 for the redactions claimed by CSIS. CSIS' previous affiant is no longer available. Additionally, the Attorney General counsel will file a supplemental *ex parte* affidavit by September 25, 2020 from CSIS that will address, among other things, the credibility and reliability of the redacted information in light of Justice Noël's reasons issued on June 30, 2020. The supplemental affidavit will be affirmed by the same affiant as the replacement affidavit.

The *Amici* indicated that they would likely call between 2-4 witnesses for each appeal, to be determined shortly. Counsel for the AGC will canvass the potential witnesses' availability, discuss scheduling with the *Amici,* and the Attorney General counsel and *Amici* will jointly advise the Court. As for the scheduling of hearing dates, they shall be scheduled in October and if required in early November.

The Attorney General counsel proposed that each witness also be provided with the proposed summaries as an aide memoire. The *Amici* explained that they are not necessarily opposed to putting proposed summaries before witnesses. The *Amici* took the position that the determination of whether a proposed summary is injurious to national

security is ultimately a question for the Court, and that the Court could make that determination with or without additional evidence from the witness on a proposed summary.

Finally, the Attorney General counsel and the *Amici* advised the Court of their joint position that written and oral arguments are necessary following the two hearings.

Public Communication No. 6, October 7, 2020

An *ex parte* and *in camera* hearing was held on October 5, 2020 in the matters of *Brar v Canada* (T-669-19) and *Dulai v Canada* (T-670-19). The *Amici* took the Court through a list of redactions about which the Attorney General counsel and *Amici* have reached an agreement. In some instances, the agreement has been to lift the redaction. In others, the agreement has been to summarize the redacted information. In others, the agreement has been that no lift of the redaction or summary can be made consistently with national security concerns. Those matters will have to be addressed in further *ex parte* and *in camera* proceedings.

The Court accepted the lifts and summaries agreed to date. They will be released to the Appellants together with further lifts and summaries of redacted information following the upcoming hearings.

The *Amici* and Attorney General counsel expect to have more agreed-upon lifts and summaries to present to the Court at the upcoming hearings. Matters that cannot be agreed by the *Amici* and the Attorney General counsel will be determined by the Court following the upcoming hearings.

Public Communication No. 8, December 2, 2020

The *ex parte* and *in camera* examination and cross-examination of the Minister's witnesses in the matter of *Dulai v Canada* (T-670-19) took place over three (3) days in November, namely November 16, 17 and 23, 2020. The Minister presented evidence on the injury to national security of disclosing the contested redactions and proposed summaries, as well as the reliability and credibility of the redacted information.

At the outset of the hearing, the Attorney General counsel and the *Amici* consented to an order that would render the evidentiary record resulting from the Brar hearings on October 14, 15, 16, 19 and 20, 2020 and the evidentiary record resulting from the Dulai hearings evidence in both appeals, subject to any arguments in relation to the weight, relevancy and admissibility of the evidence (the "Evidentiary Order"). This allowed for efficiencies in the Dulai examinations and cross-examinations.

Court began at 9:45 a.m. on November 16, 2020. The Attorney General counsel commenced by filing four (4) charts, namely (i) a classified chart listing all of the contested redactions and contested summaries, (ii) a classified chart itemizing the proposed uncontested redactions, uncontested summaries and lifts agreed to by the Attorney General counsel, (iii) a classified chart containing only the CSIS contested redactions and summaries organized in a way to guide the examination of the CSIS witness, and (iv) a classified chart listing excerpts from the transcript of the Brar hearings that apply to the present hearings.

Court resumed in the morning of November 17, 2020 at 9:30 a.m. The *Amici* continued to cross-examine the CSIS witness, and questions focused on the reliability and credibility of the redacted information and the injury to national security of releasing certain information

or summaries. The *Amici* filed a number of exhibits on various topics. The cross-examination was complete near the end of the day, after which the Attorney General counsel conducted a brief re-direct of the CSIS witness.

[104] At the conclusion of these hearings, a decision had to be made with respect to the validity of the Minister's redactions over information found in documents in the revised appeal book. To that end, the Court undertook extensive work to establish which redactions should be confirmed, which redactions needed to be partially or entirely lifted, and which redactions covered information that needed to be summarized. On October 5, 2021, an updated public order and reasons was issued, which comprised one public and two classified annexes:

A. Public Annex A—Lifts and partial lifts;

B. Classified Annex B—Uncontested redactions and summaries;

C. Classified Annex C—Contested redactions and summaries.

[105] On October 12, 2021, the revised appeal book was filed reflecting the determinations made in the updated reasons and order published on October 5, 2021, which can be found at pages 33–78 and 302–378 of the revised appeal book. An attentive reader can only conclude that the extent of disclosure is broader and that more details are provided to the Appellant when comparing pages 33–78, 302–-327 and 346–366 of the original appeal book to the revised one. I would add that the additional information is significant in nature and gives the Appellant greater knowledge of the grounds upon which he was listed.

[106] The summary of the allegations against the Appellant is another indicator of the scope of disclosure received by him. The Court included the following table in the amended order and reasons dated October 5, 2021, at paragraph 90. The table relates to the publicly disclosed allegations and refers to the documents annexed to the Minister's delegate's decision of December 21, 2018, and to the memorandum to the Senior Assistant Deputy Minister case brief dated August 16, 2018, when Mr. Brar was relisted:

Allegation	**Reference in Decision**[1]
Disclosed Allegations	

[1] Reference is to the Memorandum for the Associate Deputy Minister, Application for Recourse Case # 6343-02-13 (AGC0007) and to the case brief dated August 16, 2018 attached to the Memorandum at Tab E (AGC0004) where information was contained in the attached case brief but not in the Memorandum.

1. Mr. Brar is suspected to be a facilitator of terrorist-related activities. He is involved in Sikh extremism activities in Canada and abroad.	Page 2 of 9 (See footnote) Tab E, August 2018 case brief, p 3
2. Mr. Brar is a Canada-based Sikh extremist who has been engaged in, and will continue to be engaged in terrorist activities, particularly in fundraising in support of terrorist attacks overseas; promoting extremism, including the radicalization of youth, with the aim of achieving Khalistan independence; and attack planning and facilitation, including weapons procurement, to conduct attacks in India.	Page 5 of 9
3. Mr. Brar is a subject of Service investigation due to his association related to Sikh extremism and being an international operational contact for his father, Lakhbir Singh Brar (aka RODE), the Pakistan-based leader of the International Sikh Youth Federation (ISYF), which is a listed terrorist entity in Canada.	Page 2 of 9
4. Mr. Brar is associated with the ISYF.	Tab E, August 2018 case brief, p 4
5. Mr. Brar has close connections to both Canadian, and internationally based, Sikh extremists, including Gurjeet Singh Cheema and Mr. Dulai.	Page 2 of 9 Tab E, August 2018 case brief, p 4
6. Mr. Brar is a close contact and business associate of Mr. Dulai. Mr. Dulai has been described as a very vocal supporter of Khalistan.	Page 3 of 9 Page 8 of 9

7. Mr. Brar and Gurjeet Singh Cheema had been planning an India-based terrorist attack. Most specifically, it was revealed that during his visit to Pakistan in 2015, Brar planned for the attack on the behest of the Pakistan Inter-Services Intelligence Directorate (Pak ISI), and his job was to make available arms and ammunition in India.	Page 2 of 9 Page 3 of 9 Page 9 of 9
8. Information dated early 2018, revealed that Brar was among a group of individuals linked to, and cooperating with, the Pak ISI to thwart the Indian Government's community outreach and reconciliation efforts. An April 17, 2018 media report identified Brar as a Canadian Khalistani extremist having received a Pakistani visa for a Sikh pilgrim visit in April 2018. The report referred to a meeting in Lahore between the leaders of Lashkar-e-Tayyiba (LeT) and Sikh militants, and claimed that Pakistan is inciting pro-Khalistan/anti-India sentiment. The report also referred to the Pak ISI being hand-in-glove with Pakistani terrorists supporting global Khalistanis. Pakistan denied India's allegations. Included in the article was a photograph of Brar's visa and passport page with the heading, 'Proof #6 Pak Visas for Canadian Khalistan Extremists'.	Page 3 of 9
9. Information dated November and December 2017 described Brar as a prominent Sikh extremist element in Canada engaged in anti-India activities. Mr. Brar is described as the President of ISYF's youth wing in Canada. Brar is reportedly closely associated with a number of	Page 3 of 9 Page 7 of 9 Page 8 of 9

Canada-based Sikh radical elements. During Brar's 2015 visit to Pakistan, he had tasked Cheema to arrange to obtain arms and ammunition in India. Mr. Brar was known to have also visited Pakistan in the Fall of 2016 and again in 2017. He is reportedly collecting funds from members of the Canadian Sikh community in order to renovate some Gurdwaras in Pakistan and is suspected to have been diverting a major part of the funds for anti-India activities.	
10. Media reporting of April 2007 presented Dulai as the Vaisakhi parade organizer in Surrey, B.C., that included a tribute to late Babbar Khalsa (BK) founder Talwinder Singh Parmar (Parmar was found by the B.C. Supreme Court to be the leader of the conspiracy to blow up the two Air India planes on June 23, 1985).	Page 4 of 9
11. Mr. Brar was involved in collecting funds, and these funds were transferred to his father and another individual in Pakistan for further distribution to terrorist families in Punjab.	Page 4 of 9 Page 7 of 9
12. Mr. Brar and others have discussed the incarceration of several individuals in Punjab and how financial and legal support was needed for them, including financial support for Jagtar Singh Johal.	Page 4 of 9 Page 8 of 9
13. Mr. Brar travelled to Pakistan in late March 2018, where he visited his father, and returned to Canada on April 19, 2018.	Page 5 of 9

14. Mr. Brar travelled many times to the US in 2016 by land.	Tab E, August 2018 case brief, p 10 of 13
15. Mr. Brar arrived at Toronto Pearson International Airport on November 19, 2016, on January 13, 2017, on July 27, 2017, and on November 14, 2017.	Tab E, August 2018 case brief, p 7
16. Mr. Brar filed an incident report regarding travel from Toronto to Abu Dhabi; Mr. Brar claimed that on October 24, 2017 he was informed by agents that they were told by the Department of Homeland Security that he could not travel.	Tab E, August 2018 case brief, p 7

[107] Mr. Brar received disclosure of six allegations during the administrative review (response from the PPIO dated August 10, 2018). The 16 allegations above provide Mr. Brar with a better understanding of the Minister's grounds against him. A close reading of these allegations shows that the grounds that led to his listing are very serious.

[108] The issuance of summaries related to information protected by a good number of redactions is also informative for Mr. Brar. I invite the reader to consult them. The summaries may at times indicate that part of the information is unrelated to Mr. Brar (see pages 67–69 and 361–366 of the revised appeal book) or convey what the redactions are about (see pages 61–62 and 375–376 of the revised appeal book), without jeopardizing national security. These are only a few of many examples.

[109] In addition, public hearings were held in Vancouver in April 2022 where, for the first time, the Appellant had an opportunity to be heard in person.

E. *Legal principles related to the disclosure of national security information in judicial civil and administrative proceedings* [Back to TABLE OF CONTENTS]

[110] The S.C.C. has frequently acknowledged that national security grounds can limit the degree of information disclosed to the person impacted (see *Charkaoui I*, at paragraph 58). However, the national security restriction on disclosure needs to be exercised with care and in accordance with the fundamental principles of justice. Former Chief Justice McLachlin summarizes this delicate balance in *Harkat*, at paragraph 43:

> Full disclosure of information and evidence to the named person may be impossible. However, the basic requirements of procedural justice must be met "in an alternative fashion appropriate to the context, having regard to the government's objective and the interests of the person affected": *Charkaoui I*, at para. 63. The alternative proceedings must

> constitute a substantial substitute to full disclosure. Procedural fairness does not require a perfect process — there is necessarily some give and take inherent in fashioning a process that accommodates national security concerns: *Ruby v. Canada (Solicitor General)*, 2002 SCC 75, [2002] 4 S.C.R. 3, at para 46.

[111] As mentioned above, it should be emphasized that when national security disclosure considerations are involved in proceedings, procedural fairness does not require a perfect process. The appeal scheme in the SATA legislation reflects this reality. In the case at hand, a great deal of disclosed information relates to the grounds for the Minister's delegate's decision. As a result, Mr. Brar was in a better position to respond to the case against him.

[112] During public hearings, the expression "incompressible minimum disclosure" was used multiple times, and it was used even more frequently during confidential hearings. Former Chief Justice McLachlin discussed the concept in *Harkat* in the context of IRPA at paragraphs 55–56:

> Parliament amended the IRPA scheme with the intent of making it compliant with the s. 7 requirements expounded in *Charkaoui I*, and it should be interpreted in light of this intention: *R. v. Ahmad*, 2011 SCC 6, [2011] 1 S.C.R. 110, at paras 28-29. The *IRPA* scheme's requirement that the named person be "reasonably informed" ("*suffisamment informé*") of the Minister's case should be read as a recognition that the named person must receive an incompressible minimum amount of disclosure.
>
> Under the *IRPA* scheme, a named person is "reasonably informed" if he has personally received sufficient disclosure to be able to give meaningful instructions to his public counsel and meaningful guidance and information to his special advocates which will allow them to challenge the information and evidence relied upon by the Minister in the closed hearings. Indeed, the named person's ability to answer the Minister's case hinges on the effectiveness of the special advocates, which in turn depends on the special advocates being provided with meaningful guidance and information. As the House of Lords of the United Kingdom put it in referring to disclosure under the British special advocates regime, the named person
>
>> must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations…. Where …. the open material consists purely of general assertions and the case … is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be.
>>
>> (*Secretary of State for the Home Department v. A.F. (No. 3)*, [2009] UKHL 28, [2009] 3 All E.R. 643, at para 59, *per* Lord Phillips of Worth Matravers)

[113] Even prior to *Harkat*, however, other important cases such as *Charkaoui I* and *R. v. Ahmad*, 2011 SCC 6, [2011] 1 S.C.R. 110 (*Ahmad*), considered the limits imposed on the disclosure of national security information (*Ahmad*, at paragraph 7):

> As we stated in *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350, the Court "has repeatedly recognized that national security considerations can limit the extent of disclosure of information to the affected individual"

> (para 58). But we took care in *Charkaoui* to stress as well the importance of the principle of fundamental justice that "a person whose liberty is in jeopardy must be given an opportunity to know the case to meet, and an opportunity to meet the case" (para. 61). *Charkaoui* was an immigration case. In criminal cases, the court's vigilance to ensure fairness is all the more essential. Nevertheless, as we interpret s. 38, the net effect is that state secrecy will be protected where the Attorney General of Canada considers it vital to do so, but the result is that the accused will, if denied the means to make a full answer and defence, and if lesser measures will not suffice in the opinion of the presiding judge to ensure a fair trial, walk free. While we stress this critical protection of the accused's fair trial rights, we also note that, notwithstanding serious criticisms of the operation of these provisions, they permit considerable flexibility as to how to reconcile the accused's rights and the state's need to prevent disclosure.

[114] The concept of incompressible minimum disclosure is defined as allowing the named person to receive sufficient disclosure to know and respond to the case against them (*Harkat*, at paragraph 56). That being said, where some information is redacted, a listed person will most likely always claim that further disclosure is required. The tension between disclosing enough information to allow the listed person to answer the case against them, while at the same time preserving national security interests, is heightened by the important stakes on both sides.

[115] Although some may argue that there is insufficient disclosure as long as some information remains redacted, the S.C.C. has clearly indicated that there must be some compromise. The Appellant is expected to want to know the sources of the information that implicates him, as well as the specifics of the confidential information. Since such disclosure would threaten national security, alternatives to disclosure must be considered.

[116] I may add that counsel for the Appellant repeatedly asked this Court to disclose details on sources of information. However, as quoted in part in *Harkat*, at paragraph 56, the process can be fair even without the sources. Lord Phillips of Worth Matravers in *Secretary of State for the Home Department (Respondent) v. AF (Appellant) (FC) and another (Appelant) and one other action*, [2009] UKHL 28, [2009] All E.R. 643, made that clear when he wrote at paragraph 59:

> …. This establishes that the controlee must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. Provided that this requirement is satisfied there can be a fair trial notwithstanding that the controlee is not provided with the detail or the sources of the evidence forming the basis of the allegations. Where, however, the open material consists purely of general assertions and the case against the controlee is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be. [Emphasis added.]

[117] In *Harkat*, the S.C.C. determined that "Parliament's choice to adopt a categorical prohibition against disclosure of sensitive information, as opposed to a balancing approach, does not as such constitute a breach of the right to a fair process" (*Harkat*, at paragraph 66). In this instance, the Appellant was able to obtain information that had initially been redacted because evidence that did not meet the criteria for being deemed

injurious to national security was made public through lifts and summaries. Mr. Brar may not know all of the information supporting the claims, or even all of the allegations against him, but he does know what he is alleged to have done, as evidenced by the disclosure process in this instance and his responses to the allegations made against him. Exposing more information than what is already disclosed would be injurious to national security or endanger the safety of any person. As a result, disclosure restrictions had to be established, but not to the point where the Appellant was denied access to sufficient information to understand the case against him and give proper directions to his counsel. As explained in the concurrent decision addressing constitutional issues, while these provisions may be an imperfect substitute for full disclosure in an open court (*Harkat*, at paragraph 77), the combination of summaries, additional disclosure of information, participation of *Amici* and public hearings resulted in fairness of the proceedings.

IX. Finding resulting from the appeal proceedings [Back to TABLE OF CONTENTS]

[118] This Court has gone to considerable lengths to ensure that this appeal was conducted as openly as possible while adhering to obligations imposed by statute relating to national security. Accordingly, as noted above, confidential reasons are being issued concurrently with the current public reasons to address classified material that could not be shared with the public and are contained in Annex C. These confidential reasons include charts with classified comments on the determinations made in connection to each of the public allegations found in the table at Annex B of the current reasons, which contains limited, unclassified comments.

[119] I must remind the Appellant that my function as gatekeeper was fully assumed in both public and *ex parte* and *in camera* sessions. To that end, I had to make sure that the Minister's decision to place the Appellant on the no-fly list was reasonable. I was in charge of ensuring that the processes were fair throughout the proceedings. Hence, I envisioned the *Amici*'s role and mandate as representing the Appellant's interests as a substantial substitute for full disclosure and the Appellant's personal participation in the *in camera* portion of the proceedings. The two *Amici* have acted vigorously and effectively on behalf of the Appellant. They have performed their duties with professionalism, knowledge, and tenacity not only during closed hearings with witnesses, but also at the confidential stage of written submissions. They expressed views that differed from the Minister's not only in evaluating the redactions made, but also on a number of legal issues relating to the reasonableness of the decision prior to and after the public hearings. The *Amici*, in my opinion, were substantial substitutes to full disclosure and participation in the confidential portion of the appeal.

[120] Having dealt with special advocates in the past, I believe that in this instance, the outcome would be the same regardless of their presence. I consider the June 2020 mandate given to the *Amici* to be a comparable equivalent to the legislative role given to special advocates. It is also my view that the involvement of special advocates would not have allowed the Appellant to obtain more confidential information. It is my opinion that once national security information is identified, it must be protected whether or not

an *amicus* or a special advocate is involved. Furthermore and as discussed in the constitutional decision at paragraph 214, dealing with special advocates can be challenging because their functions, responsibilities, and power are fixed, with little room for manoeuvring. Special advocates with no restrictions on resources can present a slew of motions that can be time-consuming and sometimes ineffective.

[121] Paragraph 16(6)(e) of the SATA provides that the designated judge may receive anything that, in the judge's opinion, is reliable and appropriate. I have received and considered evidence and because of its sensitivity, it cannot be disclosed. This evidence was put on the record in response to questions asked during the *ex parte* hearings mainly by the CSIS witness and it relates to some of the public allegations, or to the Appellant. Further information is available in the confidential reasons.

[122] The SATA also provides at paragraph 16(6)(f) that a judge may rely on evidence that has not been disclosed to an appellant, even by way of a summary. In *Harkat*, former Chief Justice McLachlin commented on a similar provision in IRPA [at paragraph 39]:

> The *IRPA* scheme provides that the judge's decision can be based on information or evidence that is not disclosed in summary form to the named person: s. 83(1)(*i*). It does not specify expressly whether a decision can be based in whole, or only in part, on information and evidence that is not disclosed to the named person.

The determinations in this case deal with 16 public allegations that the Appellant is aware of, but as previously stated, there is information in relation to some of them, or to comparable situations, that simply cannot be disclosed, partially disclosed, or summarized. The Appellant may not be aware of all the details, but he knows the essence of the allegations levelled against him and has had the opportunity to answer to each one.

[123] Having said that, I could not ignore the material that was kept confidential for national security reasons. This information was related in some manner to one or more allegations that the Appellant was aware of, or was consistent with comparable acts mentioned in the known allegations. In *ex parte* and *in camera* sessions, some of this information was discussed in depth. I want to make it clear that none of my determinations are based solely on undisclosed facts or allegations. As a result, the Appellant is aware of the core of the case made against him. The Court's analysis considered both sets of allegations—disclosed and undisclosed—and the determinations are all connected to the 16 allegations that were made public. Ultimately, I made a decision on whether the Minister's delegate's conclusion was reasonable based on the 16 public allegations known to Mr. Brar.

[124] Based on the incompressible minimum disclosure doctrine discussed in *Harkat*, which was also the subject matter of the reasons in *Brar 2021*, at paragraphs 60–71, the *Amici* argued that there were irreconcilable tensions, and that this Court should order the withdrawal of some of the unknown information. For the following reasons, I made a different decision: the information in question relates to the Appellant; the

information is relevant to the 16 public allegations since it directly or indirectly pertains to them; and the information is not only reliable and appropriate, but also material to the appeal. Mr. Brar is aware of the substance of the allegations levelled against him, and he is aware of 16 specific allegations.

[125] Based on the disclosure process and the resulting disclosed information, the 16 public allegations, examining the disclosed material and taking into account the material that cannot be disclosed due to national security concerns, I believe the Appellant had more than a passing knowledge of the essence of the case brought against him. His response to the administrative review, recent affidavit, and testimony all reflect a thorough understanding of the allegations made against him.

[126] Initially, and for a period of approximately two months, the *Amici* were allowed to converse, confer, and discuss the public case with the Appellant and his lawyers. As the case progressed, the Appellant was able to have one-way communication with the *Amici* at all times. When a problem arose, the *Amici* had the option to bring to the attention of this Court. Public communications and the submission of the revised appeal book provided additional disclosure, placing the Appellant in a position of increased knowledge and allowing him to provide instructions to both his lawyers and the *Amici*. While I recognize that the Appellant does not know everything, I am confident that he knows a lot more than he does not, and that he understands the essence of the case brought against him.

[127] I am also confident that national security has been protected during this process, as it is one of my judicial responsibilities. I did it with a bias in favour of transparency and disclosure. Ultimately, I had to follow the law knowing that I had reached the limit of what I could disclose. Had I not been convinced that Mr. Brar knew the essence of the case, I would have made other appropriate determinations.

[128] At the conclusion of the proceedings, I had a range of contradicting perspectives from public hearings, as well as from *ex parte* and *in camera* hearings, which required that the appropriate determinations be made.

X. The Prime Minister's trip to India [Back to TABLE OF CONTENTS]

[129] The Appellant claimed that his inclusion on the no-fly list was the result of talks between Prime Minister (PM) Trudeau and high-ranking Indian officials during the PM's trip to India in February 2018. The Appellant refers to media reports according to which an envelope containing a list of Canadians was allegedly handed to the Prime Minister during one of the meetings. It was also reported that the Khalistani-India issue was being discussed (see "Khalistan issue figures in Amarinder-Trudeau meet; Capt hands over list of Canada-based radical", Outlook The News Scroll, 21 February 2018 in the affidavit of Dongju Zhao, at page 322).

[130] While the exact details of the meetings between Prime Minister Trudeau and Indian officials remain unknown, it is public knowledge that world leaders gather and

debate a variety of themes of mutual interest, including economic challenges such as export-import commerce, societal concerns such as defence issues, and security issues such as terrorism. It is possible that the PM and his counterparts discussed national security issues, as would be expected in a diplomatic setting. However, Mr. Brar's claim that his listing is due to a diplomatic encounter is not supported. Mr. Brar was already on CSIS' radar before his listing in April 2018, as noted on page 35 of the revised appeal book, among other things. A thorough investigation of the revised appeal book exposes material from previous eras, and the confidential version contains a complete timeline, which again corroborates the fact that other factors were considered in Mr. Brar's listing.

[131] It would be erroneous to claim that Canada responds to requests from foreign countries indiscriminately. To proceed with a briefing to place someone on the no-fly list, an entity like CSIS needs insight, knowledge, and well-researched documentation. A simple request from a single country, accompanied by its own documents, will not suffice. A lot of varied information from various sources will be required, and in practice, corroboration will be required to reach a Canadian independent conclusion.

[132] I can advise that I requested, and received, the National Security and Intelligence Committee of Parliamentarians (NSICOP) unredacted *Special report into the allegations related to the Prime Minister's official visit to India in February 2018*. I also asked counsel for the AGC and the *Amici* to comment on certain pages of the report that I had identified as pertinent for the purposes of this appeal.

[133] The totality of the evidence I had access to, both public and confidential, allows me to conclude that other factors led to the authorization to list the Appellant on the no-fly list. Therefore, I can say with confidence that there was no political interference.

XI. The finding on whether the decision was reasonable under paragraph 8(1)(a) of the SATA [Back to TABLE OF CONTENTS]

[134] As stated in Communication No. 11 dated July 11, 2021:

> The Court asked that this summary include confirmation that there is no information or evidence against either Appellant in relation to 8(1)(a) of the *SATA* and that both listings concern information and evidence in respect of 8(1)(b).

[135] The evidence presented as a whole did not contain any conclusion that Mr. Brar would engage or attempt to engage in an act that would threaten transportation security, as per paragraph 8(1)(a) of the SATA. The AGC also recognized on March 23, 2022, that the listing of Mr. Brar was based on concerns about paragraph 8(1)(b) rather than paragraph 8(1)(a) of the SATA. Therefore, the first portion of the conclusion, which deals with transportation security, is evidently unreasonable, given that there is no evidence to support such an allegation.

[136] I would note that, as per the public allegations, the focus of the terrorist activities is located abroad. The legislative scheme provides discretion to the Minister with

respect to mechanisms to ensure safety in air travel that fall short of a complete ban on all air travel. This discretion should be exercised with that in mind. Therefore, at the subsequent 90-day review, the application should take into account the unreasonable determination made in reference to paragraph 8(1)(a) of the SATA and consider the various boarding directions that apply to listings pursuant to subsection 9(1) of the SATA.

XII. The findings on whether the decision was reasonable under subparagraphs 8 (1)(b)(i) and (ii) of the SATA [Back to TABLE OF CONTENTS]

[137] Despite my finding with respect to paragraph 8(1)(a) of the SATA, I nevertheless find that the decision to maintain the Appellant on the no-fly list is reasonable because there are reasonable grounds to suspect that Mr. Brar will travel by air for the purpose of committing an act or omission that is an offence under section 83.18, 83.19 or 83.2 of the *Criminal Code* or an offence referred to in paragraph (c) of the definition "terrorism offence" in section 2 of that Act, or if it were committed in Canada, would constitute an offence referred to in subparagraph (i).

[138] I reach this determination after studying and reviewing all public and confidential facts, affidavits filed, representations from all counsel including the *Amici*, and hearing the Appellant's testimony in Vancouver. I have read and heard the Appellant's response to each of the 16 public allegations and have reviewed the decision of the Minister's delegate and the related documents. In addition, I carefully examined the classified material on each allegation, re-read the testimony of the CSIS witness, and considered the Minister and *Amici*'s written submissions.

[139] Keeping in mind that this is not a criminal matter but rather an administrative decision made in accordance with the SATA statute, I have reached this conclusion taking into account that the decision to maintain the Appellant's listing is based on the standard of reasonable grounds to suspect. The discernible facts at issue in this appeal support the possibility of specific scenarios and situations that have existed in the past. As the evidence reveals, the Appellant has created a pattern of behaviour over time that, on the basis of reasonable reasons to suspect, links him to subparagraphs 8(1)(b)(i) and (ii) of the SATA.

[140] Without jeopardizing national security, I can confidently state that this Court is presented with a clear picture: on one side, the Appellant denies the claims levelled against him and on the other side, there is evidence that provides conflicting and serious explanations. Therefore, based on a reasonable suspicion standard, I have assessed the reliability and credibility of each side and I looked at independent corroboration. As a consequence of this thorough exercise, 11 allegations, more specifically allegations 1, 2 (in part), 3, 5, 6, 7, 8, 9 (in part), 11, 12 and 13 have all been deemed to be within the realm of possibility in light of discernible facts in the evidence (see Annex B). These 11 allegations meet the criteria that support the triggering of subparagraphs 8(1)(b)(i) and (ii) of the SATA. The allegations not retained were the result of a lack of evidence and/or a lack of corroboration. For their part, the allegations

not disclosed to the Appellant have been dealt with in the confidential reasons. With that in mind, I repeat that any determination on the reasonableness of the Minister's delegate's decision is based on my findings regarding the public allegations and at no point was a determination made solely on information unknown to the Appellant. For the sake of completeness, the following judgment will include three annexes:

A. Annex A—the complete public judicial history of the two appeals;

B. Annex B—a public table of the 16 public allegations with some comments;

C. Annex C—confidential and complementary reasons, which include a confidential table of the 16 public allegations with confidential comments, as well as another confidential table dealing with undisclosed redacted information.

[141] Because of national security concerns, I am unable to reveal more in this forum. I would like to expand on my conclusion in the public reasons but doing so would involve commenting on classified information.

XII. The SATA needs improvement [Back to TABLE OF CONTENTS]

[142] Given that these appeals (the current one and that of Mr. Dulai's adjudged concurrently) are the first SATA appeals to be heard, they have required that all involved, including the Court, to reflect on elements of the legislation that could potentially improve the procedure to ultimately fulfill the SATA's objectives and officially establish legislative fairness in the proceedings. I present some suggestions for consideration to those who may be interested in further reflection:

i. The steps leading to an individual's listing, as well as the listing itself, are both confidential pursuant to the SATA. However, there is no provision in the law regarding confidentiality in appeals. Currently, in the context of the SATA, an appellant's name is not protected unless a confidential motion under the *Federal Courts Rule*, rule 151 "Filing of Confidential Material" is filed and granted. For the reasons outlined in this decision and the constitutional reasons, including the stigma associated with the term "terrorist," attention should be given to incorporating some protection of appellants' identities within the legislation, subject to the open court principle;

ii. The Minister's decision pursuant to section 15 of the SATA should give some explanation for the listing of an individual and specifically state whether paragraph 8(1)(a) or 8(1)(b) of the SATA applies, or both; and

iii. In order to ensure fairness in SATA appeal proceedings, the legislation should make it obligatory that an *amicus curiae* (or *amici curiae*) or a comparable entity be appointed with a role(s) and mandate(s) equivalent to the ones assigned in the present appeal (more on this in the constitutional reasons under the section entitled "The role and mandate of the *Amici*", at page 97).

XIII.Conclusion [Back to TABLE OF CONTENTS]

[143] I find the decision of the Minister's delegate reasonable in reference to subparagraphs 8(1)(b)(i) and (ii) of the SATA, but unreasonable in relation to paragraph 8(1)(a). Given that grounds under subparagraphs 8(1)(b)(i) and (ii) are sufficient to maintain the Appellant on the no-fly list, the decision to maintain his status as a listed person is reasonable. At the next 90-day review of the Appellant's case, in addition to determining whether grounds still exist for the listing of Mr. Brar pursuant to subsection 8(2), the Minister should also consider my findings when determining what section 9 directions, if any, should apply to Mr. Brar, in particular with respect to flying domestically.

[144] I have made the determinations in reference to subparagraphs 8(1)(b)(i) and (ii) knowing that my reasons could not be as public as I desired. I did so being aware that, unlike the situation in *Harkat*, the current appeal does not raise issues akin to imprisonment, conditional release, or the risk of torture if returned to the country of origin. Indeed, the challenge imposed on the Appellant in the current appeal is the inability to fly. This is not meant to minimize the difficulties that come with being listed, but rather to put things in perspective. Withdrawing information, as the *Amici* requested, would fail to adequately portray the case against the Appellant and would potentially render the SATA legislation ineffective. This, I submit, would neither respect the legislation's objective nor be in the interest of justice. Even though the Appellant may not have received as much information on the sources and details for each allegation as he would have wanted, the Appellant was heard, and he was able to respond to the case brought against him and offer adequate instruction to his counsel. Despite national security constraints, the proceedings were fair.

[145] Due to the dual proceedings—public hearings and confidential hearings—appealing the inclusion of two individuals on the SATA list is complex. In order to ensure a fair process in the interest of the parties and justice, my advice to the Chief Designated Judge is to make sure the judge assigned to these cases has plenty of time to assume the duties. In the present appeal, it was the case, and I truly did appreciate it.

JUDGMENT in T-669-19 [Back to TABLE OF CONTENTS]

THIS COURT'S JUDGMENT is that:

1. The appeal is allowed in part.

2. The decision of the Minister's delegate to add the Appellant's name on the no-fly list pursuant to subparagraphs 8(1)(b)(i) and (ii) of the SATA is reasonable.

3. The decision of the Minister's delegate to add the Appellant's name on the no-fly list pursuant to paragraph 8(1)(a) of the SATA is unreasonable. Therefore, at

the subsequent 90-day review, this finding must be taken into consideration and the various boarding directions for domestic flights that could apply to listings pursuant to subsection 9(1) of the SATA may be considered.

4. The present judgment includes the following annexes:

   Annex A—the complete public judicial history of the two appeals;

   Annex B— a public table of the 16 public allegations with comments;

   Annex C—confidential and complementary reasons, which include a confidential table of the 16 public allegations with confidential comments, as well as another confidential table dealing with undisclosed redacted information.

5. The Appellant asked for the costs of this appeal (revised appeal book, at page 5). None are granted.

Annex A [Back to TABLE OF CONTENTS]

Procedural history covering both Appeals (Mr. Brar and Mr. Dulai)

[1] Following the filing of the Notices of Appeal from Mr. Brar and Mr. Dulai, this Court ordered the Respondent to serve and file a public Appeal Book for each appeal, the contents of which were agreed upon by the parties. These Appeal Books contained numerous redactions made by the Respondent in order to protect the confidentiality of information or evidence it believed would be injurious to national security or endanger the safety of any person if disclosed.

[2] Subsequently, this Court ordered on October 7, 2019, that the Respondent file with the Designated Registry of this Court an unredacted Appeal Book for each appeal, containing and clearly identifying the information that the Respondent asserts could be injurious to national security or endanger the safety of any person if disclosed. The Court also ordered that the Respondent file classified affidavits with the Designated Registry explaining the grounds for the redactions as well as file and serve public affidavits explaining the nature of the redactions in a manner that does not injure national security or endanger the safety of any person. During the process of preparing the unredacted classified Appeal Books and the affidavits, a number of redactions were lifted by the Respondent, resulting in further disclosure to the Appellants.

[3] The Respondent also advised the Court and the parties that, pursuant to paragraph 16(6)(g) of the SATA, it was withdrawing certain classified information from the Appeal Book in response to Mr. Dulai’s statutory appeal. The Court accepted that the legislation provides for the withdrawal of information and issued an Order

authorizing the withdrawal of the information and the replacement of the relevant pages in the classified unredacted Appeal Book. However, the Court also ordered that, as a superior court of record, it would keep three copies of the Appeal Book containing the withdrawn information under seal in a separate location at the Designated Registry, at least until the issue of the withdrawn information retention had been dealt with.

[4] In response to the inclusion of redacted information in the Appeal Books, the Court appointed two *Amici* in an Order dated October 7, 2019. The Court originally ordered that the *Amici* be given access to the confidential information as of December 9, 2019, following which they would not be permitted to engage in two-way communication with the Appellants and their counsel, except with leave from the Court. At the request of the *Amici*, this was extended to January 20, 2020, in order to allow for more effective and meaningful communication with the Appellants in light of the redactions lifted by the Respondent.

[5] On January 16, 2020, an *ex parte* and *in camera* case management conference was held to discuss the next steps concerning the confidential information in this case. A public summary of the case management conference was provided to the Appellants shortly thereafter. During this case management conference, the Respondent and the *Amici* raised numerous legal issues regarding the withdrawn information (in Mr. Dulai's case only), the role of the *Amici* in these appeals, the bifurcation of the appeals process between the "disclosure phase" and the "merits phase," and the role of the designated judge. The Court proposed that the *Amici* and the Respondent meet to discuss the issues raised and correspond with the Court concerning the preliminary legal issues to be adjudicated before moving further in the appeals.

[6] Notwithstanding the Respondent's position that the Court should address, on a preliminary basis, the applicable standard of review in these appeals, which the Court found to be premature at this stage, a list of preliminary legal issues was agreed upon by the Appellants, the Respondent, and the *Amici* during a case management conference held on February 13, 2020. This list of preliminary questions was subsequently endorsed by the Court via its order dated February 18, 2020.

[7] On April 16, 2020, a public hearing via teleconference was held where the parties and the *Amici* made oral submissions on these legal questions.

[8] On June 20, 2020, this Court issued detailed Reasons in *Brar v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 729 (*Brar 2020*) answering the preliminary legal questions in these appeals. These Reasons addressed the role of the designated judge in appeals under the SATA, the role and powers of the *Amici* in these appeals, the procedure applicable to the withdrawal of information by the Minister under the SATA, and the possibility and purpose of *ex parte* and *in camera* hearings on the merits under the SATA. For more information on the facts up to the issuance of these Reasons, see paragraphs 22 to 28 in *Brar 2020*.

[9] On July 15, 2020, a public case management conference was held to discuss the next steps in the appeals.

[10] On July 17, 2020, an Order was issued to replace the Order dated October 7, 2019, appointing the *Amici* to better reflect the Court's Reasons dated June 30, 2020, and set out the next steps in the appeals.

[11] On September 10, 2020, the Respondent filed a replacement *ex parte* affidavit for the CSIS affiant due to the unavailability of the previous affiant. Additionally, in light of the reasons in *Brar 2020*, counsel for the Attorney General filed a supplemental *ex parte* affidavit from the same affiant on September 25, 2020.

[12] On September 22, 2020, an *ex parte* and *in camera* case management conference was held to discuss the progress of the appeals. A public summary of the discussion that took place was communicated to the Appellants in Public Communication No. 5.

[13] On October 5, 2020, an *ex parte* and *in camera* hearing was held. The AG's counsel and the *Amici* presented their agreed-upon lifts and summaries of redacted information to the Court in preparation for the upcoming *ex parte* and *in camera* hearing on the disputed redactions. This Court approved the proposed lifts and summaries. On October 7, 2020, a public summary of the hearing was issued to the Appellants in Public Communication No. 6.

[14] The *ex parte* and *in camera* examination and cross-examination of the AG's witnesses in Mr. Brar's appeal took place over six days on October 14, 15, 16, 19, 20 and 22, 2020. The AG's counsel presented evidence on the injury to national security of disclosing the contested redactions and summaries proposed by the *Amici*, as well as the reliability and credibility of the redacted information. The *Amici* questioned the justifications for the redactions and the summaries proposed by the AG's counsel, and questioned the affiants with documentary evidence. On November 3, 2020, a public summary of the hearings was communicated to the Appellants in Public Communication No. 7, which summarizes the hearings as follows:

> October 14, 2020
>
> Court began at 10:00 a.m. on October 14, 2020. The Minister called a CSIS witness who filed two (2) classified affidavits in these proceedings, one (1) on September 10, 2020, and another on September 25, 2020. The first affidavit relates primarily to the injury to national security of disclosing the redacted information and the supplementary affidavit relates primarily to the reliability and credibility of the redacted information.
>
> The witness gave evidence on various points, including:
>
> - aspects of CSIS' operations that are relevant to SATA and the PPP;
> - CSIS policies and procedures relating to the PPP including policies and procedures in relation to preparing, reviewing and updating case briefs;

- the Khalistani extremism threat in Canada;

- the reasons for Mr. Brar's nomination in exigent circumstances;

- subsequent instances where Mr. Brar's case brief was reviewed and/or revised, and Mr. Brar was relisted, including reasons for changes to Mr. Brar's case brief;

- the harm to national security that would result if each contested redaction and summary was disclosed; and

- the reliability and credibility of the redacted information, including the origin of some of this information and how it was assessed by the Service.

October 15, 2020

Court resumed in the morning of October 15, 2020, at 9:30 a.m. and the AG's counsel completed its examination of the CSIS witness late in the morning. Immediately after the examination in chief, the *Amici* commenced their cross-examination of the CSIS witness, which continued for the remainder of the day. The cross-examination on this day included questions on a variety of topics, including CSIS' policies, procedures and practices in respect of the PPP and the reliability and credibility of the redacted information.

During the cross-examination, the AG's counsel reminded the Court and the *Amici* that public counsel for the appellant would play an important role, and objected that the *Amici's* role should not be to duplicate that of public counsel. The Court endorsed those comments, and so directed the *Amici*. The *Amici* filed a number of exhibits on various topics.

October 16, 2020

The *Amici* continued to cross-examine the CSIS witness for part of the morning on October 16, 2020, at 9:30 a.m., after which Court was adjourned until Monday.

October 19, 2020

Court resumed the morning of October 19, 2020, at 9:30 a.m., and the *Amici* continued their cross-examination of the CSIS witness for the remainder of the day. The cross-examination continued to address the reliability and credibility of the redacted information.

October 20, 2020

The cross-examination of the CSIS witness continued for the morning of October 20, 2020. Among other things, the questions focused on the injury to national security of releasing certain information or summaries. After lunch, the AG's counsel conducted its re-direct of the CSIS affiant, which was concluded mid-afternoon.

October 22, 2020

Court commenced at 9:30 a.m. on October 22, 2020, and the Minister called a witness from Public Safety Canada. The Public Safety witness gave evidence on various points, including:

- the PPP, the PPAG and the PPIO;

- the documents that were prepared in relation to Mr. Brar's listing; and

- injury to national security that would result from releasing certain information.

> The *Amici* completed its cross-examination of the Public Safety affiant mid-afternoon on that same day, which focused on the PPP, the Passenger Protect Advisory Group, the Passenger Protect Inquiries Office and the documents relating to Mr. Brar's listing.

[15] The *ex parte* and *in camera* examination and cross-examination of the Minister's witnesses in Mr. Dulai's matter was held on November 16, 17 and 23, 2020. At the outset of the hearing, the AG's counsel and the *Amici* consented to an order that would render the evidentiary record resulting from the Brar and Dulai hearings subject to any arguments in relation to the weight, relevancy and admissibility of the evidence. The AG's counsel and the *Amici* agreed to an Order at the beginning of the hearing that would make the evidentiary record resulting from the Brar and Dulai hearings subject to any arguments over the weight, relevancy and admissibility of the evidence. This allowed for efficiencies in the Dulai examinations and cross-examinations. On December 2, 2020, a public summary of the hearings was communicated to the Appellants in Public Communication No. 8, which summarizes the hearings as follows:

> November 16, 2020
>
> Court began at 9:45 a.m. on November 16, 2020. The AG's counsel commenced by filing four (4) charts, namely (i) a classified chart listing all of the contested redactions and contested summaries, (ii) a classified chart itemizing the proposed uncontested redactions, uncontested summaries and lifts agreed to by the AG, (iii) a classified chart containing only the CSIS contested redactions and summaries organized in a way to guide the examination of the CSIS witness; and (iv) a classified chart listing excerpts from the transcript of the Brar hearings that apply to the present hearings.
>
> The Minister called the same CSIS witness that it called in the Brar appeal. This witness filed two (2) classified affidavits in these proceedings, one (1) on September 10, 2020, and another on September 25, 2020. The first affidavit relates primarily to the injury to national security of disclosing the redacted information and the supplementary affidavit relates primarily to the reliability and credibility of the redacted information.
>
> Because of the Evidentiary Order, the examination and cross-examination of the CSIS witness in the present appeal was shorter than it was in Brar. That said, the witness gave evidence on various points including:
>
> - the threat posed by Khalistani extremism;
> - the reasons for Mr. Dulai's nomination in exigent circumstances;
> - subsequent occasions where Mr. Dulai's case brief was reviewed and/or revised, and Mr. Dulai was relisted, including reasons for changes to Mr. Dulai's case brief;
> - the harm to national security that would result if each contested redaction and summary was disclosed; and
> - the reliability and credibility of the redacted information, including the origin of some of this information and how it was assessed by the Service.

> The AG's counsel completed its examination of the CSIS witness mid-day, after which the *Amici* commenced their cross-examination of the CSIS witness for the remainder of the day. The cross-examination on this day focused on the reliability and credibility of the redacted information, while also exploring the process by which Mr. Dulai was nominated for and has been maintained on the SATA list.
>
> November 17, 2020
>
> Court resumed in the morning of November 17, 2020, at 9:30 a.m. The *Amici* continued to cross-examine the CSIS witness, and questions focused on the reliability and credibility of the redacted information and the injury to national security of releasing certain information or summaries. The *Amici* filed a number of exhibits on various topics. The cross-examination was complete near the end of the day, after which the AG's counsel conducted a brief re-direct of the CSIS witness.
>
> November 23, 2020
>
> Court resumed at 10:00 a.m. on November 23, 2020. The Minister called a witness from Public Safety Canada. This witness also testified in the Brar appeal. Because of the Evidentiary Order, the examination and cross-examination of the Public Safety witness in the present appeal was shorter than it was in Brar.
>
> The AG's counsel conducted its direct examination for the first half of the morning, which focused primarily on the documents that were prepared in relation to Mr. Dulai's listing. The *Amici* completed its cross-examination of the Public Safety affiant by the lunch break, which focused on the documents relating to Mr. Dulai's listing and the process by which individuals are placed on the SATA list.

[16] On December 16, 2020, a public case management conference was held with all counsel to update the Appellants on the next steps in the appeals. In addition, the AG's counsel filed an *ex parte* motion record to strike certain evidence resulting from the *ex parte* and *in camera* hearings from the record.

[17] Following the *ex parte* and *in camera* hearings, on January 8, 2021, the AG's counsel and the *Amici* filed confidential submissions concerning the redactions.

[18] On January 14, 2021, the Court issued Public Communication No. 9 to inform the Appellants on the progress of the appeals in light of the COVID-19 situation and, more specifically, the recent orders enacted by the provinces of Quebec and Ontario relating to the pandemic. The AG's counsel and the *Amici* then informed the Court that they were of the view that in-person hearings in these matters should be postponed until the stay-at-home order was lifted.

[19] On February 4, 2021, an *ex parte* case management conference was held in the presence of the AG's counsel and the *Amici* to discuss the status of the appeals. I also raised a question of law, namely whether the principles set out by the SCC in *Harkat* in relation to the requirement to provide the Appellant(s) summaries or information that would permit them to know the Minister's case, applied to the SATA appeal scheme. I requested comments and further submissions from the AG's counsel and the *Amici*.

[20] On February 5, 2021, a public summary of the discussion was communicated to the Appellants in Public Communication No. 10.

[21] On February 9, 2021, counsel for the Appellants requested permission to provide the Court with submissions respecting the above question of law. The Court granted leave. Counsel for the Appellants, the AG's counsel and the *Amici* filed their written representations on February 19, 2021. The AG's counsel filed their reply on February 24, 2021.

[22] On February 24, 2021, the *Amici* filed *ex parte* written representations concerning the AG's counsel's motion to strike certain evidence from the record.

[23] On March 3, 2021, an *ex parte* case management conference was held in the presence of the AG's counsel and the *Amici* to discuss the possible adjournment of the *ex parte* and *in camera* hearing scheduled for March 4, 2021. A public communication was issued to all parties to explain that the Court proposed, and the AG's counsel and the *Amici* agreed, to adjourn the hearing scheduled for the next day due to COVID-19 related reasons and schedule an *ex parte* and *in camera* case management conference on March 9, 2021, to discuss the specific legal issues for which the Court was seeking to receive submissions.

[24] *Ex parte* and *in camera* hearings were held on June 16 and June 17, 2021. The purpose of the hearings was for AG's counsel and the *Amici* to make submissions on disclosure, the reasonably informed threshold, and the AG's motion to strike. On July 21, 2021, a public summary of the hearings was communicated to the Appellants in Public Communication No. 11 which can be found below:

> June 16, 2021
>
> Court commenced at 9:30 a.m. on June 16, 2021, and submissions were made by the AG's counsel and the *Amici* on disclosure and the requirement to reasonably inform the appellants.
>
> AG Submissions on Disclosure and Reasonably Informed
>
> The AG's counsel filed the following documents at the commencement of the proceedings:
>
> - an updated chart for each file containing the contested claims and summaries;
> - an updated chart for each file containing the summaries and redactions agreed to by the AG's counsel and the *Amici*;
> - an updated chart for each file containing the lifts made by the AG;
> - a chart for each file listing all of the allegations against the appellants that have been disclosed, partially disclosed or summarized, and withheld; and
> - a copy of the Recourse Decision in each file reflecting the agreed-upon summaries and redactions and the lifts made by the AG.

The AG's counsel made submissions on the applicable test for disclosure in appeals under section 16 of the SATA. The AG's counsel argued that if disclosure of information would result in injury to national security or endanger the safety of any person, it should not be disclosed. Additionally, it argued that SATA does not authorize the Court to balance different interests that could be at play when assessing disclosure, including whether or not the appellant is reasonably informed. The AG's counsel then went through the chart containing the contested claims and summaries to highlight why lifting or summarizing these claims would result in injury to national security.

The AG's counsel then made submissions on the reasonably informed threshold and argued that at this point in time, the appellants are reasonably informed. The AG's counsel highlighted that the scheme allows for some information to not be disclosed or summarized, and that the assessment of whether or not the appellants are reasonably informed is fact specific and should be made throughout the appeals. The AG's counsel stressed that the threshold under subsection 8(1) of SATA, namely "reasonable grounds to suspect," must inform the Court's consideration of whether or not the appellants are reasonably informed.

Amici's Submissions on Disclosure and Irreconcilable Tension

The *Amici* made submissions on two issues.

First, the *Amici* argued that the decision of the SCC in *Harkat* requires (in circumstances where redacted information or evidence cannot be lifted or summarized without national security injury, such information comes within the incompressible minimum amount of disclosure that the appellant must receive in order to know and meet the case against him), that the Minister withdraw the information or evidence whose non-disclosure prevents the appellant from being reasonably informed: *Harkat* para 59. The *Amici* argued that this situation, described in *Harkat* as an irreconcilable tension, arises in both the Brar appeal and the Dulai appeal. The *Amici* further argued that given the Minister's disagreement with the *Amici* that irreconcilable tensions arise in these appeals, he will not withdraw evidence of his own motion. The Court must therefore decide whether or not the appeals involve irreconcilable tensions.

To that end, the *Amici* proposed a form of order the Court should make if it agrees with the *Amici* that either or both of the appeals involve situations of irreconcilable tension. The order would identify the specific information or evidence that gives rise to the irreconcilable tension and declare that the Minister must withdraw that information or evidence within a fixed period (the *Amici* proposed 60 days), failing which the Court will be unable to determine the reasonableness of the appellant's listing and must allow the appeal.

Second, the *Amici* reviewed the contested claims and summaries in each appeal. In some instances, the *Amici* argued that the AG's redactions were not necessary (because the information or evidence was not injurious). In other cases, the *Amici* agreed that disclosure would be injurious but proposed a summary that would avert the injury while allowing the appellant to be reasonably informed of the case he must meet. In other cases still, the *Amici* argued that the information or evidence could not be lifted or summarized without injury, but had to be disclosed for the appellant to be reasonably informed. In these latter cases, the *Amici* asked the court to make the declaration of irreconcilable tension described above.

The *Amici* emphasized that the applicable standard is that of a "serious risk of injury," and that the judge must ensure throughout the proceeding that the Minister does not cast too wide a net with his claims of confidentiality.

Other Issues

The parties discussed other procedural issues, including the format and timing for filing a revised appeal book following the Court's decision on disclosure, a timeline for appealing this decision and staying the order if an appeal is filed, and potential redactions to the list of exhibits.

June 17, 2021

The hearing resumed at 9:30 a.m. on June 17, 2021, and the Court heard arguments from both the AG's counsel and the *Amici* on the AG's motion to strike. The AG withdrew its motion to strike following the mid-day break.

In the afternoon, the Court discussed with the *Amici* and AG's counsel the possibility of preparing a further summary of the evidence in the *ex parte* and *in camera* hearings, to expand on the summaries provided in Public Communication No.7 (T-669-19) and Public Communication No. 8 (T-670-19) in a way that would not be injurious to national security. The AG's counsel and the *Amici* agreed to prepare a draft summary in this regard.

The Court asked that this summary include confirmation that there is no information or evidence against either Appellant in relation to 8(1)(a) of SATA, and that both listings concern information and evidence in respect of 8(1)(b).

[25] The issues related to the redacted list of exhibits and disclosure of additional information through summaries were a constant endeavour after the June 2021 hearing. The Appellants were informed of this through Public Communication No. 12. Concerning the list of exhibits, it was later agreed that it would be released in a redacted format once the AG's counsel and the *Amici* had reviewed the determinations made on the redactions at issue as a result of the *ex parte* and *in camera* hearings. As for the summary of additional information, counsel for both the Appellants and Respondent undertook to submit it no later than August 31, 2021. As soon as it was submitted, reviewed, and then agreed upon by the undersigned, it was released as Public Communication No. 13 on August 31, 2021, after an *ex parte* and *in camera* hearing was held the same day.

[26] From then on, all outstanding matters were taken under reserve with the objective of issuing an Order and Reasons as soon as possible, which was done on October 5, 2021, and resulted in two Orders (*Brar 2021* and *Dulai 2021*). The issuance of orders was announced in Public Communication No. 16.

[27] On October 12, 2021, a Revised Appeal Book was filed and made available to all parties. This resulted in a broader scope of disclosure and more information was revealed to the Appellants.

[28] On November 1, 2021, a case management teleconference was held to discuss all outstanding matters, including the opportunity to be heard for both the Appellants

and the Minister pursuant to paragraph 16(6)(d) of the SATA. Then, on December 1, 2021, the Court issued an order regarding the timing for the filing of affidavits and submissions, and the scheduling of hearings planned for 2022.

[29] On December 7, 2021, and at the request of the presiding judge, an *ex parte* and *in camera* case management conference was held to discuss next steps and other scheduling matters. The Court requested additional *ex parte* and *in camera* submissions to be filed in respect of the classified and public evidence on the record that support the allegations in each appeal. A schedule was established and the Court set a few days aside in May 2022 to hold an *ex parte* and *in camera* hearing following the public hearings, if deemed necessary. This information was confirmed in Public Communication No. 17, issued on December 8, 2021.

[30] On January 31, 2022, the Court received further affidavits from Mr. Dulai including personal material that, in the view of his counsel, could jeopardize Mr. Dulai's safety or security if made public. As a result, in a letter dated January 31, 2022, his counsel requested the option to file a "public" version of the affidavit in which sensitive information would be redacted.

[31] On February 2, 2022, the AG's counsel filed their written and confidential submissions.

[32] The Court issued an oral direction on February 7, 2022, in response to Mr. Dulai's letter and the AG's counsel's reply of February 4, 2022. The Court stated that it was satisfied with the parties' agreed-upon proposal for Mr. Dulai to send a list of proposed redactions to the AG's counsel for discussion and parties to reach an agreement.

[33] On February 25, 2022, the *Amici* filed their written and confidential submissions.

[34] On March 1, 2022, the AG's counsel filed their public affidavits for each file (Mr. Brar and Mr. Dulai).

[35] On March 9, 2022, the AG's counsel filed a confidential reply in response to the *Amici*'s confidential submissions.

[36] On March 17, 2022, a public case management teleconference was held to discuss details of planned public hearings in Vancouver.

[37] On March 21, 2022, both Appellants filed their written representations related to the allegations against them.

[38] On March 23, 2022, the AG's counsel submitted a letter in response to the case management conference and Public Communication No. 11 confirming that both listings (Mr. Brar and Mr. Dulai) were based on paragraph 8(1)(b) of the SATA and not paragraph 8(1)(a).

[39] On April 5, 2022, the AG's counsel filed classified submissions pinpointing the classified evidence, if any, on which it relies in support of each of the public allegations against the Appellants found in the October 5, 2021, Amended Public Order and Reasons.

[40] On April 11, 2022, Counsel for the Minister filed their public submissions.

[41] On April 14, 2022, the *Amici* filed classified responding submissions to the AG's counsel's classified submissions.

[42] Public hearings took place over four days (April 19-22, 2022) in Vancouver, British Columbia. Both Mr. Brar and Mr. Dulai were present and testified, in addition to Ms. Lesley Soper from the Department of Public Safety Canada. Counsel for both Appellants and Respondent were present. The two *Amici* were also in attendance. The purpose of these hearings was to provide the Appellants and the Minister with an opportunity to be heard. A summary of the hearings can be found below:

> April 19, 2022
>
> Court commenced at 9:30 a.m. (PT) on April 19, 2022. Both Appellants were present and examined by their respective Counsel. Counsel for the Minister also questioned Mr. Dulai.
>
> The examination consisted of a review of each Appellant's background and questions related to the specific allegations against each one of them.
>
> In both cases, the Appellants answered all the questions and testified on the impact the listing had on them, their families and their businesses.
>
> They both categorically denied being involved in any terrorist-related activities, whether at home or abroad.
>
> April 20, 2022
>
> Court commenced at 9:30 a.m. (PT) on April 20, 2022.
>
> Counsel for the Minister introduced their witness, Ms. Lesley Soper from Public Safety Canada.
>
> Counsel for both Appellants examined Ms. Soper. Several questions regarding her four affidavits were posed focusing on her job and role.
>
> In Mr. Dulai's case, questions were raised about the administrative update and amended direction that occurred in April 2018, media reports and information obtained as a result of alleged mistreatment.
>
> In the case of Mr. Brar, questions were asked about the nature of the advisory group finding, the decision-making process and the nominating agency. Additionally, Counsel for Mr. Brar raised concerns about the credibility and reliability of the sources used to justify the listing of Mr. Brar.
>
> Counsel for Mr. Dulai made submissions on procedural fairness under the common law and section 7 of the *Charter*. Counsel stated that the Minister's delegate violated Mr.

Dulai's procedural fairness rights during the administrative recourse process by failing to give him adequate notice of the case to meet before requiring his response, and by failing to provide reasons for his decision to maintain his name on the no-fly list. As a result, Mr. Dulai seeks a declaration from the Court to this effect.

Counsel for Mr. Dulai also submitted that an irreconcilable tension remains between Mr. Dulai's right to an incompressible minimum amount of disclosure and national security concerns at the appeal stage. Counsel explained that certain information cannot be disclosed to Mr. Dulai because of national security concerns. Consequently, Mr. Dulai cannot know the case to meet and defend himself accordingly. Counsel submits that the only remedy for this irreconcilable tension is for the Minister to withdraw the undisclosable information. If this remedy is not granted, the proceedings will remain unfair. This, in turn, will violate natural justice and Mr. Dulai's rights under section 7 of the *Charter*.

Counsel for Mr. Dulai also raised concerns regarding the choice of witness for public hearings. Despite the fact that Ms. Soper did not have any role in Mr. Dulai's listing, she was the witness retained for the hearing while everything related to the CSIS witness remained out of reach for the Appellant. Consequently, the Appellant cannot be satisfied that alleged foreign interference is not related to Mr. Dulai's listing and cannot be satisfied that the decision was not political. Important rights are at issue when the label of terrorist is involved and this creates a problem.

Counsel for Mr. Dulai said that he feels scared about speaking freely and that he is concerned at the prospect that a country he advocates against [India] is potentially pulling the strings. Mr. Dulai had to put his entire life before this Court in part because he does not have what he needs to respond to the case against him. In these circumstances, Mr. Dulai is owed a high degree of procedural fairness.

April 21, 2022

Court commenced at 9:30 a.m. (PT) on April 20, 2022.

Counsel for Mr. Dulai carried on with their submissions arguing that the case against Mr. Dulai was based to a decisive degree on undisclosed information and that according to *Harkat* at para 59 "the Minister must withdraw the information or evidence whose nondisclosure prevents the named person from being reasonably informed."

His counsel also said that Mr. Dulai was unable to give meaningful direction to his counsel and therefore the *Amici* were not able to represent Mr. Dulai's interests.

Counsel stated that the standard of review in this case was correctness to which the Judge agreed.

Counsel reviewed most of the allegations against Mr. Dulai and provided explanations aimed at casting a doubt on the credibility of sources and/or the authenticity of the intent behind those allegations.

In summary, Mr. Dulai's lawyer feels that the Government of India has him on its radar and is attempting to discredit him because he is a prominent figure who could pose a threat to them.

Counsel for Mr. Brar indicated, at the beginning of their submissions, that they were not pursuing the amended constitutional question of overbreadth, nor the one related to section 6 of the *Charter*. They submitted that if the Court found that Mr. Brar was not provided with

the incompressible minimum disclosure then it needed to ignore the reasonableness of the decision.

Counsel for Mr. Brar argued that section 7 of the *Charter* was engaged in Mr. Brar's case because being labelled as a terrorist engages security of the person. The fact that Mr. Brar was labelled by the Canadian government as a terrorist imposes psychological stress. Mr. Brar feels like he is being followed. The allegations and accusations are criminal ones. Among the highest seriousness in our society today. The mere fact of accusing someone of those crimes, this is what is different from the ordinary stresses of living in a society.

Counsel for Mr. Brar submitted that when section 7 is engaged, and they believe it is, the person must know the case and have the opportunity to meet that case. While Mr. Brar takes no issue with the role of the *Amici* in this case, their participation is only as good as Mr. Brar is receiving enough information to direct both public counsel and the *Amici*. Confidential sources need to be tested to ensure their reliability.

Counsel for Mr. Brar agreed with the standard or review set forward by the Court, i.e., correctness and no deference. However, they disagree with the claim that Mr. Brar received the incompressible minimum disclosure. They submit that the Respondent's written submissions fail to address the new information that is before this Court. If the merit can only be addressed at a *ex parte* and *in camera* meeting than it reinforces the point that Mr. Brar did not received the incompressible minimum disclosure. Counsel states that Public Communication No.13 mentions additional evidence (about credibility and reliability of information) that was added and to which the Appellant is not privy. The concern about why the CSIS' evidence is preferred over that of Mr. Brar remains.

Counsel for Mr. Brar went over the allegations against him and pointed out that the narrative seems to have changed over time with some information that was withdrawn. For example, the allegation related to the training of youths appears in the first two case briefs but is not included in the subsequent one. Eventually, those actions were attributed to Mr. Cheema. The Appellant does not know the sources of these allegations but questions the rationale justifying why some have been withdrawn. Counsel submits that if the sources have been found to be unreliable, then the credibility of other evidence provided by these sources is doubtful.

Counsel for Mr. Brar stated that in and of itself, there is nothing wrong with anti-India activities or being an operational contact for someone, as opposed to what is claimed in the allegations. There are additional factors to consider in Mr. Brar's case, such as the fact that his father may make him a target for the Government of India in addition to his advocacy for social issues in the community. The consulate ban, which was declared in December 2017 and included Mr. Brar's name as a contact, could also play against him.

Lastly, Counsel for Mr. Brar introduced the idea that the timeline of Prime Minister Trudeau's trip to India and the listing of Mr. Brar may be connected, which would indicate foreign interference.

April 22, 2022

Court commenced at 9:30 a.m. (PT) on April 22, 2022.

Counsel for the Minister of Public Safety Canada informed the Court they would be relying on their written submissions and that three aspects would be covered, namely the standard of review, section 7 of the *Charter* and section 6.

They began by saying that neither Appellant had advanced arguments in terms of their liberty interest and that the Minister's position was that section 7 (liberty) was not engaged and had not been interpreted as the right to choose a means of transportation.

When it comes to security of the person, Counsel for the Minister submitted that recent jurisprudence (*Moretto v Canada (Citizenship and Immigration)*, 2019 FCA 261) had determined that stand-alone stigma did not engage section 7 of the *Charter*. The Minister is of the opinion that the Appellants' evidence of being saddened, scared and frustrated needs to be looked at from a broader picture and that it is not enough to meet the threshold required to engage section 7.

The Minister's Counsel claims that the Appellants were given the incompressible minimum disclosure during the appeal proceedings. The Appellants have shown they knew the case against them through the precision with which they addressed different issues. Counsel adds that the two *Amici* also acted as substantial substitutes.

The Minister's Counsel argues that the standard of review in these two cases should be reasonableness and not correctness, as agreed with the Court the day prior. Counsel submits that in the SATA context, a court that receives new information with regards to credibility has to go back to the decision and determine its reasonableness. On a statutory appeal, the court has to use the standard provided. The fact that the judge has more information still requires the court to decide if the decision is still tenable.

Counsel argued that if the decision is reasonable but is not the decision the judge would have made, it is still reasonable, as this is not about a *de novo* determination. Looking at the whole of the record, the question is whether the decision is reasonable and tenable. That is reasonableness.

Counsel for the Minister stated that one did not need to differentiate between paragraph 8(1)(a) or 8(1)(b) in a SATA appeal as the outcome remained the same; being listed. The judge disagreed.

When it comes to section 6 of the *Charter*, Counsel for the Minister argued that subsection 6(2) (interprovincial) was not infringed under the SATA because the law does not create a differential treatment among people. Counsel submitted that the Appellants have the ability to go to other provinces, just not by air. This does not create a differential treatment. The *Charter* does not protect the type of transportation. Moreover, the Appellants have given evidence to the effect that they have been travelling. Although travel time has been longer, they still travelled.

When asked by the Judge if an infringement to section 6 of the *Charter* could be saved under section 1 in this particular case, Counsel for the Minister answered that the required analysis was that of *Doré*, and not section 1 (*Oakes*). Counsel added that every breach of section 6 rights is proportionate and balanced based on national security considerations and that a lack of reasons does not constitute a breach of procedural fairness. The Minister relied on the recommendation as being the reasons.

The AG's counsel was present at the hearing and claimed that the Appellants had been reasonably informed and had received the incompressible minimum disclosure. Counsel went on to say that while Appellants can never know everything, they certainly know enough in light of their submissions and the *Amici*'s. There would not be a need for subsection 16(6) if they knew everything. *Harkat* has to be applied on a case-by-case basis.

> The AG's counsel specified that they would argue in *ex parte* submissions that the reasonable grounds to suspect threshold has been met. This is based on confidential information but also on some responses the Appellants have given publicly.
>
> For their part, the *Amici* submitted that they had specifically identified undisclosed allegations that do not come with the incompressible minimum. They maintain that there remains allegations to which the Appellants are unable to respond and therefore unable to direct their counsel and the *Amici*. They argue that this Court should make a *Harkat* declaration in respect to specific allegations – this invites the Minister to either find a way to make further disclosure or failing that, withdraw the allegations.

[43] An *ex parte* and *in camera* case management conference was held on April 27, 2022, at the Federal Court in Ottawa. Both *Amici* and AG's counsel were present. The purpose of the case management conference was to discuss different topics in relation to the final steps of the statutory appeals.

[44] Public Communication No. 19 was issued on April 28, 2022. It gave directions following the *ex parte* and *in camera* case management conference held the day before.

[45] On April 29, 2022, Sadaf Kashia, a lawyer from Edelmann & Co. Law Corporation specializing in complex issues concerning U.S. and Canadian immigration, provided submissions about the circumstances in which individuals may be denied admission to the United States and how that informs what may be inferred from Mr. Dulai's denial of admission on May 27, 2017.

[46] On May 6, 2022, the Court issued Public Communication No. 20 stating that it had received the NNSICOP unredacted Report on the Prime Minister's trip to India in February 2018, which would be opened and reviewed only by the judge at that time. Additional consultation was to be undertaken should the Court have determined that further disclosure was necessary.

[47] On May 16, 2022, the Court issued Public Communication No. 21 stating that it had reviewed the NSICOP Report and that the portions pertinent to the issues relating to the appeals would be made available to the AG's counsel and *Amici* for their comments, if any.

[48] The *Amici* filed written classified submissions on May 18, 2022.

[49] The Minister filed written classified submissions concerning the NSICOP report on May 18, 2022.

[50] Both the *Amici* and the Minister filed written classified reply submissions on May 24, 2022.

[51] On May 25, 2022, the Court issued Public Communication No. 22 stating that it had read the final confidential submissions and replies of the Minister and the *Amici*, and had decided to take both appeals under reserve without any further *ex parte* and *in camera* hearing.

Annex B [Back to TABLE OF CONTENTS]

PUBLIC ALLEGATIONS AND RESPONSES—Mr. Brar

16 Public Allegations	**Mr. Brar's statements in response to the 16 public allegations**	**Minister's submissions relating to allegations**	**Comments from the Court concerning allegations**
Reference: Mr. Brar's revised appeal book, October 12, 2021.	Reference: Mr. Brar's Affidavit, January 27, 2022.	Reference: Brar—Respondent's Memorandum of Fact and Law, April 11, 2022.	
1. Mr. Brar is suspected to be a facilitator of terrorist-related activities. He is involved in Sikh extremism activities in Canada and abroad. Revised appeal book: page 9 and page 72.	51. I have never engaged in or facilitated terrorist-related activities within or outside of Canada. I have never been a part of a terrorist organization or facilitated such activities. I have never engaged in fundraising in support of terrorist attacks overseas or anywhere. I have never promoted extremism. I have never engaged in or promoted the radicalization of youth. While I support an independent Khalistan, I have never engaged in extremist activities in support of an independent Khalistan. I have never planned or facilitated attacks in India by means of weapons procurement or otherwise. I have never contributed financially, either directly or		Allegation considered

	indirectly, to extremist movements.		
2. Mr. Brar is a Canada-based Sikh extremist who has been engaged in, and will continue to be engaged in terrorist activities, particularly in fundraising in support of terrorist attacks overseas; promoting extremism, including the radicalization of youth, with the aim of achieving Khalistan independence; and attack planning and facilitation, including weapons procurement, to conduct attacks in India. Revised appeal book, page 12.	51. I have never engaged in or facilitated terrorist-related activities within or outside of Canada. I have never been a part of a terrorist organization or facilitated such activities. I have never engaged in fundraising in support of terrorist attacks overseas or anywhere. I have never promoted extremism. I have never engaged in or promoted the radicalization of youth. While I support an independent Khalistan, I have never engaged in extremist activities in support of an independent Khalistan. I have never planned or facilitated attacks in India by means of weapons procurement or otherwise. I have never contributed financially, either directly or indirectly, to extremist movements.		This allegation is considered in part. The allegation that Mr. Brar has radicalized youth is not supported by the evidence.
3. Mr. Brar is a subject of Service investigation due to his association related to Sikh extremism and being an international operational contact for his father, Lakhbir Singh Brar (aka RODE), the Pakistan-based leader of the International Sikh Youth	19. To my knowledge, my father was one of the leaders of an organization that was called the International Sikh Youth Federation (ISYF). He remained active in the ISYF until 2002 and, as far as I am aware, has not been involved with the	a. He is the son of Lakhbir Singh Brar who has been residing in Pakistan, and was the leader of the International Sikh Youth Federation (ISYF) from 1996 to 2002, which has been	Allegation considered

Federation (ISYF), which is a listed terrorist entity in Canada. Revised appeal book, page 9.	ISYF since that time. My father is now 69 years old. In 2018 he underwent open heart surgery. 27. While the term “Sikh extremist” is not defined in any of the materials I have reviewed in the appeal book, I understand the term to refer to Sikhs who hold extreme or fanatical views and resort to or advocate for the use of violence to achieve those goals. When the terms “Sikh extremist” or “Sikh extremism” are utilized in this affidavit that is the definition I attribute to them. 28. I am not, nor have I ever been, knowingly associated with Sikh extremism. I do not know what is meant by “international operational contact” but my father, as mentioned above, is not the leader of the ISYF and to my knowledge he has not been involved with the ISYF since 2002. 58. The appeal book indicates, in several places, that I have been the subject of an investigation by the Service. Because of my father, I came into contact with various CSIS agents	listed as a terrorist entity in Canada since 2003. (page 22)	

	on a regular basis throughout my childhood and up until my father left Canada in 1991. I believe I was first contacted by a CSIS agent, as an adult, in the mid-1990’s when I was living in Brampton. After that first contact, various CSIS agents would come speak to me to gather information about what was happening in my community. On one occasion, I was asked to work with CSIS, and I agreed, but the agent never followed up. I estimate that between the mid-90’s and 2018 I was approached by, and spoke to, CSIS agents on 15 to 20 different occasions. It was never my understanding, based on these conversations, that I was the subject of any investigation.		
4. Mr. Brar is associated with the ISYF. Revised appeal book, page 73.	20. I have never been a member of the ISYF in Canada or elsewhere.	a. He is the son of Lakhbir Singh Brar who has been residing in Pakistan, and was the leader of the International Sikh Youth Federation (ISYF) from 1996 to 2002, which has been listed as a terrorist entity in Canada since 2003. (page 22)	This allegation is not considered as it is not corroborated.

5. Mr. Brar has close connections to both Canadian, and internationally-based, Sikh extremists, including Gurjeet Singh Cheema and Mr. Dulai. Revised appeal book, page 9 and page 73.	30. To my knowledge I have no connection to Canadian or internationally-based Sikh extremists. 32. I have no association with anyone named Gurjeet Singh Cheema. I know of an individual named Gurjeet Singh Cheema because of my involvement in the Ontario Gurdwaras Committee. I believe he is associated with or a member of one of the temples that fall under Ontario Gurdwaras Committee. I do not know him personally.	d. Mr. Brar met Parvkar Singh Dulai at a Vaisakhi parade in Toronto and they became business partners in December 2017 in a car rental company. (page 22) e. He knows a man named Gurjeet Singh Cheema through his involvement in the Ontario Gurdwaras committee. (page 22)	Allegation considered
6. Mr. Brar is a close contact and business associate of Mr. Dulai. Mr. Dulai has been described as a very vocal supporter of Khalistan. Revised appeal book, page 10 and page 15.	44. I first met Parvkar Dulai at a Vaisakhi parade in Toronto. In December 2017, we decided to enter into a business partnership. The Vancouver location of my car rental company, Yellow Car Rental, is co-owned with Mr. Dulai. 45. Like me, Mr. Dulai is a practicing Sikh and supports an independent Khalistan. I am not aware of any connection that Mr. Dulai may have to terrorism or terrorist entities and I do not believe that he has any such connections. If I had such information, I would not associate with him.	d. Mr. Brar met Parvkar Singh Dulai at a Vaisakhi parade in Toronto and they became business partners in December 2017 in a car rental company. (page 22)	Allegation considered

7. Mr. Brar and Gurjeet Singh Cheema had been planning an India-based terrorist attack. Most specifically, it was revealed that during his visit to Pakistan in 2015, Brar planned for the attack on the behest of the Pakistan Inter-Services Intelligence Directorate (Pak ISI), and his job was to make available arms and ammunitions in India. Revised appeal book, page 9, page 10 and page 16.	32. I have no association with anyone named Gurjeet Singh Cheema. I know of an individual named Gurjeet Singh Cheema because of my involvement in the Ontario Gurdwaras Committee. I believe he is associated with or a member of one of the temples that fall under Ontario Gurdwaras Committee. I do not know him personally. 33. I have never planned a terrorist attack, Indian-based or otherwise. I have never done anything at the behest of the Pak ISI. I have never made arms or ammunition available to anyone anywhere. 35. As stated above, I have never planned an Indian-based terrorist attack. I do not know anyone named Mann Singh or Sher Singh so I did not indoctrinate them, or anyone else, or motivate them, or anyone else, to conduct terrorist attacks. I have never provided anyone with arms or ammunition or provided theoretical training in the handling of such arms. I have not been to India since I left with my family to	b. Mr. Brar travels to Pakistan on a semi-regular basis. (page 22) e. He knows a man named Gurjeet Singh Cheema through his involvement in the Ontario Gurdwaras committee. (page 22)	Allegation considered

	immigrate to Canada in 1987.		
8. Information dated early 2018, revealed that Brar was among a group of individuals linked to, and cooperating with, the Pak ISI to thwart the Indian Government's community outreach and reconciliation efforts. An April 17, 2018, media report identified Brar as a Canadian Khalistani extremist having received a Pakistani visa for a Sikh pilgrim visit in April 2018. The report referred to a meeting in Lahore between the leaders of Lashkar-e-Tayyiba (LeT) and Sikh militants, and claimed that Pakistan is inciting pro-Khalistan/anti-India sentiment. The report also referred to the Pak ISI being hand-in-glove with Pakistani terrorists supporting global Khalistanis. Pakistan denied India's allegations. Included in the article was a photograph of Brar's visa and passport page with the heading, "Proof #6 Pak Visas for Canadian Khalistan Extremists". Revised appeal book, page 10.	23. I have reviewed the April 17, 2018, article from Newsl8 found at pages 80 through 82 of the appeal book filed in this appeal. I do not know how the Indian media obtained a copy of my passport and visa. 24. At no point during my time in Pakistan did I meet with anyone known to me to be the leader, or a member, of Lashkar-e-Tayyiba or any other militant group. 37. I have never cooperated with the Pak ISI to thwart community outreach or reconciliation efforts by the Indian government.	b. Mr. Brar travels to Pakistan on a semi-regular basis. (page 22) c. He travelled to Pakistan on March 31, 2018, to April 19, 2018. (page 22)	Allegation considered
9. Information dated November and December 2017 described Brar as a prominent Sikh extremist	**Training & ammunition** 35. As stated above, I have never planned an	b. Mr. Brar travels to Pakistan on a	Allegation is partly considered. The allegation that Mr. Brar is the

element in Canada engaged in anti-India activities. Mr. Brar is described as the President of ISYF's youth wing in Canada. Brar is reportedly closely associated with a number of Canada-based Sikh radical elements. During Brar's 2015 visit to Pakistan, he had tasked Cheema to arrange to obtain arms and ammunition in India. Mr. Brar was known to have also visited Pakistan in the Fall of 2016 and again in 2017. He is reportedly collecting funds from members of the Canadian Sikh community in order to renovate some Gurdwaras in Pakistan and is suspected to have been diverting a major part of the funds for anti-India activities. Revised appeal book: page 10, page 14, and page 15.	Indian-based terrorist attack. I do not know anyone named Mann Singh or Sher Singh so I did not indoctrinate them, or anyone else, or motivate them, or anyone else, to conduct terrorist attacks. I have never provided anyone with arms or ammunition or provided theoretical training in the handling of such arms. I have not been to India since I left with my family to immigrate to Canada in 1987. **ISYF President** 39. I am not, nor have I ever been, a member, let alone the President, of the ISYF youth wing in Canada or elsewhere. My understanding is that the ISYF no longer exists and has not existed for many years. **Collecting funds** 41. I have never been involved in collecting funds for the renovations of Gurdwaras in Pakistan. I am aware of several different committees that have done that, but I personally am not a part of any of those committees. I do not know what is meant by "anti-Indian activities", but as I have not	semi-regular basis. (page 22) e. He knows a man named Gurjeet Singh Cheema through his involvement in the Ontario Gurdwaras committee. (page 22)	president of the ISYF's youth wing in Canada is not supported by the evidence.

	collected funds for renovations to Gurdwaras in Pakistan I can say that I have never diverted such funds to anti-Indian activities. 42. The only time I recall having sent money overseas in the last ten years is payment for invoices from Amarjeet Kaur in Punjab. Ms. Kaur managed my advertising and Google ads for my company Yellow Car Rental. Attached as Exhibit "C" to this affidavit are invoices from Ms. Kaur.		
10. Media reporting of April 2007 presented Dulai as the Vaisakhi parade organizer in Surrey, B.C. that included a tribute to late Babbar Khalsa (BK) founder Talwinder Singh Parmar. (Parmar was found by the B.C. Supreme Court to be the leader of the conspiracy to blow up the two Air India planes on June 23, 1985). Revised appeal book: page 11.	DULAI	d. Mr. Brar met Parvkar Singh Dulai at a Vaisakhi parade in Toronto and they became business partners in December 2017 in a car rental company. (page 22)	This allegation is not considered. It concerns Mr. Dulai and is therefore for information only.
11. Mr. Brar was involved in collecting funds, and these funds were transferred to his father and another individual in Pakistan for further	41. I have never been involved in collecting funds for the renovations of Gurdwaras in Pakistan. I am aware of several different committees that have done that, but I personally am not a part		Allegation considered

distribution to terrorist families in Punjab. Revised appeal book: page 11 and page 14.	of any of those committees. I do not know what is meant by “anti-Indian activities”, but as I have not collected funds for renovations to Gurdwaras in Pakistan I can say that I have never diverted such funds to anti-Indian activities. 42. The only time I recall having sent money overseas in the last ten years is payment for invoices from Amarjeet Kaur in Punjab. Ms. Kaur managed my advertising and Google ads for my company Yellow Car Rental. Attached as Exhibit “C” to this affidavit are invoices from Ms. Kaur.		
12. Mr. Brar and others have discussed the incarceration of several individuals in Punjab and how financial and legal support was needed for them, including financial support for Jagtar Singh Johal. Revised appeal book: page 11 and page 15.	47. I do not know Jagtar Singh Johal and I have never met him. However, I am familiar with his name and am aware of numerous allegations that he has been tortured by the Indian government while in their custody. I have openly supported the worldwide movement to hold the Indian government accountable for the treatment of Mr. Johal and the denial of his basic human rights.	f. Mr. Brar met with Jagtar Singh Johal’s brother in 2018 when Johal’s brother visited Toronto to advocate for his brother’s release from Indian detention. Mr. Brar, Shamsher Singh and Mr. Johal met with MP Raj Grewal and now leader of the NDP Jagmeet Singh to advocate for Mr. Johal’s release. (page 22)	Allegation considered

	48. I have never collected funds on Johal's behalf. I have never sent funds to my father for any purpose. The only time I have provided financial contributions to my father was in relation to his open-heart surgery in 2018. I paid for the surgery and medications, but those funds were paid directly to the hospital and not to my father.		
13. Mr. Brar travelled to Pakistan in late March 2018, where he visited his father, and returned to Canada on April 19, 2018. Revised appeal book: page 12.	21. In March 2018, my wife and I travelled to Pakistan. The purpose of our trip was to visit religious sites and provide support to my father while he underwent open-heart surgery. It was my wife's first visit to Pakistan. 22. We entered the country on March 31, 2018, on Pilgrimage Visas as I had done in the past. We rented a place in Rawalpindi. We visited the Nankana Sahib and Panja Sahib. My father did not accompany us on any visits to any of the Gurdwaras as he was awaiting surgery at a hospital in Islamabad. My father remained in hospital after his surgery for approximately 10 days during which time my wife and I visited him frequently. We remained	c. He travelled to Pakistan on March 31, 2018, to April 19, 2018. (page 22)	Allegation considered. Mr. Brar admitted having taken this trip in May 2018. This visit remains important.

	in Pakistan until April 19, 2018, when we flew home to Canada.		
14. Mr. Brar travelled many times to the U.S. in 2016 by land. Revised appeal book: page 75.	9. Prior to April 2018 I frequently travelled by air within Canada in connection with my businesses. I also travelled internationally on a regular basis. In the three years prior to April 2018, I travelled to Pakistan, the Dominican Republic, Cuba and Mexico. I have travelled to the United Arab Emirates to visit family, including my maternal and paternal aunts and uncles as well as cousins, and I regularly travel by land to the United States.		This allegation is not considered. Mr. Brar admitted having travelled to the U.S. in 2016; this is well documented and not controversial.
15. Mr. Brar arrived at Toronto Pearson International Airport on November 19, 2016, on January 13, 2017, on July 27, 2017, and on November 14, 2017. Revised appeal book: page 76.			This allegation is not considered. There is nothing controversial in it and therefore it is for information only.
16. Mr. Brar filed an incident report regarding travel from Toronto to Abu Dhabi; Mr. Brar claimed that on October 24, 2017, he was informed by agents that they were told by the Department of Homeland Security that he could not travel.	53. I was travelling to Lahore via Abu Dhabi in October of 2017 with Mr. Dulai and a few other members of our community to attend birthday celebrations of Guru Nanak. This is something we did almost every year for many years. Mr. Dulai was	g. On October 2017, Mr. Brar and Mr. Dulai and other members of their community planned to travel to Abu Dhabi. U.S. Dept. of Homeland Security would not allow Mr. Dulai to board the plane and	This allegation is not considered. This is for information only.

Revised appeal book: page 76.	flagged by DHS and wasn’t allowed to travel. The airline had already issued my boarding pass, but when they found out I was travelling with Mr. Dulai they proceeded to cancel my boarding pass. I submitted a complaint and then I travelled to Lahore two days later without any problems.	they also cancelled Mr. Brar’s boarding pass. Mr. Brar travelled to Lahore, Pakistan two days later. (page 22)	