Federal Court  Cour fédérale

Date: 20170626

Docket: T-1518-15

Citation: 2017 FC 620

Ottawa, Ontario, June 26, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

BRENDA FORGET

Applicant

and

TRANSPORT CANADA AND HER MAJESTY THE QUEEN

Respondents

JUDGMENT AND REASONS

[1] Mrs. Brenda Forget, the applicant, saw her security clearance to have access to certain areas in the port of Montreal cancelled. As a result, her job as a "checker" at the port of Montreal was not possible anymore and, indeed, she was escorted off work grounds on April 10, 2014, after she had received a letter cancelling her security clearance.

[2] However, the final determination was made on August 7, 2015, following a reconsideration of the cancelling of the security clearance which was conducted with the assistance of an independent advisor. That reconsideration was conducted at the request of the applicant who made such an application on May 6, 2014.

[3] It is more specifically with respect to that decision of August 2015 that a judicial review application was launched pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985 c F-7.

[4] The applicant is a 51-year-old employee at the Port of Montreal. She began working at the port in April 2005 as a "checker". No security clearance was needed at that time. A security clearance became necessary in 2007. The applicant was security cleared. Her security clearance was renewed, for a period of five years, in 2012. It is that security clearance which was first suspended and then cancelled.

[5] The applicant is married and has two children. Her only sibling, Brian Forget, has a daughter that the applicant cared for on a full-time basis between 2012 and 2014. Brian has a lengthy criminal record, including convictions for conspiracy to import narcotics and trafficking. The applicant's cancellation of her security clearance appears to be largely as a result of her "association" with her brother.

[6] In essence, the applicant makes before this Court two arguments. First, she argues that the decision made in her case is unreasonable, which constitutes, of course, the administrative law argument. A second set of arguments is concerned with the *Canadian Charter of Rights and*

Freedoms, Part I of the *Constitution Act*, 1982, Schedule B, *Canada Act, 1982* (UK), 1982, c 11 [*Charter*]. She argues that the exercise of the discretion which the Minister of Transport has pursuant to section 509 of the *Marine Transportation Security Regulations*, SOR/2004-144 [the Regulations], violates sections 7 and 15 of the *Charter*.

[7] In a nutshell, the section 7 argument is concerned with an alleged violation of the security of the person, because the applicant's job would be in jeopardy, whilst the principle of fundamental justice would be that the provision invoked to cancel the security clearance is void for vagueness. However, the applicant never developed fully the section 7 argument. On the other hand, the applicant was more insistent that the effect of the application of section 509 of the Regulations would be to discriminate against her on the basis of her family status. She claims that her relationship with her brother is an analogous ground under section 15 and that, if her security clearance were cancelled solely on the basis of her brother's involvement in crime, that constitutes discrimination on the basis of her family status.

[8] Counsel for the applicant readily acknowledges that if his administrative law argument succeeds, there is no need to reach his constitutional law arguments.

[9] In my view, it will not be necessary to discuss any further the merits of the *Charter* arguments because the decision that was made is not reasonable, as the notion exists in administrative law. As a result, the decision to cancel the security clearance must be quashed as being not reasonable.

I. The legal framework

[10] Starting in 2007, the port of Montreal required employees working in security-sensitive areas, including checkers, to have a security clearance. The applicant successfully obtained her first clearance in December 2007. Her clearance was renewed in 2012 for another five years.

[11] The *Marine Transportation Security Act*, SC 1994, c 40 provides the authority for the Governor in Council to make regulations authorizing employee screening to protect marine transportation security. It is subsection 5(1) that is relevant:

Regulations respecting security	**Règlements en matière de sûreté**
5 (1) The Governor in Council may make regulations respecting the security of marine transportation, including regulations	**5 (1)** Le gouverneur en conseil peut, par règlement, régir la sûreté du transport maritime et notamment :
(a) for preventing unlawful interference with marine transportation and ensuring that appropriate action is taken where that interference occurs or could occur;	**a)** viser à prévenir les atteintes illicites au transport maritime et, lorsque de telles atteintes surviennent ou risquent de survenir, faire en sorte que des mesures efficaces soient prises pour y parer;
(b) requiring or authorizing screening for the purpose of protecting persons, goods, vessels and marine facilities;	**b)** exiger ou autoriser un contrôle pour la sécurité des personnes, des biens, des bâtiments et des installations maritimes;
(c) respecting the establishment of restricted areas; …	**c)** régir l'établissement de zones réglementées; (…)
[My emphasis]	[Je souligne]

[12] The Marine Transportation Security Clearance Program is based on the Regulations and it expanded the pre-existing Transportation Security Clearance Program for Canadian airports in place since 1985.

[13] Under subsection 508 of the Regulations, adopted pursuant to the Act, the Minister must conduct a number of checks when an employee applies for a security clearance to assess whether the applicant poses a risk to marine transportation security, including a criminal record check and a law enforcement and intelligence check.

Checks and Verifications	**Vérifications**
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:	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.

[14] After conducting these checks, the Minister may grant a security clearance if he or she is of the opinion that there is verifiable, reliable, and sufficient information to determine what risk the applicant poses to marine transportation security. The Minister must consider the list of enumerated factors in section 509 as part of that risk evaluation, including subsection 509(c) which asks whether there are reasonable grounds to suspect that the applicant is in a position in which there is a risk that 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. Once an employee has a security clearance, the Minister can cancel that clearance under subsection 515(5) if the Minister deems the individual a risk under section 509.

Minister's Decision	**Décision du ministre**
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:	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:
…	(…)
(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;	**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;

…	(…)
515 (5) The Minister may cancel the transportation security clearance if the Minister determines under section 509 that the holder may pose a risk to marine transportation security or that the transportation security clearance is no longer required. The Minister shall advise the holder in writing of any cancellation.	**515 (5)** Le ministre peut annuler l'habilitation de sécurité en matière de transport s'il établit, en application de l'article 509, que le titulaire de l'habilitation de sécurité en matière de transport peut poser un risque pour la sûreté du transport maritime ou que l'habilitation n'est plus exigée. Il avise par écrit le titulaire dans le cas d'une annulation.
[My emphasis]	[Je souligne]

II. The facts

[15] Although the security clearance of the applicant was renewed in 2012, a review was undertaken. The most relevant facts concerning the review can be summarized in the following way.

[16] On November 26, 2013, the Royal Canadian Mounted Police (RCMP) sent a Law Enforcement Records Check (LERC) report on the applicant to the Director of the Security Screening Program at Transport Canada. The original LERC report is in French, but it is accompanied by an English translation which was used throughout these proceedings. It is reproduced in its entirety; there is no other information on which Transport Canada relied to cancel the security clearance:

1. Since 2005, the applicant's name has appeared as a person of interest in a number of police reports about organized crime in the Port of Montreal. She was a close associate of an

individual (Subject A) who was investigated many times for importing narcotics and stealing containers.

2. In November 2005, the applicant's home was searched as a result of a multi-month investigation of a criminal organization involved in drug trafficking. That large-scale investigation called for several methods of investigation, which established that the applicant had a good knowledge of the transportation of stolen goods and that she played a direct role in preparations for a theft by creating the necessary documentation. During the search of her home, about 50g of cannabis and a weigh scale were seized. On February 3, 2006, the charge of possessing narcotics was dismissed in court.

    a. Subject A was found guilty of fraud over $5000 and sentenced to 6 months in prison in addition to 9 months served while awaiting sentencing, and 3 years' probation. Between 1987 and 2000 he was also convicted on 20 other occasions, for offences including robbery, disguise, break and enter, conspiracy to commit theft, theft over $1000, impersonation, and possession of property obtained by crime over $5000. Some of the convictions resulted in sentences of up to 3 years in prison. Subject A is currently facing charges of conspiracy to import narcotics and trafficking (4 counts), importation of cannabis (3 counts) and possession of narcotics for the purpose of trafficking.

[The original French version is appended to these reasons.]

[17] On December 5, 2013, the Director advised the applicant in writing that the information in the LERC report had raised concerns about her ability to retain a security clearance. He invited her to explain the information in the LERC report for Transport Canada to consider in its decision on whether she should maintain her clearance.

[18] In response, the applicant provided information through her lawyer as well as in her own written statement:

- "Subject A" was likely her brother. She was aware of his criminal offences but he had never tried to influence her or ask her to do anything illegal. She maintains a distant relationship with him, but remains in touch because his daughter—her niece—has lived with her family for several years.
- She did not understand why her name was mentioned as a person of interest in police reports since she has not been and is not involved with any persons involved in organized crime at the port or elsewhere. If she had knowledge of the transportation of stolen goods and played a direct role in preparing for theft by creating the necessary documentation she would have been charged.
- She had been interviewed by investigators after being told her phone was tapped due to charges against her brother.
- The cannabis charges against her or her husband were dismissed.
- She was diagnosed with breast cancer and took several months off work in 2011, 2012, and 2013 for surgeries.
- She had conducted her job in an honest, diligent, and responsible manner with no complaints.

[19] The RCMP provided two clarifications to its LERC report in February 2014. The possession of narcotics charges against the applicant were withdrawn rather than dismissed. Furthermore, Subject A, not the applicant, was the target of the investigation leading to the search of the applicant's house in 2005.

[20] The only evidence on the record about the brother's criminal activities in 2005 are two arrest warrants pertaining to several offences in Hinchinbrooke and Ste-Clotide, Beauharnois district, on the south shore of the St-Lawrence River, and one offence in the Montreal area.

[21] The Marine Transportation Security Clearance Program Advisory Body met to discuss the applicant's file in March 2014. The Record of Discussion reiterated the concerns asserted in the letter sent on December 5, 2013. The Advisory Body added that the applicant's alleged theft was "through the Port of Montreal" and that her brother "had been investigated many times for

importing narcotics and stealing containers at the Port of Montreal." These statements were not contained in the LERC report. Counsel for the respondents was asked specifically about the evidence on the record to support those statements. Nothing was identified.

[22] The Advisory Body recommended cancelling the applicant's clearance, on the basis she could be suborned, pursuant to subsection 509(c). It was said that her submissions were "not sufficient to dispel the concerns raised."

[23] On April 10, 2014, the Acting Director General of Marine Safety and Security cancelled the applicant's security clearance on behalf of the Minister. He focused on subsection 509(c) as the basis for revoking the clearance and re-iterated the Advisory Board's statement that her alleged theft was through the Port of Montreal:

> The information relating to your association to an individual (your brother) involved in criminal activity, as well as your direct involvement in and/or direct knowledge of, the transportation of stolen goods through the Port of Montreal, raised concerns regarding your judgment, reliability and trustworthiness.
>
> …
>
> A review of the information on file led me to have reasonable grounds to suspect that you are in a position in which there is a risk that you 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.

[24] Shortly after, the applicant was told she was no longer eligible to work as a checker. She was re-assigned and started working in non-sensitive parts of the port in lower-pay positions.

[25] If the Minister refuses to grant, or cancels, a clearance, the applicant can request formal reconsideration under section 517 of the Regulations.

Reconsideration	**Réexamen**
517 (1) An applicant or a holder may request that the Minister reconsider a decision to refuse to grant or to cancel a transportation security clearance within 30 days after the day of the service or sending of the notice advising them of the decision.	**517 (1)** Tout demandeur ou tout titulaire peut demander au ministre de réexaminer une décision de refuser ou d'annuler une habilitation de sécurité en matière de transport dans les 30 jours suivant le jour de la signification ou de l'envoi de l'avis l'informant de la décision.
(2) The request shall be in writing and shall set out the following:	**(2)** La demande est présentée par écrit et comprend ce qui suit :
(a) the decision that is the subject of the request;	**a)** la décision qui fait l'objet de la demande;
(b) the grounds for the request, including any new information that the applicant or holder wishes the Minister to consider; and	**b)** les motifs de la demande, y compris tout nouveau renseignement qu'il désire que le ministre examine;
(c) the name, address, and telephone and facsimile numbers of the applicant or holder.	**c)** le nom, l'adresse et les numéros de téléphone et de télécopieur du demandeur ou du titulaire.
…	(…)
(4) After representations have been made or a reasonable opportunity to do so has been provided, the Minister shall reconsider the decision in accordance with section 509 and shall subsequently confirm or change the decision.	**(4)** Après que des observations ont été présentées ou que la possibilité de le faire a été accordée, le ministre réexamine la décision conformément à l'article 509 et, par la suite, confirme ou modifie la décision.
(5) The Minister may engage the services of persons with appropriate expertise in security matters to advise the Minister…	**(5)** Le ministre peut retenir les services de personnes qui possèdent la compétence pertinente en matière de sûreté pour le conseiller. (…)

[26] The applicant requested reconsideration of the clearance cancellation. The Office of Reconsideration invited her to make further submissions and she largely re-iterated the points she presented to Transport Canada when concerns were first raised.

[27] The Office of Reconsideration asked a consultant, from outside the Department, to provide an independent opinion on the case. He reviewed the applicant's file, interviewed her on January 21, 2015, and submitted his report on March 9, 2015.

[28] As part of his review, the consultant asked the RCMP what facts supported the allegations in the November 2013 LERC report. The RCMP provided a brief response in February 2015:

> The Applicant's knowledge and direct involvement about the transportation of stolen goods through the Port of Montreal as well as her criminal association are mentioned in the LERC and are accurate.
>
> The only info that can be added is in relation to Subject A's criminal record which is as follow [*sic*]: Le 7 octobre 2013, le Sujet A a été trouvé coupable de Complot pour importation et trafic de stupéfiant, Importation de cannabis et Possession de stupéfiant en vue de trafic. Il a été condamné à 84 mois de prison. [TRANSLATION] ("On October 7, 2013, Subject A was found guilty of conspiracy to import and traffic narcotics, importation of cannabis, and possession of narcotics for the purpose of trafficking. He was sentenced to 84 months in prison")

As can be seen the response did not provide the facts supporting the allegation but rather re-asserted the allegation, declaring them to be accurate.

[29] The consultant concluded that apart from their kin relationship, the file did not "provide clear knowledge of her association" with her brother. He also found that the file "[did] not provide objectively discernible facts about her involvement in or knowledge about criminal activities in the Port of Montreal." Nevertheless, he recommended that the original decision to cancel the applicant's clearance be maintained, the strongest argument, in his view, being "the affirmation by the RCMP that, although she was never charged, she was involved in and had knowledge of criminal activities in the Port of Montreal, therefore posing a threat to the security of marine transportation."

[30] The Office of Reconsideration reviewed the entire file, including the consultant's report, and prepared its own recommendation. The Office explained that its decision was "not an easy one to make", emphasizing among other things the lack of discernible facts supporting the RCMP's allegations about the applicant's criminal actions. Furthermore, it was acknowledged that the applicant submitted the arrest warrant against her brother which shows that the offences were not linked to the Port of Montreal. Nevertheless, the Office ultimately recommended maintaining the cancellation of the clearance. The applicant's proximity to her brother constituted a risk that she could be suborned to assist him and their association was deepened due to her guardianship of her niece.

[31] The departmental position was captured in a few words. There are no discernible facts, but the Office "believes that her guardianship over her niece makes her a potential target who could be suborned to assist her brother, putting the security of marine transportation in jeopardy".

[32] On August 7, 2015, the Assistant Deputy Minister of Safety and Security confirmed that she was maintaining the cancellation of the applicant's clearance on the Minister's behalf. This is the final decision which is the focus in this judicial review application:

> I have reviewed all relevant and available information, including the recommendation from the Transportation Security Clearance Advisory Body, the original decision by the A/Director General, Marine Security, the report from the Independent Advisor, and the recommendation from the Office of Reconsideration. In the course of this review, I note your association to an individual involved in criminal activity at the Port of Montreal. I also note your home was searched in November 2005 as a result of an investigation involving drug trafficking. The large scale investigation called for several methods of investigation, which established that you had knowledge of the transportation of stolen goods and that you played a direct role in preparing for a theft by creating the necessary documentation from the Port of Montreal. I note your name has appeared as a person of interest in a number of police reports about organized crime in the Port of Montreal. There was enough information available for me to conclude there are reasonable grounds to suspect that you do meet the criterion under Paragraph 509(c)…

III. Standard of review and analysis

A. *Standard of review*

[33] As indicated earlier, there are two sets of arguments advanced by Ms. Forget. There is the straight administrative law argument that once the law is applied to the facts of this case, the decision is not reasonable. There is also the constitutional law argument relating to the application of sections 7 and 15 in this case.

[34] The first issue to be addressed is, of course, the standard of review applicable in each case. It does not seem to me that there is a disagreement between the parties on this issue. First,

the Federal Court of Appeal has already found in *Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 CAF 56, [2015] 2 FCR 1006 [*Farwaha*], that the judicial review of decisions made about security clearances pursuant to section 509 of the Regulations is done on the basis of the standard of review of reasonableness, not correctness (paras 84-86). That decision is of course binding on this Court.

[35] Second, the applicant did not seek to have section 509 of the Regulations ruled to be unconstitutional by reasons of an infringement of section 15 of the *Charter*. Rather, the argument is that the Minister infringed that section by denying the security clearance. It is the conduct of the Minister that is challenged as discriminating against the applicant because of her family status.

[36] The applicant was clear that it is the decision of the Minister that did not satisfy the requirements of section 15 of the *Charter*. In those circumstances, the framework analysis developed in *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*], calls for a standard of review of reasonableness:

> [45] It seems to me that applying the *Dunsmuir* principles results in reasonableness remaining the applicable review standard for disciplinary panels. The issue then is whether this standard should be different when what is assessed is the disciplinary body's application of *Charter* protections in the exercise of its discretion. In my view, the fact that *Charter* interests are implicated does not argue for a different standard.

[37] And later, at paragraph 54:

> [54] Nevertheless, as McLachlin C.J. noted in *Catalyst*, "reasonableness must be assessed in the context of the particular

> type of decision-making involved and all relevant factors. It is an essentially contextual inquiry" (para. 18). Deference is still justified on the basis of the decision-maker's expertise and its proximity to the facts of the case. Even where *Charter* values are involved, the administrative decision-maker will generally be in the best position to consider the impact of the relevant *Charter* values *on the specific facts of the case*. But both decision-makers and reviewing courts must remain conscious of the fundamental importance of *Charter* values in the analysis.

Accordingly, the issue of whether the decision unduly discriminates against the applicant would have to be reviewed on a standard of review of reasonableness.

[38] It is less clear to me what position the applicant is taking with respect to section 7 of the *Charter*. The first difficulty is of course to argue that either life, liberty or security of the person has been deprived where a security clearance has been lifted. There is binding authority on this Court in *Reference re Marine Transportation Security Regulations (CA)*, 2009 FCA 234 [*Reference*], at para 47, that since "(s)ection 7 does not protect property or other predominantly economic interests, it would not cover any potentially adverse impact that a refusal of security clearance might have on an employee's employment: *Mussani v. College of Physicians and Surgeons of Ontario* (2004), 74 O.R. (3d) 1, at paras. 41-43 (C.A.) (right to practise a profession not protected by section 7)". In order to argue that section 7 of the *Charter* is engaged in spite of the clear ruling of the Federal Court of Appeal, the applicant merely argues in her memorandum of facts and law that the *Reference* Court decision did not have the benefit of a factual background. In my view, such an assertion cannot displace, without more, the clear finding by the Court of Appeal. The applicant did not allege, let alone demonstrate, a "change in the circumstances or evidence that fundamentally shifts the parameters of the debate", which would be required to displace the doctrine of *stare decisis*, which is still alive and well (*Canada*

(Attorney General) v Bedford, 2013 SCC 72, [2013] 3 SCR 1101, at para 42); see also *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 at para 44). *Stare decisis* cannot be displaced on the sole basis offered by the applicant.

[39] Had the applicant been able to satisfy the first requirement of section 7, she still would have had to argue that she was deprived of life, liberty or security of the person in breach of the principles of fundamental justice. Counsel advised that the principle of fundamental justice alleged in this case would have been "void for vagueness". If that is to be the argument, it would seem that the argument would have to be that the section itself is targeted; it would be the constitutionality of section 509 of the Regulations that would be targeted. In that case, the standard of review would have been correctness (*Doré*, para 43). Be that as it may, the *Reference* is binding and there was no argument made in writing, and even less so at the hearing, to displace *stare decisis*.

[40] However, if the decision is unreasonable on the basis of principles of administrative law, there will not be a need to reach the issue of unreasonableness by reason of unconstitutional discrimination. In my view, given the facts of this case, the decision is unreasonable without having to resort to the *Charter* because it is not one of the possible acceptable outcomes defensible in respect of the facts and the law. Indeed, reasonableness is also concerned with justification, transparency and intelligibility within the decision-making process, which would be deficient in the circumstances (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47). To put it bluntly, we do not know in the end why the security clearance was cancelled.

That makes the cancellation of the security clearance unreasonable. Thus, it will not be required to reach the constitutional argument.

B. *Analysis*

[41] In order to reach my conclusion, I will review first the Regulations that apply to the issuance of security clearances at the Port of Montreal. That will be followed by a review of the facts which were considered by the decision-maker in reaching the decision to cancel the security clearance. Finally, the Court will compare this set of circumstances to others where security clearances were under consideration by the Court of Appeal and this Court.

(1) The Regulations

[42] No one argues that one is entitled to a security clearance pursuant to the Regulations. On the other hand, it is accepted that a security clearance cannot be denied arbitrarily. The Federal Court of Appeal described thus the security review process set up in 2002 in the *Reference* case:

> [11] The program is part of a security review process initiated by Transport Canada in 2002, partly in response to the attack on the World Trade Center in New York on September 11, 2001. The purposes of the program are to enable the Minister to gather sufficient information to establish the identities of workers employed in security-sensitive positions in ports and to ensure that they do not pose an unacceptable security risk to marine transportation. The scheme is intended to deter security risks from applying for clearance, and to screen out unacceptably high security risks who do apply.

[43] Section 509 of the Regulations is the provision which finds application. It provides for the circumstances in which a security clearance can be granted. The Minister is looking to

information that is verifiable and reliable and will be sufficient to determine the extent to which the applicant poses a risk to the security of marine transportation. The focus is on the security of marine transportation and the Minister will consider a series of factors provided for in the Regulations. In this case, it is paragraph 509 (c) that is invoked in order to cancel the security clearance renewed in 2012 (the initial approval was in 2007). It requires that there be reasonable grounds to suspect, not mere suspicions, that the applicant risks being suborned to be involved in the commission of an act that might constitute a risk to marine transportation. It is the reasonableness of that decision that is to be controlled judicially in the case at bar.

[44] The standard of "reasonable grounds to suspect" is a low one. Our law knows of the "beyond a reasonable doubt" standard for a criminal conviction, the "balance of probabilities" in civil matters (*Canada (Attorney General) v Fairmont Hotels Inc.*, 2016 SCC 56, [2016] 2 SCR 720, at para 35), the "reasonable grounds to believe" often required for the obtaining of a judicial order (search warrant, section 487 of the *Criminal Code*, RSC, 1985, c C-46, production order, section 487.014 and 487.015 of the *Criminal Code*) and the "reasonable ground to suspect" (preservation order, section 487.012 of the *Criminal Code*, testing for presence of alcohol or drug, section 254 of the *Criminal Code*). The reasonable grounds to suspect standard is lower than any of these.

[45] Justice Stratas was undoubtedly right to declare in *Farwaha* that reasonable grounds to suspect is a standard that is used in our law and jurisprudence (para 95). It is a standard that is lower than the reasonable grounds to believe, but it has not always been easy to articulate how it is to be applied. In their influential article "Suspicious Searches: What's so Reasonable About

Them?", (1999) 24 CR (5th) 123, Peter Sankoff and Stéphane Perrault noted how prevalent the "reasonable suspicion" standard had become. The number has only increased since then.

[46] Thankfully, the law has also evolved in order to flesh out what is intended by the standard. The recent articulation of the standard in *R v Chehil*, 2013 SCC 49, [2013] 3 SCR 220 [*Chehil*], a case revolving around the use of drug detection dogs, is of assistance. The Court, having recognized that the test is a common standard that arises in a number of contexts, more fully explained what such a standard entails, following in the footsteps of *R v Kang-Brown*, 2008 SCC 18, [2008] 1 SCR 456 [*Kang-Brown*] where Binnie J. had given the following definition of "reasonable suspicions" in contradistinction to mere suspicions:

> [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. As observed by P. Sankoff and S. Perrault, "Suspicious Searches: What's so Reasonable About Them?" (1999), 24 C.R. (5th) 123:
>
> > [T]he fundamental distinction between mere suspicion and reasonable suspicion lies in the fact that in the latter case, a sincerely held subjective belief is insufficient. Instead, to justify such a search, the suspicion must be supported by factual elements which can be adduced in evidence and permit an independent judicial assessment.
> >
> > . . .
> >
> > What distinguishes "reasonable suspicion" from the higher standard of "reasonable and probable grounds" is merely the degree of probability demonstrating that a person is involved in criminal activity, not the existence of objectively ascertainable facts which, in both cases, must exist to support the search. [pp. 125-26]

> Writing about "reasonable suspicion" in the context of the entrapment defence, Lamer J. in *R. v. Mack*, [1988] 2 S.C.R. 903, thought it unwise to elaborate "in the abstract" (p. 965). See also *R. v. Cahill* (1992), 13 C.R. (4th) 327 (B.C.C.A.), at p. 339. However, in *Alabama v. White*, 496 U.S. 325 (1990), the U.S. Supreme Court contrasted "reasonable suspicion" with reasonable grounds of belief (or, what the U.S. lawyers call "probable cause"):
>
> > Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. [p. 330]

[47] What has emerged is that "reasonable suspicions", also referred to as "articulable cause" in American jurisprudence and some Canadian case law (*Kang-Brown*, para 76), requires the presence of objectively discernible facts that will generate the possibility, as opposed to the probability for reasonable grounds to believe, of something to be inferred. Hence, the Court in *Chehil* drew the following distinction between belief and suspicion:

> [27] 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.

[48] Hence, the facts giving rise to a reasonable suspicion must be of a certain quality. In the context of a search, for instance, facts that would apply broadly to innocent persons could very well fall in the category of general suspicion, which would not satisfy the test of "reasonable suspicions" :

> [29] 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.
>
> [30] 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.
>
> *Chehill*, supra

That should not be taken to mean that the objectively discernible facts must lead to only one inference. If that were to be the case, we would have left the realm of the possible for that of the probable or even the certain. But the existence of objective and ascertainable facts appears to be essential to support reasonable suspicions.

[49] The demonstration made by the Supreme Court about the notion of "reasonable suspicions" would apply outside of the limited context of drug detection dogs (see *Chehill*, para 23, footnotes 1 and 2). Of course, what will constitute reasonable suspicions in a particular case may be the subject of debate (*R v MacKenzie*, 2013 SCC 50, [2013] 3 SCR 250, a 5:4 decision on the applicability of the "reasonable suspicions" standard to a particular set of facts).

Nevertheless, the principles enunciated by the Supreme Court would find a direct application in the matter before this Court.

[50] In *Farwaha*, the analysis of Stratas J.A. does not appear to me to be doubted by Mainville J.A., although he disagreed on other aspects of the majority ruling. This analysis would confirm the requirement that there be objectively discernible facts at the very least to ground reasonable suspicions. The need for the presence of discernible facts is meaningful. Although there is no expectation that exactitude and scientific calculation will be at play, the Minister is not given "carte blanche" to decide as he thinks appropriate:

> [93] On one view of the matter, the specification of a standard in the legislation – assessments of risk and "whether reasonable grounds for suspicion exist" – constrains the range of options available to the Minister. The Minister can confirm the cancellation of a security clearance only when those standards are met, not whenever the Minister "thinks it appropriate": see, *e.g.*, the statutory recipe and its narrowing effect on the ranges discussed in *Almon Equipment Limited v. Canada (Attorney General)*, 2012 FCA 193.
>
> (most probably, the case should be found at 2010 FCA 193 and also [2011] 4 FCR 203)
>
> (2) Facts relevant to the determination

[51] In my view, it suffices that there be an examination of the quality of the information available to the decision-maker to conclude that it is not reasonable to conclude that the reasonable grounds to suspect needed under paragraph 509 (c) are present in this case. To put it bluntly, there is a lack of discernible facts to allow the Minister to reach on his own the

conclusion of the presence of reasonable grounds to suspect. In effect, the Minister accepted the view taken by the RCMP without having the facts to support that view. The examination takes us back to the decision letter issued on August 7, 2015. The only reasons given in support of the "reasonable suspicions" are to be found in one short paragraph that I reproduce again for ease of reference:

> I have reviewed all relevant and available information, including the recommendation from the Transportation Security Clearance Advisory Body, the original decision by the A/Director General, Marine Security, the report from the Independent Advisor, and the recommendation from the Office of Reconsideration. In the course of this review, I note your association to an individual involved in criminal activity at the Port of Montreal. I also note your home was searched in November 2005 as a result of an investigation involving drug trafficking. The large scale investigation called for several methods of investigation, which established that you had knowledge of the transportation of stolen goods and that you played a direct role in preparing for a theft by creating the necessary documentation from the Port of Montreal. I note your name has appeared as a person of interest in a number of police reports about organized crime in the Port of Montreal. There was enough information available for me to conclude there are reasonable grounds to suspect that you do meet the criterion under Paragraph 509(c) of the *Marine Transportation Security Regulations*, which states:
>
> …

Although not reviewing per se the underlying recommendations, in this case the decision is the product of a number of steps which are obviously part of the record and which shed light on the ultimate decision.

[52] There are four elements that have been taken into account in the decision under review:

a) association with someone involved in criminal activity in the Port of Montreal;

b) a search conducted in November 2005; the investigation would have involved drug trafficking;

c) some investigation would have established the applicant's knowledge of transportation of stolen goods; it would establish that the applicant played a direct role in preparing the necessary documentation from the Port of Montreal;

d) police reports would have the applicant's name as a person of interest with respect to organized crime in the Port of Montreal.

[53] The Court raised on numerous occasions during the hearing whether there were on the record facts which would have supported the assertions made in the decision letter. It was confirmed that the information came exclusively from a letter provided by the RCMP on November 26, 2013. If such is the case, one has to conclude that there was amplification between the letter of November 2013 and the decision letter. That November letter refers to being the result of a "vérification de dossiers policiers" and it is ambiguously couched. It suggests much more than it tells.

[54] It does not appear that there was any attempt to supplement through independent means the conclusions offered by the RCMP. We do not know what facts were to be found in the police files, and on what basis the conclusions found in the report were reached. In fact, it was established through a clarification issued 2 months later that the search warrant executed at the applicant's home in November 2005 was part of an investigation in which the applicant was not a target. That is certainly not the impression conveyed by the letter which speaks of a large scale investigation into a criminal organization involved in the importation of narcotics.

[55] There is no information whatsoever about the mentions of the applicant's name in police reports since 2005. Without more, this is in the nature of innuendo (the Oxford Canadian Dictionary defines "innuendo" as "an allusive or oblique remark or hint, usu. disparaging"); there is no fact supporting the allusion. What is a "person of interest" and what is meant by that in the report?

[56] While the RCMP letter of November 2013 spoke of the involvement of the applicant in a theft by creating the necessary documentation, the decision letter embellishes by stating that the necessary documentation was from the Port of Montreal. That embellishment seems to come from the Advisory Body's review of the matter (March 11, 2014). While the RCMP letter was silent as to the documents needed for a theft of merchandise, the Advisory Body is much more assertive by creating a direct link with the Port of Montreal. Nothing supports the embellishment, the purpose of which is evidently to connect activities to marine transportation.

[57] It is not the only time where the Advisory Body adds granularity to the RCMP report. Hence, as already pointed out, the RCMP simply refers to the fact that a search warrant would have been executed in November 2005 at the applicant's residence. Without even suggesting that the information to obtain the search warrant was consulted (once executed, a search warrant and the information upon which it issued are available to the public, *AG (Nova Scotia) v MacIntyre*, [1982] 1 SCR 175), the Advisory Board notes "that the evidence to secure a warrant from a judge to search the applicant's home would have been fairly significant". Not only is that also in the nature of innuendo, but this ignores that the applicant would not have been the target of the investigation. A search warrant is no more than an investigative tool, required to satisfy privacy

requirements under the Constitution (*Hunter et al v Southam Inc.*, [1984] 2 SCR 145), to allow the authorities to seize that which, among other things, "will afford evidence with respect to the commission of an offence" (ss. 487(1) of the *Criminal Code*). What will afford evidence with respect to the commission of an offence is quite broad. That does not establish the culpability of the person subjected to a search. It suffices that there be reasonable grounds to believe that in that place, with the knowledge of the occupant or not, something will afford evidence of some sort with respect to an offence. A completely innocent third party may well be the subject of a search warrant. It is not a rare occurrence. Evidently, the decision-maker infers something nefarious from the execution of a search warrant 10 years earlier. No discernible fact was brought to the fore however.

[58] The Advisory Board seems to have extrapolated beyond the facts available in order to seek to establish a link with a person said to be associated with the applicant. In fact, the RCMP speaks of an association with a person who would have been investigated many times for importing narcotics and stealing containers. For the Advisory Body, there is a specific location: the Port of Montreal where the applicant works.

[59] The close association with the person is not described or defined by the RCMP. Instead, the letter of November 2005 describes the criminal record of that person: it is not insignificant. However, the record in this case does not give any indication that the offences of theft, break and enter, robbery, importation of narcotics have anything to do with the Port of Montreal. Indeed, the close association with the applicant, on this record, is limited to the fact that the close associate is the applicant's brother.

[60] It should not be surprising that the consultant retained to assist with the reconsideration of the cancellation of the security clearance asked:

> 1. To seek clarification and background information supporting the **Applicant's direct involvement and/or knowledge about the transportation of stolen goods through the Port of Montreal.**
>
> 2. To find out what **knowledge and direct role the Applicant had in the theft of goods from the Port of Montreal.**
>
> 3. To know **what is the "criminal association" of the Applicant with her brother.**
>
> (E-mail of January 26, 2015, from Chris McQuarrie to Guy Morgan)

No information in response to the requests for clarification and background was forthcoming. Not only has the Advisory Board gone beyond the RCMP letter to assert links with the Port of Montreal, but this record does not reveal any fact that could support what constitutes the criminal association with her brother. When asked directly, the RCMP declined to add. The issue is not so much to investigate the reasons for the lack of forthcomingness as it is to register, again, the lack of discernible fact to support reasonable suspicions.

[61] The report of the outside consultant dated March 9, 2015, duly noted the lack of information. The analysis provided by the consultant is one-paragraph long:

> Criminal record checks revealed that the Applicant does not have any criminal convictions or criminal charges. Although the Applicant's association with Subject A, her brother, is undeniable the initial LERC report and the subsequent responses to requests to Access [*sic*] information do not provide clear knowledge of her association beyond the kin relationship. These documents do not provide objectively discernible facts about her involvement in or knowledge about criminal activities in the Port of Montreal. It

> implies that she would have knowledge of and participated in the criminal activities of Subject A. As mentioned the charges of possession of cannabis were withdrawn which is reflected in the fact that she does not have any recorded criminal convictions or criminal charges.

Despite the absence of discernible facts, a conclusion reached by the consultant that I accept and share, the consultant nevertheless recommended that the decision to cancel the security clearance be maintained. The recommendation is based solely on the "affirmation by the RCMP that, although she was never charged, she was involved in and had knowledge of criminal activities in the Port of Montreal". As I read the conclusion, there are no objective discernible facts. For the consultant, the mere affirmation from the RCMP suffices. In effect, that constitutes the acceptance, holus-bolus, of the mere affirmation of the RCMP.

[62] The Office of Reconsideration, which supports the decision-maker who is the Minister's delegate, provided a faithful report following that of the independent consultant. The report and the recommendation for action are dated June 23, 2015.

[63] Again, the Office of Reconsideration found that there are no discernible facts, only allegations against Ms. Forget. The "tangible evidence" offered by the applicant seems to have been discounted. She provided arrest warrants concerning her brother which would show that the offences were not linked to the Port of Montreal; furthermore, an affidavit produced by the applicant indicates that her personal telephone would have been tapped between September 2010 and June 2012, yet she claims that she never heard from the authorities other than the notice issued in accordance with section 196 of the *Criminal Code*. That, the applicant would argue, would show her lack of involvement in any criminal activity.

[64] Instead, the Office of Reconsideration seems to have relied exclusively on the alleged proximity between the applicant and her brother. Although there is nothing that is relied on to establish the association with the brother, and the Office already acknowledged that the RCMP report does not provide discernible facts, "(t)he Office also believes that their association is deepened by the fact that she has guardianship over his daughter, keeping her in permanent and regular contact with her brother." The position adopted is encapsulated in the departmental position at the end of the June 23, 2015 report:

> **DEPARTMENTAL POSITION**
>
> The Office concedes that the RCMP report did not offer discernible facts proving the allegations against the applicant, but believes that her guardianship over her niece makes her a potential target who could be suborned to assist her brother, putting the security of marine transportation in jeopardy. For these reasons, **the Office of Reconsideration recommends that the initial decision to cancel a Marine Transportation Security Clearance be maintained.**

[65] The Office of Reconsideration is grasping at straws in an effort to make a case. However, the evidence concerning the applicant's niece does not even support that assertion. The record shows that the applicant did in fact take her niece into her house from June 2012 to June 2014, at which point the niece returned to live with her mother in the Eastern Townships region of Quebec. By the time the recommendation is made, even the hook of the guardianship had disappeared. I note that during most of that period, the applicant was fighting a serious illness which required she be off work for 30 weeks for surgery and treatment. Actually, absences for 17 more weeks were required between April 2011 and April 2012.

[66] As can be seen, the Advisory Body embellished the assertions found in the November 2013 letter perhaps in an effort to make the information connected to marine transportation and to claim a close association to a criminal, or perhaps by mistake. Either way the erroneous notion was conveyed. The independent consultant sought more information from the RCMP to establish discernible facts, to no avail. The Office of Reconsideration tried another tack by supporting their recommendation to cancel the security clearance on the basis that the guardianship over her niece makes the applicant a potential target for subornation. Both the independent consultant and the Office of Reconsideration concede that the RCMP did not offer discernible facts.

[67] As a result, a decision to cancel a security clearance is made without discernible facts, exclusively on the basis of the undisputed fact that Ms. Forget has a brother who has an extensive criminal record. Whatever else there may be in the RCMP letter of November 2013, it falls in the category of mere affirmation, without supporting facts. As found in the Supreme Court of Canada jurisprudence, reasonable suspicions require objective discernible facts, what the *Chehil* Court refers to as "factors that are objectively ascertainable, meaning that the suspicion is based on "factual elements which can be adduced in evidence and permit independent judicial assessment ": " (para 46). I would not wish to suggest that concepts developed in different contexts must be accepted without some caution. However, the analysis made by Stratas J.A. in *Farwaha* convinces me that the requirement of "objectively discernible facts" is to be accepted in the construction to be given to section 509 (c) of the Regulations.

[68] Here, the record confirms the paucity, indeed the lack, of discernible facts. Even the independent consultant realized that facts were missing; his attempt to have more, whatever the

reasons for their absence, did not generate those discernible facts. At best, we are left with musings, speculations and hunches, mere affirmations. Both the Federal Court of Appeal (*Farwaha*, para 97) and the Supreme Court (*Chehil*, para 47) concluded that these do not meet the standard of "reasonable grounds to suspect". Faced with a paucity of facts, the record shows that the final recommendation had to rely on the so-called "guardianship" of the applicant's niece. It is very much unclear how the guardianship could have made the applicant a potential target who could be suborned to assist her brother, putting the security of marine transportation in jeopardy. Assuming for the sake of the discussion that such an altruistic gesture, at a time the applicant was herself battling a serious illness, could be used to suborn someone, that lever would have disappeared more than one year before the decision was made to confirm the cancellation of the security clearance as the applicant's niece had returned to the Eastern Townships.

[69] There is no doubt that the Minister enjoys a broad discretion in these matters. It is needed to protect sensitive areas like ports (re *Reference*, para 53). But he cannot operate arbitrarily because he thinks it is appropriate. As Stratas J.A. put it in *Farwaha*, "(t)his is not to say that the Minister can act on the basis of fanciful musings, speculations or hunches. As I shall explain below, "reasonable grounds to suspect" does provide a meaningful standard against arbitrary cancellation of a security certificate" (para 79). Actually, it has been said that "the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches" (*Chehil*, para 30); one would hope that the same standard for the issuance of security clearances serves the same purpose.

[70] Without “reasonable suspicions”, the decision becomes one that cannot fall within acceptable possible outcomes in view of the facts and the law. Furthermore, there is a lack of justification, transparency and intelligibility within the decision-making process. In a word, the decision and the record do not allow the Court to understand why the decision is made if reasonable suspicions are not articulated. The Court must seek to determine whether the decision to cancel the security clearance falls within the range of acceptable outcomes (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, paras 14 and 16). In this case, the issue is not the adequacy of the reasons. It is instead the lack of facts that could justify a finding of “reasonable suspicions” necessary in order to conclude that there is a risk of subornation, in accordance with paragraph 509 (c) of the Regulations. Even at the end of the process, neither the independent consultant nor the Office of Reconsideration was able to establish facts. They seem to have recognized the deficiency, but chose to push ahead anyhow. This deficiency was made glaring as the record as a whole is reviewed.

[71] Despite the glaring omission, the security clearance was cancelled. The lack of “discernible facts” that could support “reasonable grounds to suspect” is fatal.

(3) Other cases

[72] There have been a number of decisions on judicial review on the issuance of security clearances. I have examined a number of them for the purpose of ascertaining whether they had objectively discernible facts in support of the reasonable suspicions required by section 509 of the Regulations.

[73] First among them is *Farwaha*. In that case, the Court of Appeal reversed a decision that the cancellation of the security clearance was not reasonable. The Court of Appeal found that, "on balance", the facts were capable of supporting the conclusion that there were reasonable grounds to suspect conduct described in paras 509 (b) and (c) of the Regulations. There is no possible comparison between the precise facts disclosed in the *Farwaha* case and what was made available in this case.

[74] Although many of the recent decisions that were submitted are concerned with security clearances at airports, pursuant to a different legislative regime, they all show a measure of specificity in the facts supporting the refusal or cancellation of the security clearance that is not present here (*Rossi v Canada (Attorney General)*, 2015 FC 961, at para 24; *Sattar v Canada (Transport)*, 2016 FC 469, at para 7; *Brown v Canada (Attorney General)*, 2014 FC 1081, at paras 12-17 [*Brown*]; *Sidhu v Canada (Attorney General)*, 2016 FC 891, at paras 4-8; *MacDonnell v Canada (Attorney General)*, 2013 FC 719, at paras 8-12; *Thep-Outhainthany v Canada (Attorney General)*, 2013 FC 59, at paras 5-6, 26; *Russo v Canada (Transport)*, 2011 FC 764, at para 84; *Henri v Canada (Attorney General)*, 2016 FCA 38, at paras 9-10, 31).

[75] The case under review does not have that measure of precision. In fact, it boils down to a letter from the RCMP that lacks in specificity. It is the Minister who must have the reasonable suspicions required under paragraph 509(c). Instead, the only information made available is generic in nature. The RCMP may have its reasons to be suspicious of the applicant, but it is the Minister who must have the reasonable grounds to suspect. This is not a matter that can be delegated. The RCMP letter is mere affirmation. The letter of November 26, 2013, does not

reveal grounds: it discloses conclusions without indicating how the conclusion is reached. Although it is undoubtedly true that the Minister can rely on the RCMP reports (*Brown*, supra), the report would have to disclose facts which will allow the Minister to reach his conclusions on his own. When the independent consultant sought that information, he was not successful. The Office of Reconsideration conceded not having discernible facts which would allow the decision-maker to reach his own conclusion. It sought to substitute the guardianship over her niece in view of the lack of discernible facts. Unfortunately for the Office of Reconsideration, the guardianship had already ceased a year earlier. It is hard to see how that could assist in reaching a conclusion that the applicant may be suborned to assist her incarcerated brother, thus putting the security of marine transportation in jeopardy.

[76] As was seen earlier, the standard of reasonable suspicions requires that there be discernible facts in order to reach beyond mere suspicions or hunches. These discernible facts were not disclosed to the decision-maker. That absence makes the finding of the Minister, through his delegate, that there are reasonable grounds to suspect that the applicant is in a position in which there is risk she be suborned to commit an act that might constitute a risk to marine transportation security, to be unreasonable. The discernible facts are not there.

IV. Conclusion

[77] As a result, the judicial review application must be granted. The decision under review is the cancellation of the security clearance. Given that this decision does not meet the requirements of reasonableness, it is the decision to cancel that must be quashed.

JUDGMENT in T-1518-15

THIS COURT'S JUDGMENT is that the judicial review application is granted. The decision to cancel the security clearance is quashed.

Costs, to be assessed in accordance with column III of the table to Tariff B, are granted in favour of the applicant.

"Yvan Roy"
Judge

APPENDIX A

Extract of the Law Enforcement Records Check (LERC) report dated November 26, 2016:

1. Depuis 2005, le nom de la demandeuse apparaît comme une personne d'intérêt dans plusieurs rapports policiers concernant le crime organisé implanté au Port de Montréal. La demandeuse était associée de près à un individu (Sujet A) qui a été enquêté à de nombreuses reprises pour des importations de stupéfiants et des vols de conteneurs.

2. En novembre 2005, la résidence de la demandeuse a fait l'objet d'une perquisition suite à une enquête de plusieurs mois qui visait une organisation criminelle impliquée dans l'importation et le trafic de drogue. Cette enquête d'envergure a nécessité plusieurs moyens d'enquête qui ont permis d'établir que la demandeuse avait de bonnes connaissances concernant le transport de marchandises volées et qu'elle a participé directement aux préparatifs d'un vol de marchandise en fabriquant des documents nécessaires pour effectuer ce vol. Lors de la perquisition, une cinquantaine de grammes de cannabis et une balance ont été saisis à la résidence de la demandeuse. Le 3 février 2006, la demandeuse a été libérée par la cour de l'accusation de possession de stupéfiant.

    a. Le sujet A a quant à lui été reconnu coupable de fraude de plus de $5,000 (Art. 380(1)(A) CC et Faux Art. 367(A) CC et condamné à une peine de 6 mois d'emprisonnement en plus de 9 mois d'emprisonnement présentenciel et, une probation de 3 ans. En plus de cet incident, entre 1987 et 2000, il a été condamné à 20 autres reprises pour des infractions incluant vol qualifié, déguisement, entrée par effraction, complot de vol, vol de plus de $1,000, obstruction, supposition de personne, possession de biens criminellement obtenus de plus de $5,000. Certaines condamnations ont mené à des peines allant jusqu'à trois ans d'emprisonnement. Le sujet A fait présentement face à des accusations de complot pour importation et trafic de stupéfiant (4 chefs), importation de cannabis (3 chefs) et possession de stupéfiant en vue de trafic.

Translation of LERC dated : November 26, 2015

1. Since 2005, the applicant's name has appeared as a person of interest in a number of police reports about organized crime in the Port of Montreal. She was a close associate of an individual (Subject A) who was investigated many times for importing narcotics and stealing containers.

2. In November 2005, the applicant's home was searched as a result of a multi-month investigation of a criminal organization involved in drug trafficking. That large-scale investigation called for several methods of investigation, which established that the applicant had a good knowledge of the transportation of stolen goods and that she played a direct role in preparations for a theft by creating the necessary documentation. During the search of her home, about 50 g of cannabis and a weigh scale were seized. On February 3, 2006, the charge of possessing narcotics was dismissed in court.

    a. Subject A was found guilty of fraud over $5000 and sentenced to 6 months in prison in addition to 9 months served while awaiting sentencing, and 3 years' probation. Between 1987 and 2000 he was also convicted on 20 other occasions, for offences including robbery, disguise, break and enter, conspiracy to commit theft, theft over $1000, impersonation, and possession of property obtained by crime over $5000. Some of the convictions resulted in sentences of up to 3 years in prison. Subject A is currently facing charges of conspiracy to import narcotics and trafficking (4 counts), importation of cannabis (3 counts) and possession of narcotics for the purpose of trafficking.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1518-15
STYLE OF CAUSE:	BRENDA FORGET v TRANSPORT CANADA AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	APRIL 18, 2017
JUDGMENT AND REASONS:	ROY J.
DATED:	JUNE 26, 2017

APPEARANCES:

Julius Grey Audrey Boissonneault	FOR THE APPLICANT
Andréane Joanette-Laflamme Véronique Tardif (trainee)	FOR THE RESPONDENTS

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