Federal Court Cour fédérale

Date: 20141127

Docket: T-1454-13

Citation: 2014 FC 1141

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 27, 2014

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

PIERRE-LOUGENS HENRI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant (or Mr. Henri) is an aeronautics mechanic. He has been working for several years for Air Transat airlines at the Montréal–Pierre Elliott Trudeau International Airport. Mr. Henri has been performing this job there in what are known as restricted areas, access to which is limited to individuals who hold a security clearance, renewable every five years, issued under the *Aeronautics Act*, RSC, 1985, c A-2 (the Act) and its regulations.

[2] One of the objectives of this statutory framework is to prevent access to these restricted areas by any person who, in the opinion of the Minister of Transport, Infrastructure and Communities (the Minister), may be prone or induced to commit, or to assist or abet any person to commit, an unlawful act for civil aviation.

[3] Since the late 1990s, Mr. Henri has held a security clearance that gives him access to certain restricted areas of Pierre Elliot Trudeau airport. At the time of the most recent renewal exercise of said clearance, Mr. Henri was informed that the clearance was being reviewed because of his association with individuals involved in criminal activities. He was invited at that time to respond to this allegation, which he did. Deeming the response insufficient to alleviate his concerns regarding this association, the Minister cancelled Mr. Henri's security clearance.

[4] It is this decision that Mr. Henri is challenging. He is asking that it be set aside, believing that it was made in violation of the principles of procedural fairness and that it is, in any event, unreasonable. For the following reasons, the applicant's application for judicial review must fail.

I. Background

A. *Airport security*

[5] Air safety is an issue of substantial importance (*Thep-Outhainthany v Attorney General of Canada*, 2013 FC 59, 425 FTR 247, paragraph 17) and it is a function of, among other things, airport security. According to the Act, the Minister is responsible for promoting security in

Canadian airports, which includes controlling access to restricted areas of certain designated airports. Pierre Elliot Trudeau airport is one of those airports.

[6] Access to these restricted areas is more specifically governed by the *Canadian Aviation Security Regulations, 2012*, SOR/2011-318. Pursuant to these regulations, such access is limited to persons in possession of a restricted area identity card whose issuance is conditional on, *inter alia*, the person to whom it is issued possessing a security clearance.

[7] In accordance with section 4.8 of the Act, the Minister is vested with the power to grant, refuse to grant, suspend or cancel a security clearance. This power is discretionary (*Clue v Attorney General of Canada*, 2011 FC 323, at paragraph 14), and to support the exercising of this power, the Minister adopted a policy called the "Transportation Security Clearance Program" (the Security Clearance Program), whose aim is "the prevention of unlawful acts of interference with civil aviation by the granting of clearances to persons who meet the standards set out in this Program." One of the underlying objectives of the Security Clearance Program is, more specifically, to prevent the uncontrolled entry into a restricted area of an airport by any individual who the Minister believes may be prone or induced to commit, or to assist or abet any person to commit, an unlawful act for civil aviation.

[8] The Security Clearance Program is administered by Transport Canada's Director of Security Screening Programs (the Director) and, for the most part, sets out the procedure for processing and reviewing security clearance applications. Under this process, all security clearance applications are analyzed by the Director and include, at minimum, a fingerprint-based

criminal records check, a check of the relevant files of law enforcement agencies, and a Canadian Security Intelligence Service indices check.

[9] When, at the end of his review, the Director believes there is reason to recommend the refusal, suspension or cancellation of a security clearance, he convenes the Advisory Body created pursuant to the Security Clearance Policy. Once seized of the case, the Advisory Body in turn proceeds with a full analysis of the case and makes a recommendation to the Minister. To that end, the Advisory Body may consider any factor that is relevant. Once its recommendation has been communicated to the Minister, the latter makes a decision pursuant to section 4.8 of the Act.

B. ***The review of the applicant's security clearance***

[10] As previously stated, Mr. Henri has held a security clearance enabling him to access the restricted areas of Pierre Elliot Trudeau airport since the late 1990s. During the renewal process of said clearance in 2012, some adverse information raised doubts about Mr. Henri's fitness to retain such a clearance. Therefore, additional checks were deemed necessary, and on April 4, 2013, the Royal Canadian Mounted Police (the RCMP) provided the Director with a law enforcement record check report.

[11] On April 12, 2013, the Director's office, based on this report, informed Mr. Henri by letter that his security clearance was under review because of his association with individuals involved in criminal activities. Specifically, the said letter linked Mr. Henri to two individuals who were members of a street gang in Montréal in the following circumstances:

a. The first (Subject A) was arrested in January 2011 at Pierre Elliott Trudeau airport, travelling from Haiti, in possession of cocaine and an electronic device containing photos of two individuals working in baggage handling for Air Canada at the Port-au-Prince airport, photos attached to an email from Mr. Henri;

b. Though he initially denied knowing him during a voluntary forensic interview with the RCMP held in November 2011, Mr. Henri nevertheless identified Subject A from a photo presented by the investigator;

c. The second (Subject C) is the one through whom Mr. Henri's email containing the photos of the two Port-au-Prince airport employees passed to Subject A; an analysis of telephone records that was conducted on the cellular telephone numbers that Mr. Henri was using at the time indicates that Mr. Henri allegedly contacted Subject C approximately 63 times, including 38 times during the period, in 2011, in which Subject C was incarcerated;

d. Mr. Henri was observed a number of times at the residence of Subject C and was in constant telephone communication with his residence.

[12] The letter of April 12, 2013, also stated:

a. That following the seizure of the electronic device in Subject A's possession at the time of his arrest, the RCMP had initiated an investigation to attempt to analyze the degree of internal corruption at Pierre Elliott Trudeau airport;

b. That Mr. Henri was the primary target of that investigation, since the RCMP had reasonable grounds to believe that he had been—or was going to be—involved in the commission of offences related to the importation of drugs and the possession of drugs for the purposes of trafficking;

c. That checks of the land register and bank records seemed to substantiate Mr. Henri's involvement in the commission of this type of offence, since they established that Mr. Henri was the owner of three buildings with a combined value of $869,400 and that relatively large sums had passed through his bank accounts, thus painting a picture of assets and a financial situation that, in the RCMP's opinion, was incompatible with the salary of a mechanic employed by Air Transat; and

d. That despite the presence of incriminating evidence, the RCMP's investigation had been closed without any charges being laid because it was impossible to determine beyond a reasonable doubt Mr. Henri's involvement in the importation of narcotics.

[13] Finally, the letter of April 12, 2013, informed Mr. Henri of the existence of the Security Clearance Program, as well as the existence and mandate of the Advisory Body and the grounds upon which it could base its recommendation to the Minister to grant, refuse to grant or cancel a security clearance. Said letter also contained, at the very end, the following notice:

> [TRANSLATION]
>
> Transport Canada encourages you to provide additional information describing the circumstances surrounding the aforementioned information and associations, and to provide additional relevant information or an explanation, including any extenuating circumstances, within 20 days of receiving this letter.

> Any information that you provide us will be considered when making the decision regarding your security clearance. This information may be submitted by mail to the attention of Transport Canada (ABPB), . . . , or by facsimile to . . . , or by email to the following address: . . . .
>
> If you wish to discuss these issues further, please contact Pauline Mahon at . . . .

[14] On June 20, 2013, after contacting the Director's office twice, obtaining two extensions and retaining the services of counsel, Mr. Henri submitted to said office, in the form of an email to which was attached a letter from his counsel, a response to the letter of April 12, 2013, in which Mr. Henri essentially:

a. Reiterated the impact that cancelling his security clearance would have on his employment;

b. Denied any involvement in the illegal importation of cocaine that gave rise to Subject A's arrest, or in any other criminal activity;

c. Denied having questionable associates, stating in that regard that Subject C was the brother of his former spouse with whom he had a child, and that his contact with him was limited to providing him with assistance and advice;

d. Endeavoured to demonstrate the legitimacy of his interests in the three buildings registered in his name and of his banking transactions; and

e. Explained that he had neither permitted nor authorized Subject C to be in possession of or transmit to any person the photos of the two employees assigned to baggage handling at the Port-au-Prince airport.

[15] On June 25, 2013, the Advisory Body convened under the Security Clearance Program met to review Mr. Henri's case and, at the end of that review, recommended to the Minister the cancellation of his security clearance. The Advisory Body's recommendation was based on the fact that it seemed reasonable to believe, on a balance of probabilities, that Mr. Henri may be prone or induced to commit, or to assist or abet any person to commit, an unlawful act for civil aviation because of his ties with Subjects A and C and because of the RCMP's investigation indicating his suspected involvement in the importation of drugs through Pierre Elliott Trudeau airport.

[16] On July 17, 2013, the Advisory Body's recommendation was confirmed, on behalf of the Minister, by the Director General, Aviation Security, at Transport Canada, and on the 29th of that same month, Mr. Henri was advised of it in writing. The Minister's decision explained, *inter alia*, that the response Mr. Henri had submitted to the letter of April 12, 2013, did not contain sufficient information to alleviate his concerns stemming from Mr. Henri's recent contacts with Subjects A and C and Mr. Henri's suspected involvement in importing drugs through Pierre Elliott Trudeau airport. In short, the Minister was also of the opinion, based on all of the information before him, that there was reason to believe, on a balance of probabilities, that Mr. Henri may be prone or induced to commit, or to assist or abet any person to commit, an

unlawful act for civil aviation. All of this raised considerable concerns, in the Minister's opinion, about Mr. Henri's judgment, reliability and honesty.

[17] In the letter of July 29, 2013, communicating his decision to Mr. Henri, the Minister informed Mr. Henri of his right to apply to the Federal Court for a review of his decision. That is what Mr. Henri chose to do in this case.

II. Issues and standard of review

[18] This case essentially raises two issues. The first is whether the Minister's decision to cancel the applicant's security clearance was consistent with the rules of procedural fairness. The second involves the actual merits of said decision.

> It is well established that the standard of review that the Court applies to the first issue is that of correctness, while the standard applicable to the second is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Clue*, above, at paragraph 14; *Peles v Attorney General of Canada*, 2013 FC 294, at paragraphs 9 and 10; *Pouliot v Minister of Transport, Infrastructure and Communities*, 2012 FC 347, at paragraph 7; *Fontaine v Transport Canada Safety and Security*, 2007 FC 1160, 313 FTR 309, at paragraph 63; *Thep-Outhainthany*, above, at paragraph 11; *Sylvester v Attorney General of Canada*, 2013 FC 904, at paragraphs 10 and 11; *Fradette v Attorney General of Canada*, 2010 FC 884, at paragraph 17). The parties do not challenge this.

[19] Before proceeding with the analysis of these two issues, I must first deal with the preliminary objection raised by the respondent, that of the admissibility of certain segments of Mr. Henri's affidavit in support of this application for judicial review. The respondent maintains that, insofar as Mr. Henri therein alleges facts that were not before the Minister at the time that

he issued the decision that Mr. Henri is challenging, these facts, to which the memorandum filed by Mr. Henri in this matter extensively refers, cannot be considered by the Court in the analysis of this application.

[20] Specifically, the respondent argues that this affidavit contains a set of new facts about, *inter alia*, Mr. Henri's training and his employment with Air Transat, his dealings with his former spouse and Subjects A and C, and his meetings with the RCMP officers as part of the investigation of which he was the primary target.

[21] After reviewing the affidavit in question, I find that the respondent's objection is well founded. The case law of this Court is clear on this point: judicial review is directed at the legality of the decision of the administrative decision-maker, which assumes the review of the record as it existed before that decision-maker; it does not, therefore, allow for an improvement of the factual matrix of the record, since that would be changing the fundamental nature of this proceeding (*Spasoja v Canada (Minister of Citizenship and Immigration)*, 2014 FC 913, at paragraph 22; *Ontario Assn. of Architects v Assn. of Architectural Technologists of Ontario*, 2002 FCA 218, [2003] 1 FC 331; *Vennat v Canada (Attorney General)* (FC), 2006 FC 1008, [2007] 2 FCR 647, at paragraph 43; *Chopra v Canada (Treasury Board)*, 168 FTR 273, [1999] FCJ No 835 at paragraph 5; *Peles*, above, at paragraphs 11 and 12; *Lorenzen v Transport Canada Safety and Security*, 2014 FC 273, at paragraph 30).

[22] There are only two exceptions to this principle, namely, where the new evidence relates to issues of procedural fairness or to issues associated with the decision-maker's jurisdiction

(*Peles*, above, at paragraphs 11 and 12; *Ontario Assn. of Architects v Assn. of Architectural Technologists of Ontario*, above, at paragraph 30; *McFadyen v Canada (Attorney General)*, 2005 FCA 360, at paragraphs 14 and 15). Although Mr. Henri raises issues of procedural fairness in this case, the new evidence contained in his affidavit is not related to those issues. It instead aims to improve the response that he submitted to the Director on June 20, 2013. As such, it is inadmissible. Moreover, even if it were a relevant factor in the analysis of the admissibility of this new evidence, nothing on the record shows that Mr. Henri was unable to submit this evidence to the Minister in a timely manner.

[23] Therefore, the respondent's objection is allowed, with the result that I will consider, in his analysis of the Minister's decision, only the evidence that was before him at the time he issued said decision.

III. Analysis

A. *Procedural fairness*

[24] Mr. Henri maintains that the Minister breached the duty of fairness owed to him. He believes that since the repercussions of cancelling his security clearance were significant for him and his family, in that it involved his ability to retain his employment, a high standard of justice was required.

[25] He argues that this high standard of justice required that he have clear knowledge of the case against him; that he be advised of the assessment process that would be used, his burden of

proof and the consequences of an insufficient and/or incomplete response from him; that he be granted a genuine opportunity to submit observations and that these be duly considered; and lastly, that any public document relating to the allegations against him be reviewed by the Minister.

[26] With respect, I cannot concur with the point of view that the rules of procedural fairness were breached in this case.

[27] First, it is important to determine the specific content of the Minister's duties in this regard. The issue of the scope of the duty to act fairly, which is a concept that varies depending on the context and the criteria developed by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, primarily, has been considered more than once by the Court in the context of the cancellation of security clearances in relation to air safety. The case law, I believe, reveals the following findings:

a. Air safety is an issue of substantial importance, and access to restricted areas of designated airports is consequently a privilege, not a right (*Thep-Outhainthany*, above, at paragraph 17; *Sylvester v Attorney General of Canada,* above, at paragraph 18);

b. The Minister's power, in this context, to grant, refuse to grant, suspend or cancel a security clearance is discretionary and specialized (*Clue*, above, at paragraph 14) and, when exercising that power, the Minister may consider any factor that is relevant (*Thep-Outhainthany*, above, at paragraph 19);

c. This power is forward-looking, in the sense that relies on prediction; in other words, it does not require the Minister to believe, on a balance of probabilities, that an individual will commit an act that will unlawfully interfere with civil aviation or will assist or abet any person to commit an act that would do so; he need only be convinced that the individual may do so (*MacDonnel v Attorney General of Canada*, 2013 FC 719, at paragraph 29);

d. Therefore, it does not require the Minister to be convinced beyond a reasonable doubt that the individual whose security clearance is under review will commit such an act; cancelling the security clearance remains in this sense a purely administrative decision, in which the innocence of the parties is not at stake and the seriousness of the potential consequences of a negative decision differs from those in criminal trials and proceedings (*May v Ferndale Institution*, 2005 SCC 82, at paragraphs 91–92; *Thep-Outhainthany*, above, at paragraphs 20–21; *Sylvester*, above, at paragraphs 18–19); and

e. Though the content of the duty of procedural fairness is slightly higher when an existing clearance is cancelled than when someone is refused clearance for the first time, it is still, nevertheless, on the lower end of the spectrum (*Pouliot*, above, at paragraph 10); in practical terms, this means that the procedural safeguard related to the process that may lead to the cancellation of a security clearance is limited to the right to know the alleged facts and the right to make representations about those facts; it does not include the right to a hearing (*Pouliot*, above, at paragraph 10; *Rivet v Attorney General of Canada*, 2007 FC 1175, at paragraph 25; *DiMartino and*

> *Koska v Canada (Minister of Transport)*, 2005 FC 635, at paragraph 36; *Peles*, above, at paragraph 16; *Clue*, above, at paragraph 17).

[28] There is no doubt in my mind that this standard was met in this case. Although it is not an example of model writing, the letter of April 12, 2013, was sufficiently detailed and specific so as to enable Mr. Henri to know the nature and extent of the Director's concerns, to understand that the cancellation of his security clearance was one of the possible outcomes of the review of said clearance that the letter very clearly announced, and to know that the opportunity to respond to said concerns was being offered to him.

[29] Mr. Henri claims that the letter of April 12, 2013, did not provide sufficient detail about the identity and number of individuals with whom he was having questionable dealings or about the precise nature of said dealings, and as a result he did not have a genuine opportunity to make representations. He also maintains that the identified dates on which the photos of the two Port-au-Prince airport employees were allegedly passed to Subject A make this allegation [TRANSLATION] "incomprehensible and illogical."

[30] This argument is purely retrospective and must be rejected. First, insofar as the concerns expressed in the letter of April 12, 2013, were unclear to him, it was open to Mr. Henri to request clarification. Moreover, said letter invited him to do so in no uncertain terms. Furthermore, that is what he did on May 2, 2013, by conveying to the Director's office his surprise and lack of understanding regarding some of the allegations identified in the letter of April 12, 2013.

[31] Yet, nothing in his subsequent communications with the Director's office regarding the letter of April 12, 2013, or in his official response to said letter, including the letter from his counsel at the time, gave any indication of the matter of which he is complaining today. Specifically, the letter from counsel states the following:

> [TRANSLATION]
>
> But let us return to your letter. We note that the allegations or issues raised are serious. However, after checking the facts and, in particular, the various bank statements, notarial acts and loan agreements of Mr. Henri, we note that said allegations have no merit.
>
> . . .
>
> We hope that these explanations and corrections will be sufficient to remove any doubt about Mr. Henri's integrity and honesty and to maintain his current clearance.

[32] I see nothing there that indicates an inability to respond fully and genuinely to the concerns raised in the letter of April 12, 2013.

[33] Mr. Henri also maintains that he expected the Director to get back to him to request additional information from him that could clarify his response of June 20, 2013. However, there is no evidence in the record suggesting that the Director may have made such a commitment or created such an expectation on the part of Mr. Henri.

[34] The concept of legitimate expectation with regard to procedural fairness requires evidence of the decision-maker's behaviour *(National Anti-Poverty Organization v. Canada (Attorney General)* (FCA), [1989] 3 FC 684, [1989] FCJ No 443 (QL), at paragraphs 31–32; *Brink's Canada Ltd. v Canada Council of Teamsters* (FCA), 185 NR 299, [1995] FCJ No 1114

(QL), at paragraphs 25–26; *Trépanier v Canada (Attorney General)*, 2004 FC 1326, 259 FTR 86, at paragraph 35). The fact that Mr. Henri showed that he was willing and available to provide the Director with any additional information following his response of June 20, 2013, is of no assistance to him in the absence of evidence establishing that the Director had suggested he would have the opportunity to supplement the response, once his review was complete, based on the questions that it may have raised among those who were conducting the review.

[35] Mr. Henri was encouraged to respond to the letter of April 12, 2013. He was given 20 days to do so. He requested, and obtained, two extensions of that deadline, *inter alia* to give him time to retain counsel and enable counsel to conduct the checks that he deemed necessary or helpful. In this sense, he had a genuine opportunity to make his representations. Nothing in the rules of procedural fairness imposes on the administrative decision-maker any duty to ensure, before issuing a decision, that the representations submitted by the affected party were clear, complete and persuasive.

[36] Mr. Henri also maintains that the fact that the letter of April 12, 2013, merely [TRANSLATION] “encouraged him” to respond to the letter of April 12, 2013, gave no indication of the importance of the upcoming decision. There again, this argument must fail. The response of June 20, 2013, including the letter from Mr. Henri’s counsel, makes it abundantly clear that Mr. Henri, as well as his counsel at the time, was well aware of the importance of the exercise being conducted and the potential repercussions on his personal situation, with Mr. Henri explicitly referring to the loss of his employment as an inescapable consequence of cancelling his security clearance.

[37] His argument based on the description, in the Minister's decision, of his association with Subjects A and C as [TRANSLATION] "recent contacts," as if they were new facts not brought to his attention in the letter of April 12, 2013, must equally fail. A reasonable review of the entire record shows that those contacts could only be the ones referred to in the letter of April 12, 2013. In addition, as the reference here is to contacts dating back to 2011, the use of the description [TRANSLATION] "recent" was certainly not completely inappropriate or a reasonable source of confusion.

[38] Mr. Henri criticizes the Minister for not having considered the available public documents pertaining to the three buildings that he owns. Although this argument has, in my opinion, more to do with the issue of the reasonableness of the Minister's decision than the issue of procedural fairness, it is of no assistance to the applicant since, regardless of the perspective from which it is considered, the Minister's decision did not reiterate the inferences drawn in the letter of April 12, 2013, in relation to the ownership of said buildings and to the banking transactions. One must then assume that the explanations Mr. Henri provided in that regard were sufficiently complete and convincing for the Minister to consider that said inferences could not serve as a basis for cancelling his security clearance.

[39] Finally, Mr. Henri maintains that the Minister, and the Advisory Body before him, failed to personally consider the evidence gathered by the RCMP and about which the report was submitted to the Director on April 4, 2013. Here again, although this argument is more concerned with the issue of the reasonableness of the Minister's decision than that of procedural

fairness, it is confronted with two important elements of the process that could lead to the cancellation of a security clearance.

[40] The first of these two elements deals with the status of the information obtained from the RCMP for the purposes of the verification process for security clearances. This Court has already ruled that the reliability of this information is sufficient, even if, in such a context, it constitutes hearsay (*Fontaine*, above, at paragraph 75; *MacDonnel*, above, at paragraph 31). The second element that Mr. Henri's argument is confronted with is in some ways the corollary of the first: the Minister is not required to cross-check information obtained from the RCMP (*Fontaine*, above, at paragraph 75; *MacDonnel*, above, at paragraphs 16 and 31). I note that the burden on the Minister, when he must decide whether or not to cancel a security clearance, is much less onerous than in a criminal matter; it requires only the belief, based on a balance of probabilities and the assumption that information obtained from the RCMP or other law enforcement agencies is reliable, that the person who holds the security clearance may be prone to commit or to assist a third party to commit an act that may unlawfully interfere with civil aviation (*Sylvester*, at paragraph 19). As my colleague Mr. Justice Harrington reiterated in *MacDonnel*, above, the onus is on the person who holds the security clearance to address the Minister's concerns (*MacDonnel*, above, at paragraph 34).

[41] I conclude that, in general, the process that led to the decision to cancel Mr. Henri's security clearance was conducted in compliance with the rules of procedural fairness that apply to this type of decision, and that this means of challenging said decision must consequently be rejected.

B. *Reasonableness of the Minister's decision*

[42] As I have already stated, given the discretionary and specialized nature of the Minister's power under section 4.8 of the Act, and given the goal of this section, which is to prevent the uncontrolled entry of undesirable people into restricted areas of Canadian airports, Mr. Henri had to convince the Court that the Minister's decision to withdraw his security clearance was unreasonable. In concrete terms, this means it is not sufficient to disagree with the impugned decision or to demonstrate that an alternate reading of the facts would have been preferable to the Minister's reading.

[43] The standard of reasonableness is concerned more with the justification, transparency and intelligibility of the impugned decision and whether it falls within a range of possible, acceptable outcomes with regard to the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). It requires from the Court a certain amount of deference to the conclusions of the administrative decision-maker and provides that it is not in the Court's purview to reweigh the evidence and substitute its point of view for that of the administrative decision-maker (*Dunsmuir*, at paragraph 47; *Jarvis v Canada (Attorney General)*, 2011 FC 944, at paragraph 23; *Kissoon v Canada (Minister of Human Development Resources)*, 2004 FC 24, at paragraph 5 (affd 2004 FCA 384)).

[44] Mr. Henri is essentially arguing that the Minister's decision is unreasonable in that the Minister allegedly failed to consider important evidence, namely, the public documents regarding his buildings and the evidence gathered by the RCMP for the purposes of the report of

April 4, 2013, including the video and audio recordings of the voluntary forensic interview with the RCMP held in November 2011, as well as the photos, text messages and telephone records to which the letter of April 13, 2013, refers.

[45] As I have already stated, this argument cannot succeed. On the one hand, whether or not the Minister considered the public documents pertaining to the applicant's buildings is no longer relevant since the Minister's decision is not based on the inferences drawn in the letter of April 13, 2013, in relation to the ownership of those buildings or the banking transactions identified therein. On the other hand, the criticism levelled at the Minister regarding the evidence in the RCMP's possession indicates, with respect, a misunderstanding of the Minister's role and of the verification process for security clearances. As I have already noted, the reliability of the information that the RCMP conveyed to the Minister must be considered sufficient. It is not up to the Minister to cross-check it; the onus is on the person who holds the security clearance to demonstrate that the Minister's concerns, stemming from that information, are unfounded (*Fontaine*, above, at paragraph 75; *MacDonnel*, above, at paragraphs 16 and 31; *Sylvester*, at paragraph 19; *MacDonnel*, above, at paragraph 34).

[46] In this case, Mr. Henri, in his response to the letter of April 12, 2013, focussed primarily on the inferences drawn from the ownership of his buildings and from his banking transactions. The rest of the concerns expressed in the letter of April 12 were, in a way, generally denied. Like my colleague Mr. Justice Manson in *Peles*, above, it is necessary to ask oneself in this regard why the applicant, whose burden it was, did not make a more vigorous attempt to demonstrate the nature of his contact with Subject A, whom he identified in the end, or what may have led to

the fact that no charges were laid against him following the investigation, conducted by the RCMP, of which he was the primary target.

[47] In these circumstances, the decision of the Minister, who is responsible for ensuring air safety and, consequently, the security of Canadian airports, appears to me to fall within the range of possible, acceptable outcomes based on the facts and law that apply in this case.

[48] Therefore, the applicant's application for judicial review will be dismissed with costs.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application for judicial review is dismissed with costs against the applicant.

"René LeBlanc"

Judge

Certified true translation
Carol Cerutti, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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