Federal Court Cour fédérale

Date: 20170607

Docket: T-340-16

Citation: 2017 FC 556

Ottawa, Ontario, June 7, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

ARUN RANDHAWA

Applicant

and

CANADA (MINISTER OF TRANSPORT)

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review application of a decision of the Minister of Transport [Minister], dated January 21, 2016, denying, on reconsideration, the Applicant's application for a marine transportation security clearance [Security Clearance] made under the *Marine Transportation Security Regulations*, SOR/2004-144 (the "Regulations") on the ground that there are reasonable grounds to suspect that the Applicant is in a position in which there is a risk that he 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. According to the Minister, this risk exists due to the Applicant's association to two individuals who are executive members of a criminal organisation well known to police and known to assist in the smuggling of cocaine between the United States and Canada and to have ties with other criminal groups such as the Hells Angels and the Japanese mafia. These two individuals happen to be the Applicant's brothers.

[2] The Applicant claims that the Minister's decision is unreasonable as there is no evidence upon which the Minister could have found a reasonable suspicion that he is at risk of subornation. He contends in this regard that given the evidence on the current status of his "associates", the nature of his relationship with them and his personal character, this association alone cannot be considered a sufficient, objectively discernable factor to justify a reasonable suspicion that he may pose a risk to marine transportation because of a risk that he may be suborned.

II. Background

[3] In March 2013, the Applicant was hired as a casual longshore worker by the British Columbia Maritime Employer's Association at the Port of Vancouver. In order for someone working on the premises of the Port of Vancouver to access the Port's restricted areas or perform certain tasks, a Security Clearance is needed.

[4] A few days after having been hired, the Applicant applied for a Security Clearance. On June 23, 2014, Transport Canada received a Law Enforcement Record Check [LERC report]

from the Royal Canadian Mounted Police [RCMP]. The LERC report stated that the Applicant had no known criminal convictions but was identified as an active member of an Indo-Canadian organized crime group. It also listed the law enforcement authorities' encounters, over an eight-year period, with either the Applicant or two of his "very close associates".

[5] The LERC report indicated that one of those two associates (Subject A) was believed to be an executive member of an Indo-Canadian organized crime group involved in cross border narcotics smuggling and that this group had been used to assist in the transportation of cocaine from the United States [US] into Canada. The LERC report also indicated that there was information indicating that such group was involved directly and indirectly with the Hells Angels, the Japanese Mafia, and Chinese criminals. The LERC report also stated that the Applicant's other "very close associate" (Subject B) was caught in the US with 107 kilos of cocaine in 2008, pleaded guilty to cocaine possession and conspiracy and was sentenced to a 60-month jail term and three (3) years of supervised release.

[6] The Applicant was informed in a letter dated July 10, 2014 (the "Fairness letter") that Transport Canada had received adverse information raising concerns regarding his suitability to obtain a Security Clearance and that his application was being reviewed accordingly. The information referred to in the Fairness letter essentially mirrored that found in the LERC report. The Applicant was encouraged to provide additional information regarding the incidents and associations referred to in the letter, which he did on August 27, 2014.

[7] In his response, the Applicant denied ever being a member of any criminal organization or organized crime group and indicated that based on the information provided in the Fairness letter, he assumed that the two individuals referred to as "Subject A" and "Subject B" were his brothers. He indicated that this would be the only basis upon which he associates with them regularly, emphasizing that he did not condone, encourage or benefit from any of their activities. The Applicant also claimed to be committed to a pro-social life and highlighted that he had successfully completed other security clearance applications that enabled him to obtain a Nexus card as well as licenses for non-restricted firearms. He denied having any knowledge of most of the incidents listed in the Fairness letter aside from the fact that he called the police in May 2012 to report that one of his brothers was missing.

[8] Thereafter, a body advising the Minister, known as the Advisory Body, studied the matter and on September 16, 2014, recommended that the Applicant's Security Clearance application be denied "based on a police report that identifies the applicant as an active member of, and very closely associated to two (2) individuals that are executive members of, an Indo-Canadian Organized Crime Group that is known to assist in the smuggling of narcotics (cocaine) between the United States and Canada". The Advisory Body was of the view that an in-depth review of the file raised "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".

[9] On November 18, 2014, the Minister endorsed the Advisory Body's recommendation and denied the Applicant's Security Clearance application. Then, as permitted by paragraph 517(1)

of the Regulations, the Applicant requested that the Minister reconsider his decision. In support of his request, the Applicant submitted eight (8) reference letters in addition to his counsel's submissions. Again, a body advising the Minister, known as the Office of Reconsideration, studied the matter along with an independent security advisor appointed pursuant to paragraph 517(5) of the Regulations.

[10] On September 16, 2015, the independent security advisor sent her report to the Office of Reconsideration, recommending that the Minister reconsider the decision to deny the Applicant's Security Clearance application. The independent security advisor found that:

a) There is no direct, reliable evidence in the Applicant's file to establish that he is a member of a gang, active or otherwise;

b) The claim that the Applicant has "a very close association and associates himself on a daily basis with members of a gang" can only be a reference to the Applicant living in the same family home as the brothers who are identified as "Subject A and B" and is not supported by objectively discernable facts;

c) There is no factual support for the claim that the Applicant's brothers are Executive Members of the gang;

d) The Applicant is credible and his explanations to date are reasonable and they are not contradicted by objectively discernible evidence on the case file;

e) The Applicant has no criminal convictions or brushes with the law;

f) The Applicant's accomplishments lend credence to his submissions that his focus has been solely on education, career, community service and a future family;

g) The reference letters submitted support the conclusion that the Applicant is reliable, trustworthy and possesses good judgment and that there are no reasonable grounds to suspect that the Applicant is vulnerable to being suborned for a purpose that might constitute a risk to the security of marine transportation.

[11] The Office of Reconsideration did not agree with the recommendation of the independent security advisor. As a result, it recommended to the Minister that the initial decision to refuse the Applicant's Security Clearance application be maintained. Although it agreed with the independent security advisor that there was not enough evidence to conclude that the Applicant is an active member of a criminal organization, the Office of Reconsideration remained concerned over the "minimal contact" the Applicant entertains with his two brothers. It concluded as follows:

> "Overall, the applicant has been vocal about his ambitions and his lifestyle, which he claims, differs from his brothers'. However, his silence on certain issues is worrisome. He has not tried to dispel the Minister's concerns by explaining how he will ensure he would not follow his brothers' steps, on the contrary, he admitted to still seeing the one who got out of jail. We also found that he was not forthcoming when addressing the incarceration of his younger brother."

[12] In a letter dated January 21, 2016, the Minister informed the Applicant that there was still enough information before him to conclude that there were reasonable grounds to suspect that, as per paragraph 509(c) of the Regulations, the Applicant is in a position in which there is a risk that he 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, due to:

a) The Applicant's very close association to individuals who are Executive Members of an Indo-Canadian crime group;

b) The fact that this crime group is well known to the police, known to assist in the smuggling of narcotics, namely cocaine, between the US and Canada and known to have ties with other groups such as the Hells Angels and the Japanese Mafia; and

c) The fact that one of the individuals who the Applicant associates with was caught with 107 kilograms of cocaine in the US and was sentenced to 60 months of prison and three years of supervised release.

[13] As a result, the Minister confirmed his previous decision denying the Applicant's Security Clearance application.

III. Issue and Standard of Review

[14] The sole issue to be determined in this case is whether the Minister's suspicion that the Applicant is at risk of subornation because of his association with his two brothers is supportable on the basis of the evidence that was before the Minister.

[15] It is well-settled now that a decision denying a Security Clearance application is to be reviewed against the standard of reasonableness as such a decision involves fact finding and determining mixed questions of fact and law where the facts play a dominant role (*Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha, 2014 FCA 56 [Farwaha]*, at paras 84 to 86). Therefore, as pointed out by the Respondent, the issue in this case is not whether the Court, after having reweighed the evidence, would have reached the same

decision as the Minister but whether the Minister's decision falls within a range of possible, acceptable outcomes, as dictated by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47 [*Dunsmuir*].

[16] In *Farwaha*, at para 92, the Federal Court of Appeal set out the following factors as being relevant in considering the "breath of the range of reasonableness available to the Minister" in deciding whether to grant, refuse, suspend or cancel a Security Clearance application:

a) The Minister's decision is a matter of great importance to applicants as it affects the nature of their work, their finances and their prospects for advancement;

b) The decision concerns security matters where wrong decisions can lead to grave consequences;

c) Security assessments involve some policy appreciation and sensitive weighing of facts; and

d) The Minister's decision requires assessments of risk based on whether reasonable grounds for suspicion exist.

[17] The Federal Court of Appeal provided these additional comments regarding the last of these four factors:

a) Assessments of risk and whether reasonable grounds for suspicion exist are standards that involve the sensitive consideration of facts and careful fact-finding, tasks that normally entail a broad range of acceptable and defensible decision-making (*Farwaha*, at para 94);

b) Assessments of risk are forward-looking and predictive; by nature, these are matters not of exactitude and scientific calculation but of nuance and judgment (*Farwaha*, at para 94);

c) Contrary to the "reasonable and probable grounds" standard, the "reasonable grounds to suspect" standard is a lesser, looser, judgmental standard based identifying "possibilities", not finding "probabilities" (*Farwaha*, at para 96);

d) While fanciful musings, speculations or hunches do not meet the standard of "reasonable grounds to suspect", the "totality of the circumstances" and inferences drawn therefrom, including information supplied by others, apparent circumstances and associations among individuals can (*Farwaha*, at para 97); and

e) To satisfy that standard, verifiable and reliable proof connecting an individual to an incident, as would be required to secure a conviction or even a search warrant, is not necessary; instead, "objectively discernable facts" will suffice (*Farwaha*, at para 97).

[18] I would add to this that in assessing the security risks, the Minister, given the substantial importance of marine transportation safety (*Farwaha*, at para 16), is entitled, as he is the context of aviation safety, to err on the side of public safety (*Britz v Canada (Attorney General)*, 2016 FC 1286, at para 35; *Sargeant v Canada (Attorney General)*, 2016 FC 893, at para 28; *Thep-Outhainthany v Canada (Attorney General)*, 2013 FC 59, at para 17; *Fontaine v Canada (Transport)*, 2007 FC 1160, at paras 53, 59, 313 FTR 309 [*Fontaine*]; *Clue v Canada (Attorney General)*, 2011 FC 323, at paragraph 14). *Rivet v Canada (Attorney General)*, 2007 FC 1175, at para 15, 325 FTR 178).

IV. Analysis

[19] As I have just indicated, marine transportation safety has been held to be a matter of substantial importance. This is particularly the case since the attacks on the World Trade Center in New-York on September 11, 2001. As a matter of fact, the Regulations are the product of a security review prompted by these tragic events. So are similar enactments for airport security (*Farwaha*, at para 12).

[20] This oft-cited quote from the *Reference re Marine Transportation Security Regulations*, 2009 FCA 234 [*Reference MTSR*], at para 66, summarizes the broad purpose behind the Regulations:

> "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."

[21] The Regulations focus on security threats to public safety and the economy emanating from terrorism and organised crime (*Reference MTSR*, at para 67; *Farwaha*, at para 19). *Farwaha* offers an in-depth description of the goals the Regulations are meant to achieve and the problems they are designed to remedy:

> [16] Marine ports play a large role in Canada's economy. A single breach of security could result in an incident shutting down Canada's international marine transportation system, resulting in losses of hundreds of millions of dollars a day, to say nothing of the ripple effect upon economic sectors that depend on the ports. Most of all, many could die or could be injured or maimed by the incident. See the Regulations' Regulatory Impact Analysis Statement, *Canada Gazette*, Part II, vol. 138, no. 11 at pages 920-926.
>
> [17] For this reason, marine ports have in place physical security measures, such as fencing, lighting, patrols, and x-ray and

> radiation screening. But a single insider at a marine port can subvert these measures: *Reference re Marine Transportation Security Regulations*, supra at paragraph 23.
>
> [18] The *Security Regulations* aim to reduce the risks individuals pose to marine ports. They achieve this by requiring those who work in security-sensitive areas to obtain a Marine Transportation Security Clearance from the Minister. The Minister grants a security clearance to those who do not pose an unacceptable risk to marine transportation. Those who "pose an unacceptable security risk to marine transportation" are screened out: *Reference re Marine Transportation Security Regulations*, supra at paragraph 11.
>
> [19] As will be seen, to some extent the *Security Regulations* focus on criminal organizations and organized crime. The concern is that those with ties to criminal organizations and organized crime might be intimidated or coerced into performing illegal acts or subverting security measures at marine ports. There are links between terrorists and organized crime: *Reference re Marine Transportation Security Regulations*, supra at paragraph 64. Indeed, organizations involved in organized crime may offer their services to terrorists by aiding them in, for example, smuggling weapons, explosives or operatives into Canada in containers: *Reference re Marine Transportation Security Regulations*, supra at paragraph 64.

[22] In pursuance of these goals, section 508 of the Regulations requires the Minister, upon receipt of a Security Clearance application, to conduct a number of checks and verifications in order to determine whether the applicant poses a risk to the security of marine transportation. These checks and verifications include a criminal record check, a check of law enforcement files, including intelligence gathered for law enforcement purposes, and a Canadian Security Intelligence Service indices check.

[23] Once that information is gathered, the Minister, according to section 509, may then grant a Security Clearance if, in his opinion, the information provided by the applicant and that

resulting from the checks and verifications conducted under section 508 is verifiable and reliable and is sufficient to determine to what extent the applicant poses a risk to the security of marine transportation. That determination is made through an assessment of the factors listed at paragraphs 509(a) to (e). Among those factors, the following two are relevant to the present case:

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

[24] The organisations or groups referred to in subparagraph 509(c)(v) are terrorist groups within the meaning of subsection 83.01(1) of the *Criminal Code*, criminal organizations as defined in subsection 467.1(1) of the Criminal Code or referred to in subsection 467.11(1) of the *Criminal Code*, or organizations "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".

[25] Here, the suspicion of the Applicant presenting a risk of being 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, lies with his association to his two brothers who, according to the information that was before the Minister, are members of a crime group well-known to the police and known to assist in the smuggling of narcotics between Canada and the United States and to have ties with other criminal organizations.

[26] The Applicant claims that association alone is not sufficient to raise reasonable grounds of suspicion of subornation unless the association raises concerns that the applicant might be intimidated or coerced into performing illegal acts or subverting security measures at marine ports. He contends that the totality of circumstances in this case provides no basis, premised on objectively discernable facts, to suspect that there is an unacceptable risk of subornation resulting from his association to his two brothers. He says that he had no contact with his elder brother while that brother was incarcerated in the United States between 2008 and 2012 and that he has had minimal contact with him since his release. With respect to his younger brother, the Applicant contends that he moved out of the family home in 2012 or 2013 and that he has maintained minimal contact with him after that and no contact since this brother returned to jail in the summer of 2015.

[27] According to the Applicant, the Minister’s decision comes down to one of guilt by association, which is repugnant at law. He claims that this is even more so in this case since his association with his brothers is not an association by choice. He says that he did not choose his family and that there is nothing he can do, legally, to dissociate himself from his brothers. He

adds that there is clear evidence that he is a person of impeccable character, moral judgment and trustworthiness which does not make him susceptible to subornation from a family member or anyone else.

[28] As pointed out by the Applicant, innocent associations will normally not warrant the denial of a security clearance (*Reference MTSR*, at para 37-38). The Applicant contends that he never denied being aware that his brothers were engaged in, or accused of being engaged, in criminal activity. However, he submits that his association with them is exactly the type of "innocent association" which will normally not trigger a reasonable suspicion of risk of subornation.

[29] Despite the Applicant's counsel able argument, I am not satisfied that the Applicant's association with his brothers falls within the category of "innocent associations" as contemplated by *Reference MTSR* and that the Minister's finding that this association raises a reasonable suspicion of subornation is unreasonable. While the Federal Court of Appeal specifically indicated in *Reference MTSR* that when an applicant is unaware of a family member's involvement in a criminal organization such relationship would be an innocent one, it did not include in this category situations in which the applicant knew of his relatives' criminal endeavours. Here, the Applicant says that he never denied that his brothers have been engaged in, or accused of being engaged in, criminal activities. He simply contends that one cannot pick one's family. While such assertion is true, unfortunately, it does not save him in the circumstances of this case.

[30] As the Respondent points out, a section 509 assessment is not only concerned with a review of the applicant's character but also with the extent to which the applicant poses a risk to the security of marine transportation through the possibility of future intimidation or coercion (my emphasis). In other words, such assessment is "forward-looking and predictive" (*Farwaha*, at para 94). The fact that the apprehended risk of intimidation or coercion has not materialized at the time the assessment is made is therefore irrelevant.

[31] In such context, I find that the Applicant's association with his brothers provided the Minister, in the totality of circumstances, with a rational basis for holding a reasonable suspicion of subornation and potential risk to marine transport security as:

a) Both brothers have been incarcerated in the last 10 years for trafficking in narcotics;
b) Their alleged involvement with an Indo-Canadian organized crime group specialized in the trafficking of cocaine between Canada and the United States is not in dispute;
c) They both lived with the Applicant, in the family home, before being incarcerated;
d) Albeit minimal, the Applicant does maintain contact with the older brother while the younger brother is incarcerated;
e) The Applicant was concerned when his older brother went missing;
f) The younger brother continued to live in the family home after his arrest up until his parents denied providing any further surety given his behavior while on bail; and,
g) Both brothers had access to the Applicant's car and he to theirs and while driving one of his brother's car in 2010, the Applicant was stopped by the RCMP/British Columbia Combined Forces Special Enforcement Unit, a unit that does not conduct routine traffic stops but rather targets, investigates, prosecutes, disrupts and

> dismantles the organized crime groups and individuals that pose the highest risk to public safety due to their involvement in gang violence.

[32] In addition, the record shows that the Office of Reconsideration expressed concerns over the Applicant's ignorance of the details of his brothers' arrests. As the Respondent points out, this reasonably suggests either naivety or willful blindness on the part of the Applicant, especially regarding the older brother who spent 60 months in jail in the United States for possession of more than 100 kilograms of cocaine. In other words, the Applicant may not have been as forthcoming as he claims to have been in respect to his brothers' arrests, which raises additional concerns.

[33] This Court has recognized on many occasions that it is reasonable to conclude that there is a risk to marine or air transport security because of a person's associations (*Russo v Canada (Minister of Transport, Infrastructure and Communities)*, 2011 FC 764, at para 84; *Farwaha*, at para 97; *Sidhu v Canada (Citizenship and Immigration)*, 2016 FC 34, at para 20; *Brown v Canada [Attorney General]*, 2014 FC 1081, at para 74; *Fontaine v Canada (Transport Canada Safety and Security)*, 2007 FC 1160, at para 7; *Neale v Canada (Attorney General)*, 2016 FC 655, at para 70).

[34] Recently, in *Wu v Canada (Attorney General)*, 2016 FC 722 [Wu], the applicant's airport security clearance was cancelled based on her continued association with her ex-husband who was a full patch member of the Hell's Angels. The evidence before the Minister was that the sole basis of that association was a court order concerning the custody of their children and, that

therefore, such association was not voluntary. The evidence showed that the applicant had taken considerable steps to distance herself from her ex-husband. However, it also showed that in the latter part of their marriage, Ms. Wu was aware that her ex-husband was pursuing membership with the Hell's Angels and presumably, as is the case here, that he was involved in a criminal lifestyle (*Wu*, at para 27).

[35] The Chief Justice found that the decision to cancel Ms. Wu's security clearance was reasonable in the circumstances of the case. He held that the fact Ms. Wu's ongoing interaction with her ex-spouse may not be voluntary, and may be limited by the terms of the custody order, it did not negate or contradict the fact that her ex-husband will continue to have regular and ongoing opportunities to intimidate her and to attempt to induce her (*Wu*, at para 29).

[36] The Applicant claims that contrary to *Wu*, there is no evidence here that there has been any attempt by his brothers to intimidate or induce him. However, as I indicated previously, risk assessments under section 509 of the Regulations, as is the case in the airport security context, are forward-looking and predictive. As pointed out by the Respondent, the relationship between brothers, because of its special nature, bears more scrutiny than a relationship between acquaintances. Here, despite not condoning his brothers' lifestyles, the Applicant does maintain some contact with them.

[37] Given the seriousness of the brothers' criminal activities and the relevance of these activities to the security of marine transportation, I am of the view that the Minister could reasonably form the view, in a forward-looking and predictive perspective, that because of his

association to his brothers, there were reasonable grounds to suspect that there is a risk that the Applicant is in a position in which there is a risk that he 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.

[38] According to *Farwaha*, the thrust of section 509 is that a security clearance should only be granted when the Minister is sure, on the basis of reliable and verifiable information, that the Security Clearance applicant poses no risk to marine security, which means that “there must be no doubt on the matter” (*Farwaha*, at para 69). Again, the Minister is entitled to err on the side of safety given the “catastrophic harm, both economic and human” threats to marine and air transportation security can cause (*Farwaha*, at para 13). Here, I find that the Minister could reasonably entertain a doubt on the matter and that this doubt is sustainable on objectively discernable facts.

[39] Finally, the Applicant takes issue with the fact that both the Office of Reconsideration and the Minister did not share the independent security advisor’s conclusions. First, neither the Office of Reconsideration nor the Minister was bound by the independent security advisor’s report. According to paragraph 517(5) of the Regulations, the independent security advisor is just that: an advisor. Second, as noted by the Office of Reconsideration, one of the independent security advisor’s key findings, the one that there was no objectively discernable evidence that the Applicant’s brothers were members, let alone executive members, of an Indo-Canadian organized crime group, could reasonably be questioned as the Applicant never denied that his brothers were members of this group, his counsel even stating that the Applicant believed that the alleged members of the organized crime group mentioned in the Fairness Letter were family

members. In any event, the Minister was entitled to prefer the LERC report to the report of the independent security advisor (*Singh Kailley v Canada (Transport)*, 2016 FC 52, at para 29 [*Kailley*]).

[40] I note too that in *Farwaha*, the Office of Reconsideration, an advisory body meant to provide independent advice to the Minister (*Farwaha*, at para 110), recommended that the Minister reconsider his cancellation of the applicant's Security Clearance (*Farwaha*, at para 114). Nonetheless, the Minister upheld his decision and cancelled the applicant's Security Clearance on the advice of another advisory body, the Program Review Board. Overall, the Minister's decision in *Farwaha* was held to be reasonable and procedurally fair.

[41] The Applicant also takes issue with the Office of Reconsideration's view that he did not explain how he will ensure that he will not be influenced by his brothers with whom he admitted to still being in contact. He says that he was never asked that question during the reconsideration process, or at any other stages of the security clearance process for that matter, resulting in being imposed an excessive burden of proof by the Office of Reconsideration.

[42] I am afraid this argument cannot succeed as the onus was on him, and not the Minister, to demonstrate that he may not pose a risk to the security of marine transportation (*Kailley*, at para 20). As stated by the Chief Justice in *Wu*, the burden is not on the Minister to further justify the very plausible inferences to be drawn from the information available. That onus is on the Security Clearance applicant to provide any additional information that might eliminate the basis for any concerns regarding the applicant's suitability to be granted a Security Clearance (*Wu*, at

para 46). The onus to demonstrate how he will ensure that he will not be influenced by his brothers, again from a forward-looking perspective, was therefore clearly on the Applicant.

[43] There are situations where in balancing the interests of the individual affected and public safety, the interests of the public take precedence. To borrow from the Chief Justice's reasons in *Wu*, this is so "even where the person may have taken considerable steps to distance himself or herself from the source of the risk to the travelling public" (*Wu*, at para 1). As the Chief Justice found it to be the case in *Wu*, I find that the facts of the present case are a demonstration of one of such situation.

[44] For all these reasons, the Applicant's judicial review application must fail. Given the outcome of the present proceedings, costs are awarded to the Respondent in an all-inclusive amount set at $1,500.00, as agreed to by the parties.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review application is dismissed, with costs to the Respondent in a fix amount of $1,500.00, disbursements included.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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