Date: 20070921

Docket: T-529-07

Citation: 2007 FC 947

Ottawa, Ontario, September 21, 2007

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

STEPHEN MYERS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] There are two applications for judicial review being heard by this Court one following the other pursuant to an Order of Madam Prothonotary Aronovitch, dated August 30, 2007. This application, Docket T-529-07, is the first being heard by the Court. It is for judicial review of a decision of the Canada Revenue Agency (CRA) on August 3, 2006 revoking the applicant's "enhanced reliability status." The second application, Docket T-78-07, is for judicial review of a decision of the Department of Public Works and Government Services Canada (PWGSC) on December 14, 2006 denying the applicant reliability status.

FACTS

[2] The applicant worked on several short-term contracts for various government departments and agencies. The applicant obtained these contracts through employment agencies.

[3] To qualify for some of these contract positions, the applicant had to undergo a security screening and be granted reliability status. The applicant first obtained reliability status from PWGSC on June 27, 2003. That status was not due to expire until June 27, 2013. Since obtaining reliability status from PWGSC, the applicant has been employed by several government departments and agencies:

> October to December 2003 – Public Health Agency of Canada
> January to June 2004 – Department of National Defence
> October to December 2004 – Treasury Board Secretariat
> July 2005 – Corrections Canada
> October to December 2005 – Public Health Agency of Canada
> January 2006 – Health Canada
> February to March 2006 – Canadian International Development Agency
> April to July 2006 – Canada Revenue Agency

[4] On April 3, 2006, the applicant commenced working for the CRA as a Tele Trace Agent at the Collections Call Centre in Ottawa, Ontario. The applicant was employed in this capacity for almost three months when he resigned on June 28, 2006. The applicant's resignation was to take effect on July 12, 2006. The respondent contends that three days before the applicant's July 12, 2006 resignation was to take effect, the CRA dismissed the applicant because his team leader discovered he was misrepresenting his performance to management.

The CRA's investigation of the applicant

[5] In early June 2006, the CRA investigated the applicant for allegedly misusing the CRA's electronic mail system, and for misrepresenting both himself and the CRA for his "own personal gain." The CRA's investigation stemmed from accusations made by the applicant that the father of his sister's child was involved in acts of fraud against the CRA and other government departments. The investigation focused on the events of June 6, 2006, whereby the applicant sent six e-mails to the Ottawa police and other government departments alleging such conduct. In many of these e-mails, the applicant represented himself as acting on behalf of the CRA.

[6] On June 8, 2006, the applicant met with CRA management regarding these allegations and was informed that there would be an investigation into his conduct. The applicant was also informed that there would be a second meeting once the investigation was complete. While the investigation was ongoing, the applicant submitted his resignation. On July 20, 2006, the CRA received an investigation report into the applicant's use of the CRA's electronic mail system. That report revealed that between April 20, 2006 and June 23, 2006, the applicant sent and received 3252 personal e-mails; 1440 of which were sent by the applicant.

Decision under review

[7] On August 3, 2006, after the applicant resigned, the CRA revoked the applicant's "enhanced reliability status" because his conduct created "an irreparable breach of the bond of trust" between himself and the CRA. The revocation letter provided two reasons for revocation: (1) the applicant misrepresented himself by using the CRA name and perceived level of authority in correspondence

with other government departments; and (2) the applicant misused the CRA electronic mail system by transmitting "an excessive amount of [personal] e-mails" through the system.

ISSUES

[8] There are two issues raised in this application:

1) Whether the CRA met its burden of proof in adducing sufficient evidence to revoke the applicant's "enhanced reliability status"; and

2) Whether the Director breached the rules of procedural fairness in failing to provide the applicant with notice of, or any opportunity to respond to, the allegations made against him.

STANDARD OF REVIEW

[9] In considering this application for judicial review, it is not for the Court to satisfy itself that it would have come to the same conclusion as the decision-maker in question. Rather, as Madam Justice Dawson recently stated in *Mulveney v. Canada (Human Resources Development)*, 2007 FC 869 at paragraph 7:

> ¶ 7 … the Court must determine, as a matter of law, what the proper standard of review to be applied to the Minister's decision is, and then it must apply that standard of review to the decision.

[10] In *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, the Supreme Court of Canada affirmed the primacy of the pragmatic and functional approach when determining the appropriate standard of review. As the Court stated at paragraph 22:

> ¶ 22 To determine standard of review on the pragmatic and functional approach, it is not enough for a reviewing court to interpret an isolated statutory provision relating to judicial review. Nor is it sufficient merely to identify a categorical or nominate error, such as bad faith, error on collateral or preliminary matters, ulterior or improper purpose, no evidence, or the consideration of an irrelevant factor. Rather, the pragmatic and functional approach calls upon the court to weigh a series of factors in an effort to discern whether a particular issue before the administrative body should receive exacting review by a court, undergo "significant searching or testing" … or be left to the near exclusive determination of the decision-maker. These various postures of deference correspond, respectively, to the standards of correctness, reasonableness *simpliciter*, and patent unreasonableness.

[11] The contextual factors addressed by the Supreme Court in *Dr. Q* are the presence or absence of a privative clause or statutory right of appeal; the expertise of the decision-maker relative to that of the reviewing court; the purposes of the legislation and the provision in question; and the nature of the question.

[12] In relation to the first factor, neither the *Canada Revenue Agency Act*, S.C. 1999, c. 17 (*CRA Act*) nor the *Financial Administration Act*, R.S.C. 1985, c. F-11 contains a privative clause or an automatic right of appeal. This factor is therefore to be treated as neutral, requiring that neither greater nor less deference be accorded to the decision-maker.

[13] With respect to the expertise of the decision-maker, it is clear that a valid reliability status is a term of employment for positions within the federal public service. The decision to revoke an "enhanced reliability status" is therefore one that concerns human resources management in the federal public administration. Paragraph 30(1)(d) of the *CRA Act* gives the CRA authority over all

matters relating to “human resources management, including the determination of the terms and conditions of employment of persons employed by the Agency.” As such, in relation to matters of whether an individual is “reliable” in the eyes of the CRA, the decision-maker has special expertise and deference should be afforded.

[14] As mentioned, the *CRA Act* is intended to give the CRA exclusive authority relating to matters of human resources management. These provisions are supplemented by the *Government Security Policy*, which is intended to “support the national interest and the Government of Canada’s business objectives by safeguarding employees and assets and assuring continued delivery of services.” The respondent rightly submits that the instruments’ combined purpose is to protect the Government from potential security risks, and to allocate the authority to manage those risks with the CRA. This intention suggests a deferential standard.

[15] The final factor to be considered is the nature of the question. Decisions relating to whether an individual is “reliable” are highly factual in nature and, as such, must be afforded great deference. This was recognized by the Federal Court of Appeal in *Kampman v. Canada (Treasury Board)*, [1996] 2 F.C. 798 at paragraph 12, where Mr. Justice Marceau stated:

> ¶ 12 … a reliability assessment is the responsibility of the institution concerned and a so-called enhanced reliability status is essentially an attestation that, in the subjective opinion of the deputy head of the institution, a high degree of confidence or reliance may be placed on the individual involved. The revocation of that status in the case of an employee is a prerogative of the deputy head and merely reflects a change in that opinion, a loss of confidence in the employee’s reliability.

In this case, the first issue with respect to the burden of proof is a question of mixed fact and law, and warrants less deference. The second issue is a question of procedural fairness, and is entitled to no deference: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392.

[16] The pragmatic and functional analysis therefore leads the Court to the conclusion that the first issue be reviewed on a reasonableness *simpliciter* standard, and the second issue on a correctness standard.

ANALYSIS

[17] Before considering the issues, the Court will review the respondent's powers and policies regarding personnel security screening.

Treasury Board powers and policies regarding personnel security screening

[18] Subsection 7(1) of the *Financial Administration Act* allocates a list of responsibilities to the Treasury Board. Included in this list is paragraph (e), which states:

Responsibilities of Treasury Board	Attributions du Conseil du Trésor
7. (1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to	**7.** (1) Le Conseil du Trésor peut agir au nom du Conseil privé de la Reine pour le Canada à l'égard des questions suivantes:
[...]	[...]
*(*e*)* human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it;	*e*) la gestion des ressources humaines de l'administration publique fédérale, notamment la détermination des conditions d'emploi;

[19] Further clarifying the Treasury Board's powers respecting human resources management is subsection 11.1(1) of the *Financial Administration Act*, which states, *inter alia*:

Powers of the Treasury Board	Pouvoirs du Conseil du Trésor
11.1 (1) In the exercise of its human resources management responsibilities under paragraph 7(1)(*e*), the Treasury Board may	**11.1 (1)** Le Conseil du Trésor peut, dans l'exercice des attributions en matière de gestion des ressources humaines que lui confère l'alinéa 7(1)*e*) :
[…]	[…]
(*b*) provide for the classification of positions and persons employed in the public service;	*b*) pourvoir à la classification des postes et des personnes employées dans la fonction publique;
[…]	[…]
(*j*) provide for any other matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resources management in the public service.	*j*) régir toute autre question, notamment les conditions de travail non prévues de façon expresse par le présent article, dans la mesure où il l'estime nécessaire à la bonne gestion des ressources humaines de la fonction publique.

[20] Under this authority, the Treasury Board has enacted the *Government Security Policy* (the *Policy*), which supports "the national interest and the Government of Canada's business objectives by safeguarding employees and assets and assuring the continued delivery of services." One key aspect of the *Government Security Policy* is its requirement that all individuals requiring access to government assets and classified information undergo a security screening in order to ensure that they are "reliable and trustworthy." As article 10.9 of the *Policy* states:

> Special care must be taken to ensure the continued reliability and loyalty of individuals, and prevent malicious activity and unauthorized disclosure of classified and protected information by a disaffected individual in a position of trust.

[21] Supplementing the *Government Security Policy* is the Treasury Board's *Personnel Security Standard*, which "establishes the operational standard and certain technical-level procedures for personnel security." The *Personnel Security Standard* contains both mandatory and recommended measures that help guide the implementation of the *Government Security Policy*.

Three levels of personnel screening

[22] There are three levels of screening under the *Government Security Policy* and *Personnel Security Standard*. The first level is referred to as "basic reliability status," and is "required for individuals under contract for more than six months and who have regular access to government premises." Individuals with "basic reliability status" are only granted access to information and assets that are neither classified nor designated. As the Federal Court of Appeal stated in *Kampman*, above, at paragraph 11 with respect to "basic reliability status": "basic reliability is to be expected of any employee."

[23] The second level of status is referred to as "enhanced reliability status," and is required where the duties or tasks of a position or contract "necessitate access to designated information and assets, regardless of the duration of an assignment, appointment or contract." Individuals with "enhanced reliability status" are able to access classified information and assets, on a need-to-know basis. This interpretation is in accord with the Court of Appeal's findings in *Kampman*, above, where it is stated at paragraph 11 that "enhanced reliability status is required of anyone whose duties may put him or her in contact with designated information or assets."

[24] The final level of status is referred to as “security clearance,” which is required where the duties or tasks of a position or contract necessitate access to classified information and assets. Security clearances are further divided into three categories, depending on the type of access required. There is Level I clearance relating to confidential information, Level II clearance relating to secret information, and Level III clearance relating to top secret information. An individual granted security clearance may access, on a need-to-know basis, classified information and assets up to and including the level of security granted. In order to obtain a security clearance, an individual must already have a valid reliability status. Security clearances may be granted by the deputy head or a departmental security officer on behalf of the deputy head, but decisions to deny, revoke, or suspend security clearances must be made by the deputy head, and those decisions are non-delegable.

CRA powers and policies regarding personnel security screening

[25] Section 30 of the *CRA Act* outlines a number of matters over which the CRA has authority:

Matters over which Agency has authority	Compétence générale de l’Agence
30. (1) The Agency has authority over all matters relating to	**30. (1)** L’Agence a compétence dans les domaines suivants :
(*a*) general administrative policy in the Agency;	*a*) ses grandes orientations administratives;
(*b*) the organization of the Agency;	*b*) son organisation;
(*c*) Agency real property and Agency immovables as defined in section 73;	*c*) les immeubles de l’Agence et les biens réels de l’Agence, au sens de l’article 73;
(*d*) human resources management,	

including the determination of the terms and conditions of employment of persons employed by the Agency; and

(*e*) internal audit in the Agency.

Treasury Board regulations

(2) Notwithstanding the *Financial Administration Act*, the Agency is not subject to any regulation or requirement established by the Treasury Board under that Act that relates to any matter referred to in subsection (1), except in so far as any part of the regulation or requirement relates to financial management.

d) la gestion de ses ressources humaines, notamment la détermination de ses conditions d'emploi;

e) sa vérification interne.

Règlements et exigences non applicables

(2) Par dérogation à la *Loi sur la gestion des finances publiques*, l'Agence n'est pas assujettie aux règlements ou exigences du Conseil du Trésor ayant trait aux questions visées au paragraphe (1), sauf dans la mesure où ils ont trait à la gestion financière.

[26] As subsection 30(2) makes clear, the CRA is not statutorily bound to the terms of the *Financial Administration Act* or the *Government Security Policy*. However, the CRA has entered into a Memorandum of Understanding with the Treasury Board, whereby it agrees to bind itself by the terms of those instruments. As the Memorandum outlines:

> The Purpose of this Memorandum of Understanding is to have the [CRA] subject to the provisions of the Government Security Policy under the responsibility of the Treasury Board, which provides the policies and supporting operational standards for the appropriate safeguarding of sensitive information and assets as well as the security of the employees for all the federal government.

[27] Responsibility for determining whether an individual requires "basic" or "enhanced reliability status" or a security clearance is delegated to CRA Managers under Chapter 10 of the CRA's *Finance and Administration Manual*. The type of status required is dependent upon the type of job the individual performs and the type of access the individual requires.

[28] “Basic reliability” is granted to those individuals whose duties do not require access to designated information or assets, and who do not require unescorted access on CRA premises. “Enhanced reliability,” on the other hand, is required by those individuals whose duties require access to designated information and/or unescorted access to CRA premises. The *Finance and Administration Manual* states that directors are responsible for decisions to grant, deny, or revoke a reliability status.

[29] Security clearance is granted to employees requiring access to confidential information and involves a thorough risk assessment. The *Finance and Administration Manual* states that the Assistant Commissioner is responsible for decisions to grant, deny, or revoke a security clearance. This is consistent with the terms of the *Government Security Policy*, which allocates responsibility for such decisions to the deputy head and makes clear that such responsibility cannot be further delegated.

[30] The applicant is asking this Court to interpret and give legal meaning to documents that are neither acts of Parliament nor delegated legislation. The jurisprudence is clear in stating the legal rights created by such policies depend on the intent and context within which they were issued. As stated in *Endicott v. Canada (Treasury Board)*, 2005 FC 253, 270 F.T.R. 220 at paragraph 11, per Strayer D.J.:

> ¶ 11 The 1999 Policy in question here was not delegated legislation. It was clearly a directive by Treasury Board as to how departments should deal fairly with their employees. Whether such internal directives create legal rights which a court can define or enforce, appears from the jurisprudence to depend on what the intent was and the context in which the directive was issued.
>
> [Emphasis added.]

I further stated in *Glowinski v. Canada (Treasury Board)*, 2006 FC 78, 286 F.T.R. 217 at paragraph 43:

> ¶ 43 … A Court of law should not give policies the force of law unless Parliament clearly intended such policies to be given the force of law and such policies are clear, and not inconsistent with other policies.

[31] Both the *Government Security Policy* and the *Personnel Security Standard* were mandated by the terms of the *Financial Administration Act* and the *CRA Act*, and are consistent with these enactments. As paragraph 7(1)(e) of the *Financial Administration Act* states, the Treasury Board is given full authority concerning issues of "human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it." Further, the responsibilities allocated to the Treasury Board in establishing various screening levels is essential to maintaining a public service comprised of individuals who are both "reliable and trustworthy" in the eyes of their employers.

Issue No. 1: Did the CRA meet its burden of proof in adducing sufficient evidence to revoke the applicant's "enhanced reliability status"?

[32] The applicant submits that the CRA failed to adduce sufficient evidence to prove that the applicant was unreliable so as to justify the decision to revoke his "enhanced reliability status." The CRA evidence consisted of:

1) Six personal e-mails sent from the applicant's CRA computer that accused a person of fraud, and that appeared to be sent on behalf of the CRA. These accusations of fraud involved a personal matter between the applicant and the father of his sister's child, and should not have involved or made reference to the CRA; and

2) Evidence that the applicant sent or received 3252 personal e-mails while on the job over a two-month period. This is about 70 personal e-mails per day.

[33] On the reasonableness *simpliciter* standard, the Court is satisfied that the respondent met its burden of proof to adduce sufficient evidence to revoke the applicant's "enhanced reliability status." This evidence is clear, and at the hearing before the Court, the applicant did not deny the veracity of this evidence, only that he was not provided with it prior to the ultimate decision being made to revoke his "enhanced reliability status."

Issue No. 2: Did the Director breach the rules of procedural fairness in revoking the applicant's "enhanced reliability status"?

[34] The question is whether, in revoking the applicant's "enhanced reliability status," the Director of the CRA's Ottawa Technology Centre complied with the rules of procedural fairness.

The applicant contends that the Director's decision should be set aside because the applicant was not provided with an opportunity to properly respond to the allegations against him. The applicant argues that the Director's decision violated the rules of procedural fairness accorded to the applicant under administrative law.

[35] The fact that the Director's decision is administrative in nature and one that affects the "rights, privileges or interests" of the applicant is enough to give rise to a duty of procedural fairness: see *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 and *Baker v. Canada*, [1999] 2 S.C.R. 817. The presence of a duty of fairness also appears to be encapsulated within the *Government Security Policy* itself, where article 10.9 states that government departments must "[t]reat individuals in a fair and unbiased manner, and give them an opportunity to explain adverse information before a decision is reached."

[36] In situations where such a duty arises, the extent of the duty is dependent on the circumstances of each individual case. In *Baker*, above, the Supreme Court outlined a number of factors that are to be weighed in determining the appropriate level of procedural fairness to be afforded: the nature of the decision and the procedure followed in making it; the nature of the statutory scheme and provisions within it; the importance of the decision to the individual affected; the legitimate expectations of the person challenging the decision; and the agency's choice of procedure in making the decision.

[37] First, the Supreme Court made clear in *Baker*, above, that when determining the appropriate level of fairness, one must look at the nature of the statutory scheme and the terms of the statute pursuant to which the body operates. As the Court stated at paragraph 24, greater protections will be required "when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted." In this case, the applicant's recourse is an application for judicial review in this Court. The reasoning behind the Director's decision is to be adjudged on a *reasonableness simpliciter* standard, and the applicant has no further internal appeal once the Director's decision is rendered. These factors point to the need for procedural safeguards above the minimal level.

[38] Another factor determining the appropriate level of fairness is the importance of the decision to the individual. As the Supreme Court makes clear at paragraph 25 of *Baker*:

> ¶ 25 ...The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. ...

The granting of reliability status (whether basic or enhanced) is an integral term of employment in Canada's public service. As the *Government Security Policy* makes clear, the Government of Canada "depends on its personnel and assets to deliver services that ensure the health, safety, security and economic well-being of Canadians." As such, the government must be able to ensure that individuals with access to government information and assets are both reliable and trustworthy. Where an individual has been denied reliability status, or where that status has been revoked, the individual's employment is effectively terminated. Such an impact is nothing less than profound. This also signals a degree of fairness that is greater than the minimum level

[39] In this case, I am of the opinion that, at the very least, the applicant is entitled to know the information upon which the decision is being made, and to explain such adverse information before an ultimate decision is reached. In the case at bar, the applicant was not given such an opportunity. The respondent contends that the applicant was given sufficient opportunity to respond to the CRA's allegations at the June 8, 2006 disciplinary meeting, when he was confronted with the allegation that he had used his CRA e-mail account for improper purposes. I fail to see how this opportunity was sufficient to respond to the serious allegations facing the applicant. First, Parise Ouellette, whose recommendation formed the basis of the ultimate revocation decision, deposed that the June 8, 2006 meeting was not for disciplinary purposes, but rather for the purpose of informing the applicant about a pending investigation into his conduct, and to inform the applicant that another meeting would be scheduled once the investigation was complete. As Ms. Ouellette states:

> … It was not a meeting to impose discipline – the 1st meetings never are – it was a fact-finding meeting between management and Mr. Myers.

[40] Once the investigation was completed and the respondent had made further inquiries into the applicant's use of the CRA's electronic mail system, a second opportunity to address all of the allegations against him should have been given to the applicant. The preliminary nature of the June 8, 2006 meeting created an expectation in the applicant that such an opportunity would be provided. The excessive use of personal e-mails by the applicant, 3252 in two months, was not known by the CRA on June 8, 2006, and was not disclosed to the applicant before his "enhanced reliability status" was revoked. As mentioned above, this was one of the two reasons for revoking the status.

[41] The respondent alleges that the second meeting did not occur because the applicant resigned before the CRA completed its investigation. I do not find this to be an acceptable justification. By revoking his "enhanced reliability status," the respondent seriously compromised the applicant's ability to obtain future contracts within the public service. Because the Director's decision was going to have a continued impact on the applicant, he should have been given the opportunity to answer the allegations against him, regardless of the date of his resignation.

[42] In *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, the Supreme Court of Canada held that in some instances a court should disregard a breach of natural justice or procedural fairness where that breach could not possibly have made a difference in the outcome of the decision under review. As the Court stated at 228, per Justice Iacobucci:

> In light of these comments, and in the ordinary case, Mobil Oil would be entitled to a remedy responsive to the breach of fairness or natural justice which I have described. However, in light of my disposition on the cross-appeal, the remedies sought by Mobil Oil in the appeal *per se* are impractical. While it may seem appropriate to quash the Chairman's decision on the basis that it was the product of an improper subdelegation, it would be nonsensical to do so and to compel the Board to consider now Mobil Oil's 1990 application, since the result of the cross-appeal is that the Board would be bound in law to reject that application by the decision of this Court.
>
> The bottom line in this case is thus exceptional, since ordinarily the apparent futility of a remedy will not bar its recognition…. On occasion, however, this Court has discussed circumstances in which no relief will be offered in the face of breached administrative law principles: e.g., *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561. As I described in the context of the issue in the cross-appeal, the circumstances of this case involve a

> particular kind of legal question, viz., one which has an inevitable answer.
>
> In *Administrative Law* (6th ed. 1988), at p. 535, Professor Wade discusses the notion that fair procedure should come first, and that the demerits of bad cases should not ordinarily lead courts to ignore breaches of natural justice or fairness. But then he also states:
>
> > A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless.
>
> In this appeal, the distinction suggested by Professor Wade is apt.

[43] In this case, the applicant has not adduced any evidence that the decision revoking his "enhanced reliability status" was unreasonable. At the same time, the Court cannot make a *Mobil Oil* finding that the breach of the duty to act fairly could not possibly have made a difference in the final decision. It is possible that, after providing full disclosure, the applicant might have been able to respond so that his "enhanced reliability status" would not have been revoked. Clearly, the excessive use of personal e-mails at the office and the e-mail representations that the applicant was acting on behalf on the CRA on personal matters, are serious and legitimate concerns regarding the applicant's reliability. At the same time, the applicant is entitled to an opportunity to respond to these allegations before the CRA acts on them.

[44] For these reasons, the duty of procedural fairness owed to the applicant was breached. This constitutes an error of law so that the application must be allowed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1) this application for judicial review is allowed with costs;

2) the decision of the CRA revoking the applicant's "enhanced reliability status" is set aside; and

3) the matter will be referred to another CRA officer to redetermine this decision after first providing the applicant with opportunity to respond to the allegations against him.

"Michael A. Kelen"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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