

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160926

Docket: A-466-15

Citation: 2016 FCA 241

**CORAM: DAWSON J.A.
BOIVIN J.A.
WOODS J.A.**

BETWEEN:

WILLIAM RYAN MITCHELL

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 26, 2016.

Judgment delivered from the Bench at Toronto, Ontario, on September 26, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 26, 2016).

DAWSON J.A.

[1] The *Canadian Aviation Security Regulations, 2012*, SOR/2011-318 require persons working in restricted areas of a designated airport to possess a security clearance (paragraph 146(1)(c) and subsection 165(a)). The *Aeronautics Act*, R.S.C. 1985, c. A-2 allows the Minister of Transport to grant or refuse to grant a security clearance to a person or to suspend or cancel a

security clearance (section 4.8). Section I.4(4) of the Transportation Security Clearance Program Policy states that the objective of the Program is to prevent the uncontrolled entry into a restricted area of a listed airport by any individual who the Minister reasonably believes, on a balance of probabilities, may be prone or induced to commit an act that may unlawfully interfere with civil aviation, or assist or abet any person to commit an act that may unlawfully interfere with civil aviation. The Minister may cancel a security clearance to any individual if he determines that the individual's presence in the restricted area of a listed airport would be inconsistent with the aim and objective of the Program; when determining whether to cancel a security clearance the Minister may consider any factor that is relevant (subsections II.35(1) and (2) of the Policy).

[2] The appellant applied for the renewal of his transportation security clearance. In the course of considering that application Transport Canada sought and received a Law Enforcement Records Check from the Royal Canadian Mounted Police that described an escalating pattern of sexual misconduct involving children on the part of the appellant. The appellant told the police he did not want his conduct to be put before the courts as he did not want it to affect his employment as a pilot.

[3] An Advisory Body considered the appellant's conduct and concluded that it raised concerns about the appellant's "judgment, reliability and trustworthiness". It recommended to the Minister that the appellant's security clearance be cancelled. The Minister concurred and went on to conclude that he was satisfied that he had reason to believe, on a balance of probabilities, that the appellant may be prone or induced to commit an act, or assist or abet an

individual to commit an act that may unlawfully interfere with civil aviation. Accordingly, the Minister cancelled the appellant's security clearance.

[4] A judge of the Federal Court dismissed an application for judicial review of the Minister's decision (2015 FC 1117).

[5] On this appeal from the judgment of the Federal Court the appellant concedes, correctly, that the Minister's decision is reviewable on the reasonableness standard of review. He argues, however, that the Federal Court erred in the application of this standard. In the appellant's submission it cannot reasonably be concluded that he may be prone or induced to commit an act or assist or abet any person to commit an act that may unlawfully interfere with civil aviation. This is said to be so because there is no correlation between the appellant's misconduct and maintaining access to restricted areas of airports.

[6] Despite the able submissions of counsel for the appellant we disagree. It is well settled that reasonableness review is concerned with whether a decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The range of reasonable outcomes will depend upon the context of the decision.

[7] In the present case, the context is informed by a number of factors, including the broad discretion granted to the Minister to take into account any relevant factor, the fact that the Minister need only reasonably believe, on a balance of probabilities, that one may be prone or induced to commit an act or assist or abet any person to commit an act that may unlawfully

interfere with civil aviation and the inherently forward looking predictive nature of a risk assessment.

[8] In our view, it was not unreasonable to conclude that the appellant's conduct raised concerns about his judgment, reliability and trustworthiness. Nor was it unreasonable to infer from his statements to police that he wanted his misconduct kept out of the courts because he did not want it to affect his employment as a pilot that the appellant was vulnerable to be induced to act by others who possessed knowledge of his misconduct.

[9] It follows, in our view, that the decision fell within the range of possible, acceptable outcomes defensible in respect of the facts and the law.

[10] It further follows that the appeal will be dismissed with costs.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-466-15

STYLE OF CAUSE: WILLIAM RYAN MITCHELL v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 26, 2016

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WOODS J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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