

Federal Court



Cour fédérale

Date: 20160118

Docket: T-579-15

Citation: 2016 FC 52

Vancouver, British Columbia, January 18, 2016

PRESENT: The Honourable Mr. Justice Shore

IN THE MATTER OF THE *MARINE TRANSPORTATION SECURITY ACT*

BETWEEN:

SANDEEP SINGH KAILLEY

Applicant

and

CANADA (MINISTER OF TRANSPORT)

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Sandeep Singh Kailley (age 27) is a Canadian citizen. The Applicant is a longshore worker who sought to obtain a Marine Transportation Security Clearance for his employment at the Port of Vancouver Fraser [Port]. His security clearance application was

rejected, in a decision dated March 6, 2015, by Transport Canada. The Applicant is seeking judicial review of this decision.

[2] The Applicant is a hard working individual and is well-liked by his co-workers and management at the Port. As well as being a longshore worker, the Applicant started an apprenticeship to become an electrician in 2011; and, in 2014, the Applicant obtained his certification. In an attempt to heighten his income earning potential and job opportunities, the Applicant applied for a Marine Transportation Security Clearance [MTSC] in February 2013 through the Marine Transportation Security Clearance Program at Transport Canada [MTSC Application].

[3] In response to the Applicant's MTSC Application, Transport Canada sought and received a Limited Law Enforcement Record Check report from the Royal Canadian Mounted Police [RCMP] on February 25, 2013; and, on June 23, 2014, Transport Canada received a full Law Enforcement Record Check report from the RCMP [LERC Report].

[4] The LERC Report stated that the Applicant had no known criminal record; and, he was not, at the moment of the report being conducted, facing any criminal charges. Nonetheless, the LERC Report contained allegations that the Applicant may have been associated with drug traffickers in the past. Furthermore, the LERC Report indicated that the Applicant had been identified by his neighbour, a victim of a stabbing, as being the perpetrator of the assault. Subsequently, the Applicant was charged with one count of aggravated assault and one count of possession of a weapon for a dangerous purpose.

[5] The LERC Report also contained allegations that in November 2013, the Applicant threatened the victim of a stabbing if the victim testified in Court. The Crown prosecutor was made aware of the threat, by the victim, and notified the RCMP. Ultimately, the assault and weapon charges were stayed; and, the charges for uttering threats did not proceed.

[6] In light of these allegations, Transport Canada sent a letter on July 8, 2014, to the Applicant notifying him of the aforesaid allegations contained in the LERC Report; and, encouraged the Applicant to provide information and explanations with regard to the allegations [TC's Letter of Concerns].

[7] The Applicant made a disclosure request, on July 22, 2014, to Transport Canada for particulars of the allegations that Transport Canada made, as well as, all the documents and information in possession of Transport Canada which give rise to Transport Canada's concerns as to the Applicant's suitability to retain a security clearance. Transport Canada responded to the request in September 2013 in a disclosure that included the LERC Report.

[8] The Applicant, by way of his counsel, responded to Transport Canada's letter by way of a letter dated October 20, 2014 [Applicant's Response Letter]. In the letter, the Applicant's counsel provided explanations to the allegations and concluded that a consideration of the Applicant's circumstances pursuant to section 509 of the *Marine Transportation Security Regulations*, SOR/2004-144 [MTSR] should lead Transport Canada to conclude that the Applicant does not pose any threat to the security of marine transportation; and, he should be

permitted to receive his MTSC. This letter was not accompanied by a sworn affidavit undersigned by the Applicant to attest to the truthfulness of the contents of the letter.

[9] On November 5, 2014, Transport Canada obtained a “Canadian Police Information Centre” Report confirming the information contained in the LERC Report, namely, that the Applicant, as of November 2013, did not have any convictions; and, that he had been charged for aggravated assault, possession of a weapon for a dangerous purpose, and, uttering threats, but there was a stay of proceeding on those charges.

II. Impugned Decision

[10] On December 9, 2014, the Security Clearance Advisory Body, at Transport Canada, recommended that the Applicant’s MTSC Application be rejected. On March 4, 2015, a representative of the Minister of Transport, after reviewing TC’s Letter of Concerns, the Applicant’s submissions, the Advisory Body recommendations and the MTSR, refused to grant the Applicant a MTSC:

The information related to the applicant’s suspected association to drug traffickers, as well as his recent charges related to serious violence and uttering threats, raised concerns regarding his judgment, trustworthiness and reliability. [...] A review of the information on the file led me to have reasonable grounds to suspect that the applicant is in a position in which there is a risk that she [*sic*] may be suborned to commit an act or to assist or abet any person to commit an act that might constitute a risk to marine transportation security. I also have reasonable grounds to suspect that the applicant has been involved in, or contributes or has contributed to, an act of serious violence against persons or property. I considered the statement provided by the applicant; however, the information presented was not sufficient to address my concerns.

(Applicant’s Record, p 65)

[11] The Applicant is seeking judicial review of the decision by the Minister of Transport.

III. Issues

[12] The Court considers the following issues to be central to this application for judicial review:

1. Is the Minister's decision to reject the Applicant's Marine Transportation Security clearance application reasonable?
2. Did the Minister fail to meet the requirements of procedural fairness?

IV. Legislation

Minister's Decision

509 The Minister may grant a transportation security clearance if, in the opinion of the Minister, the information provided by the applicant and that resulting from the checks and verifications is verifiable and reliable and is sufficient for the Minister to determine, by an evaluation of the following factors, to what extent the applicant poses a risk to the security of marine transportation:

...

(b) whether it is known or there are reasonable grounds to suspect that the applicant

(i) is or has been involved in, or contributes or has contributed to, activities directed toward or in support of the misuse of the

Décision du ministre

509 Le ministre peut accorder une habilitation de sécurité en matière de transport si, de l'avis du ministre, les renseignements fournis par le demandeur et ceux obtenus par les vérifications sont vérifiables et fiables et s'ils sont suffisants pour lui permettre d'établir, par une évaluation des facteurs ci-après, dans quelle mesure le demandeur pose un risque pour la sûreté du transport maritime :

[...]

b) s'il est connu ou qu'il y a des motifs raisonnables de soupçonner que le demandeur :

(i) participe ou contribue, ou a participé ou a contribué, à des activités visant ou soutenant une utilisation malveillante de l'infrastructure

transportation infrastructure to commit criminal offences or the use of acts of violence against persons or property, taking into account the relevance of those activities to the security of marine transportation,

(ii) is or has been a member of a terrorist group within the meaning of subsection 83.01(1) of the Criminal Code, or is or has been involved in, or contributes or has contributed to, the activities of such a group,

(iii) is or has been a member of a criminal organization as defined in subsection 467.1(1) of the Criminal Code, or participates or has participated in, or contributes or has contributed to, the activities of such a group as referred to in subsection 467.11(1) of the Criminal Code taking into account the relevance of these factors to the security of marine transportation,

(iv) is or has been a member of an organization that is known to be involved in or to contribute to — or in respect of which there are reasonable grounds to suspect involvement in or contribution to — activities directed toward or in support of the threat of or the use of, acts of violence against persons or property, or is or has been involved in, or is contributing to or has contributed to, the activities of

de transport afin de commettre des crimes ou l'exécution d'actes de violence contre des personnes ou des biens et la pertinence de ces activités, compte tenu de la pertinence de ces facteurs par rapport à la sûreté du transport maritime,

(ii) est ou a été membre d'un groupe terroriste au sens du paragraphe 83.01(1) du Code criminel, ou participe ou contribue, ou a participé ou a contribué, à des activités d'un tel groupe,

(iii) est ou a été membre d'une organisation criminelle au sens du paragraphe 467.1(1) du Code criminel ou participe ou contribue, ou a participé ou a contribué, aux activités d'un tel groupe tel qu'il est mentionné au paragraphe 467.11(1) du Code criminel, compte tenu de la pertinence de ces facteurs par rapport à la sûreté du transport maritime,

(iv) est ou a été un membre d'une organisation qui est connue pour sa participation ou sa contribution — ou à l'égard de laquelle il y a des motifs raisonnables de soupçonner sa participation ou sa contribution — à des activités qui visent ou favorisent la menace ou l'exécution d'actes de violence contre des personnes ou des biens, ou participe ou contribue, ou a participé ou a contribué, aux activités d'une

such a group, taking into account the relevance of those factors to the security of marine transportation, or

(v) is or has been associated with an individual who is known to be involved in or to contribute to — or in respect of whom there are reasonable grounds to suspect involvement in or contribution to — activities referred to in subparagraph (i), or is a member of an organization or group referred to in any of subparagraphs (ii) to (iv), taking into account the relevance of those factors to the security of marine transportation;

(c) whether there are reasonable grounds to suspect that the applicant is in a position in which there is a risk that they be suborned to commit an act or to assist or abet any person to commit an act that might constitute a risk to marine transportation security;

[Emphasis added.]

telle organisation, compte tenu de la pertinence de ces facteurs par rapport à la sûreté du transport maritime,

(v) est ou a été associé à un individu qui est connu pour sa participation ou sa contribution — ou à l'égard duquel il y a des motifs raisonnables de soupçonner sa participation ou sa contribution — à des activités visées au sous-alinéa (i), ou est membre d'un groupe ou d'une organisation visés à l'un des sous-alinéas (ii) à (iv), compte tenu de la pertinence de ces facteurs par rapport à la sûreté du transport maritime;

c) s'il y a des motifs raisonnables de soupçonner que le demandeur est dans une position où il risque d'être suborné afin de commettre un acte ou d'aider ou d'encourager toute personne à commettre un acte qui pourrait poser un risque pour la sûreté du transport maritime;

[Je souligne.]

V. Parties Submissions

[13] The Applicant submits that the Minister's decision is unreasonable as the Minister's concerns are not sufficient to lead to a reasonable suspicion that the Applicant poses a risk to the security of marine transportation. The Minister should have given greater weight to the

unchallenged evidence submitted by the Applicant as opposed to the police report, which contains unverifiable and unreliable evidence in the form of hearsay.

[14] Furthermore, the Applicant submits that the Minister failed to meet the requirements of procedural fairness as the Minister failed to consider the Applicant's submissions; and, by failing to disclose a copy of the additional police database check to the Applicant, after he submitted his Response Letter. The Applicant was not afforded the opportunity to make submission regarding the additional police check. Moreover, the Minister wrongfully applied the broader "Aviation Program" requirements in assessing the Applicant's MTSC Application as opposed to the narrower "Marine Program" requirements, which is regulated by section 509 of the MTSR.

[15] Conversely, the Respondent submits that the Minister's decision to reject the sought security clearance is reasonable in light of the material before the Minister. Contrary to the Applicant, the Respondent submits that the Minister should be given a broad discretion to reject a security clearance as the Minister does not have to be satisfied, on the balance of probabilities, that an individual will commit a harmful act; but, rather, that an individual may commit a harmful act. Given the particulars of this case, it was reasonable for the Minister to find that the Applicant may, on the balance of probabilities, pose a threat to marine security.

[16] The Respondent submits that the Applicant was afforded procedural fairness as he knew precisely what allegations formed the basis for the Minister's decision; and, was given an opportunity to respond.

VI. Standard of Review

[17] The standard of review of reasonableness is applicable wherein mixed fact and law determinations as well as fact determinations are reached by the Minister as to whether a security clearance shall be granted (*Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 FCA 56 at paras 80-87 [*Farwaha*]).

[18] The standard of review of correctness is applicable to an alleged breach of procedural fairness (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, 2009 SCC 12 at para 43).

VII. Analysis

A. *Preliminary remarks*

[19] The Applicant submits that the Minister may only refuse to grant a MTSC if the Minister determines that there are reasonable grounds to suspect that a person poses a risk according to the criteria set out in section 509 of the MTSR. Thus, the Minister must have reasonable cause to suspect, based on a constellation of objectively discernible facts, that the Applicant is involved in violence, or is associated with the persons described, or meets another of the criteria enumerated at section 509 of the MTSR; and, that the association or involvement is relevant to the security of marine transportation.

[20] As explained below, the Applicant is suggesting a test that is in patent contradiction with the purpose of the security clearance program, the MTSR, and, decisions from the Federal Court of Appeal, and this Court, regarding marine transportation security. Contrary to the submission of the Applicant, the onus is on the Applicant, and not the Minister, to demonstrate that he may not pose a risk to the security of marine transportation.

[21] In *Reference re Marine Transportation Security Regulations*, 2009 FCA 234 [*Reference re Marine*], Justice John M. Evans summarized the purpose of the Canadian security clearance program with regard to marine transportation:

[66] [...] Canada's long coast line and many ports, its substantial economic dependence on international trade in goods transported by sea in and out of Canada and, to a lesser degree, on cruise line business, its ability to fund security measures, and its proximity to the United States, are all factors that provide a rational explanation of why Canada has instituted the present security clearance system.

[67] These considerations also indicate the substantial and pressing nature of the public interest that the Regulations are designed to advance: protection from threats to public safety and the economy from the activities of terrorist groups and organized crime. [Emphasis added.]

[22] In assessing the Minister's decision to reject the Applicant's MTSC Application, the Court must take into consideration the pressing nature of the public interest to the Canadian economy and the security of Canadians.

B. *Was the Minister's decision to reject the MTSC Application reasonable?*

[23] The Minister has a broad power and discretion to grant or cancel security certificates

(*Rossi v Canada (Attorney General)*, 2015 FC 961 at para 31 [*Rossi*]). Both the French and the English versions of section 509 of the MTSC do not impose on the Minister an obligation to grant a security clearance; but rather, they both state that the Minister may grant a security clearance.

Minister's Decision

509 The Minister may grant a transportation security clearance if, in the opinion of the Minister, the information provided by the applicant and that resulting from the checks and verifications is verifiable and reliable and is sufficient for the Minister to determine, by an evaluation of the following factors, to what extent the applicant poses a risk to the security of marine transportation:

[Emphasis added.]

Décision du ministre

509 Le ministre peut accorder une habilitation de sécurité en matière de transport si, de l'avis du ministre, les renseignements fournis par le demandeur et ceux obtenus par les vérifications sont vérifiables et fiables et s'ils sont suffisants pour lui permettre d'établir, par une évaluation des facteurs ci-après, dans quelle mesure le demandeur pose un risque pour la sûreté du transport maritime :

[Je souligne.]

[24] The Minister may only grant a MTSC if the Minister is of the opinion that: i) the information provided by the applicant and that resulting from the checks and verifications is verifiable and reliable; and, ii) there is sufficient verifiable and reliable information allowing the Minister to determine, based on the factors as set out at section 509 of the MTSR that the Applicant may not pose a risk to the security of marine transportation.

[25] If the Minister is of the opinion that there is not sufficient quality information, provided by the Applicant or resulting from the checks and verification, the Minister is under no obligation to proceed to the second portion of the test (*Farwaha*, above at paras 67-68).

[26] Consequently, in order to decide whether it was reasonable for the Minister to refuse to grant the Applicant a marine security clearance, the Court must first decide whether there was sufficient quality information. If so, then the Court must examine the Minister's decision pursuant to the factors at section 509 of the MTSR.

(1) Was there sufficient quality information?

[27] The Advisory Board, and subsequently the Minister, relied primarily on the LERC Report and the Applicant's criminal record to determine that there are reasonable grounds to suspect that the Applicant is in a position where there is a risk that he may be suborned to commit an act or to assist or abet any person to commit an act that might constitute a risk to marine transportation security; and, that there are reasonable grounds to suspect that the Applicant has been involved in, or contributes or has contributed to, an act of violence against persons or property.

[28] The Applicant submits that the Court should give minimal weight to the LERC Report as the LERC Report only states allegations that are hearsay in nature. As a result, the Applicant suggested that the Court must give more weight to the justifications provided by the Applicant in his Response Letter, than to the LERC Report, because of its inherent problems of hearsay and the summary nature of the LERC Report.

[29] This argument must be rejected. This Court has held that information obtained from the RCMP is sufficient for the purposes of the checking process of a security clearance (*Fontaine v Canada (Transport)*, 2007 FC 1160 at para 75 [*Fontaine*]). Moreover, this Court has held that the Minister may rely exclusively on a LERC Report or RCMP report to assess whether an

applicant should be granted a security clearance (*Brown v Canada (Attorney General)*, 2014 FC 1081 at para 65; *Henri v Canada (Attorney General)*, 2014 FC 1141 at para 40).

[30] The Minister was provided a LERC Report containing allegations that the Applicant may have been associated with drug traffickers and may have committed an act of violence against a person. Furthermore, the Minister was also provided a Response Letter by the Applicant with regard to the allegations in the LERC Report. Given the foregoing, the Minister was provided sufficient, reliable, and verifiable information to determine whether the Applicant may pose a risk to marine security by an evaluation of the factors at section 509 of the MTSR.

(2) May the Applicant pose a risk to the security of marine transportation?

[31] As stated previously, the Applicant's MTSC Application was rejected for the two following reasons. Based on a review of the MTSR, the Applicant's Response Letter and the LERC Report, the Minister held that:

- 1) There are reasonable grounds to suspect that the Applicant is in a position in which there is a risk that he may be suborned to commit an act or to assist or abet any person to commit an act that might constitute a risk to marine transportation security; and,
- 2) There are reasonable grounds to suspect that the Applicant has been involved in, or contributes or has contributed to, an act of serious violence against persons or property.

[32] The Minister found that the information presented in the Applicant's Response Letter was not sufficient to address her concerns about the risk that the Applicant may pose to the security of marine transportation.

[33] The Applicant submits that the Minister's decision was unreasonable as the allegations against him, with regard to an act of serious violence against a person, are not sufficient grounds to suspect that he could pose a risk to marine security or that he poses a subornation risk. Secondly, the Applicant submits that association to drug traffickers is not a factor that the Minister can consider, under 509 of the MTSR, as drug traffickers are not "organizations" about which one can reasonably assume the use of violence. There is no link between an alleged association with drug traffickers and the MTSR. Thirdly, a review of a person's suitability to hold an MTSC is not a general character review but a review of the specified factors under section 509 of the MTSR, thus, in her assessment, the Minister should not have taken into consideration the Applicant's judgment, reliability and trustworthiness. Fourthly, there was no proof that the Applicant poses a risk of subornation. Fifthly, the Minister should have taken all the evidence into consideration, and, failed to give sufficient weight to the evidence submitted by the Applicant.

[34] The LERC Report indicated allegations that the Applicant was associated with drug traffickers, faced criminal charges for a violent criminal offence (later stayed), and there was an allegation that he uttered threats to the victim of a stabbing if the victim testified in Court.

[35] This Court has stated in *Fontaine*, above at para 83, that association with individuals who might have a negative influence on a security clearance applicant can be sufficient grounds to reject a security clearance application. It is implicit that in his determination as to whether an individual may be suborned to commit an act, or assist, or abet any person to commit an act that might constitute a risk to marine transportation security, the Minister shall assess a person's character or propensities.

[36] Regarding the allegations that the Applicant's car was loaned to individuals related to drug trafficking, the Applicant submits that he was not aware of any connection to the drug trade of any person to whom he loaned his car; and, that it was unreasonable for the Minister to find that the Applicant is associated with persons involved in the drug trade. The Minister had no obligation to demonstrate, on the balance of probabilities, that the Applicant was associated with drug traffickers; the Minister only has to demonstrate that he has a reasonable ground to suspect that the Applicant may pose a risk to the security of marine transportation. Thus, the Minister does not have to demonstrate standard, verifiable and reliable proof of connecting an individual to an incident; rather, objectively discernable facts will suffice (*Farwaha*, above at paras 96-97).

[37] The Applicant submits that drug traffickers are not organizations about which one can reasonably assume the use of violence; and, there is no link between an alleged association with drug traffickers and the MTSR. The Applicant provided no evidence to support his claim that drug traffickers are not organizations about which one can reasonably assume to have the potential for use of violence. Secondly, this Court has recognized that there is a connection

between association with drug traffickers and a possible risk of subornment that may impact marine transport security (*Russo v Canada (Transport)*, 2011 FC 764 at para 84 [*Russo*]).

[38] The Applicant also submits that the Minister did not take into consideration all the evidence, namely, that the Minister did not give sufficient weight to the Applicant's Response Letter. The Court finds that the Minister considered the Applicant's Response Letter but found that it was not sufficient to address her concerns. The role of this Court is not to reweigh evidence and substitute its own opinion to the one of the Minister; rather, the role of this Court is to determine whether the Minister's decision was reasonable (*Lorenzen v Canada (Transport)*, 2014 FC 273 at para 52).

[39] Finally, the Applicant submits that there is no weighing of public policy involved; and, that the Minister's decision is of great importance to the Applicant and his ability to earn a living. Quite the opposite is accurate. The security clearance program under the MTSR addresses important public interest concerns:

[13] The *Security Regulations* establish the Marine Transportation Security Clearance Program. The Program addresses threats to the security of Canada's international marine ports. Terrorism and organized crime are among the potential security threats: *Reference re Marine Transportation Security Regulations*, 2009 FCA 234 at paragraph 64. Needless to say, these threats can cause catastrophic harm, both economic and human.

(*Farwaha*, above at para 13)

[67] These considerations also indicate the substantial and pressing nature of the public interest that the Regulations are designed to advance: protection from threats to public safety and the economy from the activities of terrorist groups and organized crime.

(*Reference re Marine*, above at para 67)

[40] As to the significance of the decision in regard to the Applicant, they are minor: the Applicant will not be imprisoned, he will not lose his job, he will keep working for the same employer (see *Rossi*, above at para 32).

[41] The security of Canadian marine transportation is a serious matter and a high standard is required in order to assure that a security clearance is granted to an individual that poses no risk to the security of marine transportation:

[69] This makes sense. The thrust of section 509 is that a security clearance should only be granted to an individual when the Minister is sure, on the basis of reliable and verifiable information, that the individual poses no risk to marine security. Colloquially expressed, there must be no doubt on the matter. This high standard is necessary to prevent the grave consequences that might ensue if the individual commits injurious or destructive acts in sensitive port areas. [Emphasis added.]

(*Farwaha*, above at para 69)

[42] The Minister, based on the LERC Report, had doubts that the Applicant poses no risk to marine security; as a result, in light of the foregoing, it was reasonable for the Minister to refuse to grant the sought security clearance.

C. *Did the Minister fail to meet the requirements of procedural fairness?*

[43] The Applicant submits that the Minister breached procedural fairness by omitting to consider the Applicant's Response Letter; and, that the Applicant was not afforded an opportunity to make submissions on the additional police database check performed after the Applicant's Response Letter was submitted.

[44] The level of procedural fairness required with respect to the denial of an initial application for security clearance is minimal, specifically where an Applicant does not lose his job as a result of the refusal (*Russo*, above at paras 59, 69).

[45] The first argument must be rejected. The Minister stated having taken into consideration the Applicant's submissions but found that it was not sufficient to address her concerns. The Applicant may not be satisfied with the reason given by the Minister, but, adequacy of reasons is not, in and of itself, a stand-alone basis for quashing a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]). The Court considers that the reasons provided by the Minister are sufficient to enable the Court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Newfoundland Nurses*, above at para 16. Also, paragraphs 103, 104, and 105 of the *Farwaha* decision above are pertinent in this regard.)

[46] The second argument must also be rejected. In assessing a security clearance application, section 508 of the MTSR provides that the Minister shall conduct certain checks and verification:

Checks and Verifications

508 On receipt of a fully completed application for a transportation security clearance, the Minister shall conduct the following checks and verifications for the purpose of assessing whether an applicant poses a risk to the security of marine transportation:

Vérifications

508 Sur réception d'une demande d'habilitation de sécurité en matière de transport dûment remplie, le ministre effectue les vérifications ci-après pour établir si le demandeur ne pose pas de risque pour la sûreté du transport maritime :

- | | |
|---|---|
| (a) a criminal record check; | a) une vérification pour savoir s'il a un casier judiciaire; |
| (b) a check of the relevant files of law enforcement agencies, including intelligence gathered for law enforcement purposes; | b) une vérification des dossiers pertinents des organismes chargés de faire respecter la Loi, y compris les renseignements recueillis dans le cadre de l'application de la Loi; |
| (c) a Canadian Security Intelligence Service indices check and, if necessary, a Canadian Security Intelligence Service security assessment; and | c) une vérification des fichiers du Service canadien du renseignement de sécurité et, au besoin, une évaluation de sécurité effectuée par le Service; |
| (d) a check of the applicant's immigration and citizenship status. | d) une vérification de son statut d'immigrant et de citoyen. |

[47] The Applicant was fully aware of the case to be met as he was informed in the TC's Letter of Concerns of the various allegations against him. The additional police database check did not provide any new allegations or facts that the Applicant had not been made aware of in TC's Letter of Concerns. In *Russo*, above at para 56, Justice James Russell rejected a very similar argument and found that there was no breach of procedural fairness by the Minister:

[56] In my view, the record shows that the Applicant was made fully aware that his criminal record raised concerns regarding whether he was a security risk. He was given every opportunity to explain why this record should not be considered as a threat to marine security. There was no failure to disclose documentation because the only documents relied upon by the decision maker were those related to the Applicant's criminal record, of which he was fully aware. The Applicant appears to be suggesting that he should have been pre-warned of concerns that arose as part of the investigative process so that he could have been in a position to refute conclusions that were drawn only after the investigation took place and all of the information was assessed. This is not a procedural fairness issue in my view.

[48] The Applicant was fully aware of the allegations against him in the LERC Report; he was provided an opportunity to answer those concerns, which he seized by submitting a Response Letter. Given that the additional police database check did not provide any new facts or allegations against the Applicant, there was no breach of procedural fairness.

VIII. Conclusion

[49] Consequently, the application for judicial review must be dismissed, with costs, set at \$2000 as agreed to by both parties.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed,
with costs, set at \$2000 as agreed to by both parties.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-579-15

STYLE OF CAUSE: SANDEEP SINGH KAILLEY v CANADA (MINISTER OF TRANSPORT)

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: SHORE J.

DATED: JANUARY 18, 2016

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FOR THE RESPONDENT