Federal Court  Cour fédérale

Date: 20171211

Docket: T-1843-16

Citation: 2017 FC 1132

Vancouver, British Columbia, December 11, 2017

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

BALDEEP VARN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision made by Mr. Pierre Giguère, Departmental Security Officer [DSO], Director General of the Canada Border Services Agency [CBSA], refusing the Applicant's application for reliability security status on the grounds that the Applicant was dishonest about her involvement with thefts from automated banking machines when previously employed as an armoured car driver. The DSO found the Applicant's overall attitude and

deceitfulness to be a concern as they demonstrated questionable honesty, integrity, and truthfulness, which would place both the Applicant and the CBSA at risk.

[2] For the reasons that follow, I find that the DSO did not act outside his jurisdiction, that there was no breach of the Applicant's right to procedural fairness, and that the decision was reasonable. The application is therefore dismissed with costs.

[3] As an aside, the parties agree that the proper Respondent in this application for judicial review is the Attorney General of Canada. Accordingly, an order removing the CBSA from the style of cause will be issued with immediate effect.

I. Preliminary issue regarding admissibility of the Applicant's affidavits

[4] The Applicant initially relied on her own affidavit affirmed on November 17, 2016, in support of the application for judicial review. She subsequently moved for an extension of time to file a further affidavit affirmed on November 28, 2016 and the affidavit of Mark Cameron affirmed on November 25, 2016 [Cameron Affidavit].

[5] On February 8, 2017, Prothonotary Mandy Aylen granted the Applicant an extension of time to serve and file the two additional affidavits, without prejudice to the Respondent's right to make submissions before the hearing judge as to the relevance and admissibility of the evidence.

[6] At the hearing of the application, counsel for the Applicant acknowledged that, as a general rule, applications for judicial review are to be conducted on the basis of the material that

was before the decision-maker. Counsel conceded that the Applicant's affidavits contained information and exhibits that were not before the DSO and did not fall within any exception to the rule.

[7] Both of the Applicant's affidavits are replete with extraneous and improper information and exhibits that appear to be intended to bolster her credibility and garner sympathy with the Court. The Respondent objects in particular to the Applicant's second affidavit that consists of a point-by-point argument against the content of the certified record and findings of an investigator. The Cameron Affidavit is equally improper as it introduces new facts, attempts to re-characterize the evidence on the record, and contains opinion and argument.

[8] The Applicant's supporting affidavits do not assist this Court in assessing the legality of the impugned decision. Rather, they serve only to obscure the issues and divert attention from the basis upon which the reliability status was denied. As a result, the three affidavits have been largely ignored.

II. Facts

A. *Overview*

[9] In order to provide context for these reasons, it is useful to start by briefly describing the process that must be completed before an individual can be granted reliability security status.

[10] Reliability status is the minimum standard of security screening for positions requiring unsupervised access to protected information and assets. Screening for reliability status appraises an individual's honesty and whether they can be trusted to protect the employer's interests.

[11] The individual being screened completes a questionnaire to determine whether he or she may pose a security risk on the basis of ideology, conduct, associations, or features of character. The questionnaire covers a range of topics related to personal activities, including finances, involvement with illegal drugs, alcohol use, associations, use of computers and technology, online presence, and loyalty to Canada.

[12] Decisions about an individual's clearance follow a procedure set out by the Treasury Board Secretariat Standard on Security Screening [TB Standard], a document issued pursuant to the *Financial Administration Act*, RSC 1985, c F-11. Adverse information is assessed with respect to the following: its nature and seriousness, how recent it is, the surrounding circumstances of the incident, and its implications for the individual's reliability and whether the individual has been open about the information and has resolved, or appears likely to resolve, the concerns to which it gives rise.

[13] Individuals are also given an opportunity to validate or refute adverse information subject to limits imposed by the *Privacy Act*, RSC 1985, c P-21, or other applicable legislation. The presence of adverse information on a file does not necessarily mean that an individual's screening will be denied. Each file is reviewed on its own merits and a global assessment is conducted where all information gathered for personnel screening purposes is evaluated.

B. *Facts leading up to the impugned decision*

[14] It would have been useful had counsel provided a concise summary of the facts in chronological order. The Court was left instead to wade through numerous documents reproduced in a haphazard manner in the tribunal record in order to ascertain what transpired during the screening process.

[15] The relevant facts are set out below based on a careful review the documentary record, which I find to be reliable given that most of the documents were generated contemporaneously with the events and therefore not affected by the authors' subjective hindsight.

[16] On May 19, 2015, the Applicant completed a Personnel Screening, Consent and Authorization Form and a Security Clearance Form for employment as a CBSA officer trainee. In response to a question whether she had been dismissed or asked to resign from any position, the Applicant disclosed that she had been terminated from employment with G4S Cash Solutions Canada Ltd. [G4S] in April 2012 due to an investigation that indicated she may have been part of losses pertaining to a crew with which she worked.

[17] The Applicant declared that she was not involved in the losses and that there was no evidence to support the allegations. The Applicant indicated that she grieved her termination to the Labour Board through her union, CAW, now known as Unifor. She ultimately reached a settlement agreement following a mediation held in December 2014 with GardaWorld Canada [Garda], the company that purchased G4S during the intervening period. The Applicant claimed

that she was found clear of any wrongdoing in the matter and that she had supporting written documentation from the investigating police agency, the Vancouver Police Department [VPD], Garda, and Unifor, "all acknowledging that the allegations made against [her] were without merit and have no supporting proof."

[18] The documentation attached to the Applicant's Security Clearance Form includes a VPD General Occurrence Report [GOR] relating to file number 2012-57402 that states that Detective Constable Greenwood had reviewed the documentation and information supplied by G4S relating to theft over $5,000 with several members of the Financial Crimes Unit, that a meeting was held with the Regional Crown Counsel to discuss the file, and that the file was closed. Because the GOR is heavily redacted, the target of the investigation cannot be ascertained.

[19] Also attached to the Applicant's Security Clearance Form are two letters from the National Director, Employee and Labour Relations, with Garda relating to the Applicant and VPD file number 12-57402. The first one is an unaddressed reference letter dated December 2, 2014. The second is a letter to the VPD dated December 5, 2014 stating that Garda had reviewed the matter and found that there was no proof to support the allegations by G4S against the Applicant.

[20] The final document is a letter dated January 26, 2015 from Mr. Cameron to the VPD bringing to the VPD's attention a Garda Information Bulletin advising that a named investigator had been criminally charged with theft over $5,000 on November 18, 2014 after a parcel was declared missing at its Mississauga Branch on June 10, 2014. (This person shall be referred to in

these reasons by his initials, "K.M.", as the criminal charge against him was later dismissed in court.) Mr. Cameron states that "[c]ombined with the Company's letter attached stating there is no proof to support the allegations this should in my view completely clear Baldeep Varn and [name blacked out] of any taint associated with the spurious complaint originated by a man now charged with stealing."

[21] On June 9, 2015, a report was prepared by a CBSA Assigned Analyst who recommended that reliability status be granted to the Applicant "pending negative CRNC [Criminal Records Name Check] and LERC [Law Enforcement Records Check] responses".

[22] Before any records checks were received, the Applicant attended a security interview with Ray Bonnell, a CBSA security advisor, on June 15, 2015. Following the interview, Mr. Bonnell made the following observations in a note dated June 22, 2015:

> - VARN had her employment terminated at G4S Cash Solutions in April 2012. At the time she was an armored car driver and VARN along with her partner were fired because of an allegation of missing money. VARN denied any wrongdoing and hired a lawyer to represent her case. She received a clean disciplinary record and a cash settlement from the company. VARN provided documentation to support her claim. It is interesting to note that the principal investigator in her case was later charged for theft of $100,000 from the company.
> - VARN presented well answering all questions without hesitation.
> - The writer recommends the granting of a Reliability Status pending a negative LERC.

[23] The following day, Mr. Bonnell spoke with Detective Constable Greenwood, who had investigated the reported theft in VPD file number 2012-57402. Mr. Bonnell subsequently made the following observations in a note to file:

> VARN, and her partner were armoured vehicle drivers for G4S Cash Solutions and both were fired from the job for allegations of theft. VARN fought her dismissal and was eventually given a cash settlement and document from the company clearing her of any wrongdoing. She was not given her job back.
>
> During my interview with VARN, I felt that she was evasive when specifically asked if a theft of money had occurred on her watch. She kept referring to the company's inability to provide exact details as to when, where, how much money was missing. She also provided a document from Mark Cameron the union representative clearing her of any involvement with [K.M.] the company investigator who accused VARN of the theft. [K.M.] was later charged himself for stealing $100,000.00 from the company in Ontario.
>
> During my interview, I felt that VARN was not being totally honest relating to the theft from G4S Cash Solutions. When I spoke with Det/Cst. Greenwood I specifically asked him if in fact a theft had occurred. His answer was yes, and further there were numerous thefts. The company had in place systems to detect patterns of missing money but these systems did not allow them to determine the exact time and amounts taken and the location. Det/Cst Greenwood wanted to pursue this case further but the crown prosecutor felt there was a very slim chance of a successful prosecution. Det/Cst Greenwood is not in a position to accuse VARN of theft however he is not willing to say she was not involved in a theft. The company was sold and the new company wanted to but [*sic*] this issue behind them so a settlement was reached with all parties.
>
> I find myself faced with a dilemma, in that I personally believe that VARN was not totally honest however it will be very difficult to prove that. It may be that she was covering for her partner at the time or she may have been involved.
>
> In view of this, I am recommending the granting of Reliability Status pending a negative LERC.

[24] On September 4, 2015, the Royal Canadian Mounted Police [RCMP] prepared a LERC report relating to the Applicant and sent it to CBSA. The report confirmed that the Applicant had no criminal record but noted that she was listed in the following occurrences:

> i. On May 6, 2008, the Bank of Montreal reported several internal thefts involving two G4S Security Guards (the applicant and subject A), to the Burnaby, BC RCMP. The applicant and Subject A were suspects in five thefts under $5000 from Automated Banking Machines, but denied all allegations. An in depth investigation was conducted. Although the applicant and Subject A remained strong suspects, there was not enough evidence to lay charges. This file was concluded.
>
> ii. In February 2012, the Branch Manager of G4S Cash Solutions, his Security Manager and officers of the Vancouver Police Department (VPD) conducted an investigation into numerous Automated Bank Machine shortages from the Vancouver G4S Branch. The applicant and Subject A were the suspects for all losses. During an interview by G4S staff the applicant admitted to taking 50% of the losses however this interview was not conducted under police caution which means it would not have been admissible in court. VPD deemed all of the evidence against the applicant and Suspect A was circumstantial and was insufficient for charge approval standards. No criminal charges were laid and the file was concluded.

[25] In light of the new information contained in the LERC, Mr. Bonnell conducted a second interview of the Applicant on February 16, 2016. During the interview, the Applicant continued to deny any involvement in the alleged theft of money, stating "I am a married woman with a son, why would I steal money?". She denied making any confession to K.M., stating that her union representative, Mr. Cameron, was present during the entire interview with K.M. The Applicant also revealed for the first time the name of her partner at G4S who was also a suspect in the alleged thefts [hereinafter referred to by his initials "D.R."]. D.R. is described as a friend and listed as a character reference in the Applicant's Security Clearance Form. The Applicant

questioned why D.R., who was now a Border Services Officer, had been accepted for employment with CBSA while her application continued to be stalled.

[26] Following the second interview, Mr. Bonnell corresponded with other CBSA personnel asking that the RCMP be contacted to confirm whether there was an error in the LERC relating to D.R. because information identifying him as a suspect in the bank thefts should have appeared in the report. During the course of the investigation into the screening of D.R., e-mails were discovered in D.R.'s CBSA e-mail account that suggested that there was an ongoing romantic relationship between D.R. and the Applicant, a fact the Applicant did not disclose to Mr. Bonnell.

[27] On August 26, 2016, Mr. Bonnell prepared a Security Review Investigation Report [SRIR] for his manager, Kenneth McCarthy, Director of Personnel Security and Professional Standards Division, and the DSO recommending the denial of reliability status for the Applicant. The SRIR set out various reasons for his recommendation, including:

i. The Applicant's attempt to blur the facts by providing a document "from the Vancouver City Police (VPS)" which the Applicant stated cleared her of the alleged thefts in BC by highlighting that K.M. was not to be trusted.

ii. The Applicant denied making any confession to K.M. about her involvement in the alleged theft of money, relying on the fact that her union representative, Mark Cameron, was present during the entire interview by K.M. However, Mr. Cameron later confirmed

that he only sat in on part of the interview and during that time he did not hear any confession.

iii. After the second interview with the Applicant, it was discovered that she had been in a romantic relationship with D.R. for several years. The Applicant did not disclose this information. Given D.R.'s alleged involvement in the theft of money, the Applicant's failure to disclose her personal relationship with D.R. raised serious concerns, bringing her credibility and integrity into question.

iv. When asked if she stole the money, the Applicant replied that "[t]hey did not show me any evidence of the theft". There was a clear lack of anger or strong denial that is usually expressed by accused persons.

v. There was no reason to believe that the LERC information was not accurate.

vi. The Applicant minimized her involvement as well as the seriousness of her behaviour.

[28] Mr. McCarthy subsequently assessed the mitigating and aggravating factors described within the SRIR and prepared his own security observations report, that concludes as follows:

> In my assessment of the file, I note that the applicant is 44 years old and that the allegations of theft against her occurred four and eight years ago. In the second allegation of theft, we know that she was suspended and investigated; and following mediation, no charges were laid, she was given a clean disciplinary record, and she was not hired by the new company. The LERC indicates that she confessed to taking 50% of the stolen money. She denied this in her security interviews, but she did so using diversion tactics and she significantly minimized the incident. She is deceptive and poses a serious Insider Threat risk to the CBSA.
>
> I concur with the recommendation that the applicant's request for a reliability status screening be denied.

C. *The impugned decision*

[29] On October 4, 2016, the Applicant received the decision letter from Mr. Giguère, the DSO, stating that her request for a CBSA reliability status was denied. The letter states that the information obtained through the LERC revealed concerns pertaining to the Applicant's ability to obtain a CBSA reliability status. The DSO wrote:

> More specifically, during the interviews, you were dishonest about your previous involvement with thefts from automated banking machines in the Lower Mainland of British Columbia. You did provide a partial disclosure during the security interviews however you did not disclose your complete involvement in this matter. You downplayed what amounted to being extremely serious allegations against you for which you had been suspended and investigated. Your overall attitude and deceitfulness are a concern for the CBSA as they demonstrated questionable honesty, integrity, and truthfulness on your part. This is contrary to our security practices as a law enforcement agency, and it would place both you and the CBSA at risk.
>
> As the Departmental Security Officer for CBSA, I have reviewed the circumstances of this case, and consequently, I have ascertained that there is sufficient cause to deny you a CBSA Reliability Status.

[30] The present application for judicial review was commenced on October 28, 2016 seeking a declaration that the decision is invalid and unlawful, an order that the decision be set aside, and an order that the Applicant's request for reliability status be granted or, alternatively, that the matter be referred back for redetermination.

III. Issues

[31] The parties have identified the following issues to be determined on this application:

A. What is the applicable standard of review?

B. Did the decision-maker act outside his jurisdiction?

C. Was the Applicant afforded the requisite level of procedural fairness?

D. Is the decision unreasonable?

IV. Analysis

A. *What is the applicable standard of review?*

[32] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 57 [*Dunsmuir*], that an exhaustive analysis is not required in every case to determine the proper standard of review. The Court must first ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded to a decision-maker with regard to a particular category of question. Where the standard of review applicable to a particular question is well-settled, the reviewing court may adopt that standard of review. In this case, there is no dispute between the parties regarding the appropriate standard to be applied.

[33] First, the core of the test for excess of jurisdiction is whether there has been a statutory grant of power to the tribunal giving it the authority to decide the issue in question. Without a statutory grant of power, a tribunal acts outside its authority and without jurisdiction. The appropriate standard of review with regard to an excess of jurisdiction is correctness (see *Dunsmuir* at para 59).

[34] Second, issues of procedural fairness are reviewable on the standard of correctness (see *Singh Kailley v Canada (Minister of Transport)*, 2016 FC 52 at para 18 [*Singh Kailley*]; *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[35] Third, it has been consistently held that the standard of review applicable to questions of mixed fact and law is reasonableness, particularly when deciding whether to grant security clearance to an individual (see *Singh Kailley* at para 17; *Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 FCA 56 at paras 80-87 [*Farwaha*]).

B. *Did the decision-maker act outside his jurisdiction?*

[36] The Applicant submits that the denial letter makes statements asserting the Applicant's guilt without reference to any findings of fact. She maintains that Mr. Bonnell, Mr. McCarthy and the DSO ignored exculpatory evidence regarding the two occurrences reported in the LERC and simply accepted the opinion of police sources that the Applicant must be guilty of theft notwithstanding that there was not a single piece of evidence to support such a belief. The Applicant claims that the DSO abandoned any analysis of the facts in favour of accepting unsubstantiated beliefs, thereby acting in excess of his jurisdiction.

[37] The Applicant no doubt wishes to couch the alleged errors by the DSO as an excess of jurisdiction in order to attract a higher standard of review. However, no excess of jurisdiction arises on the facts of this case. The Supreme Court of Canada in *Dunsmuir* at para 59 confined

true questions of jurisdiction or *vires* to the narrow sense of whether or not the tribunal has the authority to make the inquiry.

[38] There is no question that the DSO had the necessary authority to assess the material before him and to decide whether the Applicant's application for reliability security status should be granted. In any event, for the reasons that follow, I am not persuaded that the DSO made any error in reaching his conclusion.

C. *Was the Applicant afforded the requisite level of procedural fairness?*

[39] The Applicant submits that she was not afforded procedural fairness on a number of bases.

[40] The Applicant repeats her argument that the denial decision was based on unsupported speculation by Det/Cst. Greenwood that she was guilty of theft. She maintains that there was clear and convincing proof establishing that she was exonerated in respect of the 2012 incident and that she provided a complete explanation of any potential adverse information. She claims there was no way for her to explain why an unarticulated belief of a police officer should not be preferred over a record of what actually transpired because there was no information to rebut and no facts to counter. The Applicant maintains that the DSO was bound to provide some facts to support a reasonable basis for his conclusion that she was somehow involved with the thefts given that the police investigation failed to produce evidence that could substantiate charges. In the absence of anything more than a bald statement of suspicion, the Applicant submits she was effectively deprived of her right to respond. I disagree.

[41] The Applicant's contention that Mr. Bonnell, Mr. McCarthy, and ultimately the DSO ignored her evidence and blindly accepted the opinion of a police source is not borne by the record. Although Mr. Bonnell was troubled by the information provided by Det/Cst. Greenwood, which caused him to reconsider his assessment that the Applicant had been forthright during the first interview, he nonetheless gave the Applicant the benefit of the doubt and was prepared to recommend that reliability status be granted pending a negative LERC. The new information in the LERC that the Applicant had confessed to taking 50 percent of the losses obviously tipped the scale against the Applicant and it was this damning information, and not Det/Cst. Greenwood's opinion, that triggered the second interview.

[42] The Applicant was interviewed a second time in accordance with the TB Standard and had a full opportunity to address Mr. Bonnell's concerns regarding the information contained in the LERC. The fact that the DSO gave more credence to the information contained in the LERC does not negate the fact that procedural fairness was met.

[43] The Applicant further submits that it was procedurally unfair to take into account the 2008 occurrence as it fell outside the five-year time period of the reliability assessment. The Applicant has not pointed to a provision in the Treasury Board Secretariat's or CBSA's policies, directives, and standards that explicitly disqualify information preceding the five-year period from being considered. In any event, the fact that the 2008 occurrence fell outside the five-year period of the reliability assessment is not in itself sufficient to limit the broad discretion to grant a security clearance. In *Doan v Canada (Attorney General)*, 2016 FC 138 at para 29, Mr. Justice

Richard Mosley found that the length of time between events of concern and the application for security clearance may be a factor taken into consideration.

[44] The Applicant was able to fully respond to the alleged thefts in 2008. She explained that she was questioned concerning the allegations, denied any involvement, was not disciplined, continued on in her position, and never heard from the police again. There is no indication that these allegations were given undue weight by the DSO or were otherwise a determinative factor in the making of his decision.

[45] The degree of procedural fairness accorded to an applicant for an initial grant of security status is minimal (see *Motta v Canada (AG)*, [2000] 180 FTR 292 (FCTD); 2000 CanLII 14801 at para 13). For the above reasons, I am satisfied that the screening process met the minimum threshold for procedural fairness.

D. *Is the decision unreasonable?*

[46] The main issue for consideration in this application is whether the decision of the DSO is unreasonable. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-16 [*Newfoundland Nurses*], the Supreme Court of Canada held that a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion. As long as the decision-maker's reasons allow the reviewing court to understand why it made its decision and permit the court to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria of "justification, transparency and intelligibility" are met (see also *Dunsmuir* at para 47).

[47] In the context of security screening, assessments of risk involve the sensitive consideration of facts and careful fact-finding, tasks that normally entail a broad range of acceptable and defensible decision-making (see *Farwaha* at para 94). Assessments of risk are forward-looking and predictive. By nature, these are matters not of exactitude and scientific calculation but rather matters of nuance and judgment.

[48] Given the CBSA's mandate for providing integrated border services that support national security and public safety, the decision-maker is entitled to err on the side of public safety, as in the contexts of aviation and marine security screening. This means that in balancing the interests of the individual affected and public safety, the interests of the public take precedence (see *Randhawa v Canada (Transport)*, 2017 FC 556 at para 18; *Thep-Outhainthany v Canada (Attorney General)*, 2013 FC 59 at para 17; *Salmon* at para 83).

[49] The Applicant submits that there are many serious errors, misstatements and misunderstandings of the documents that entirely undermine the reliability and findings of the investigation. I agree that there were some inaccuracies in the reports prepared over the course of the investigation; however they are immaterial to the ultimate decision rendered by the DSO.

[50] For example, at paragraph 3 of the SRIR, Mr. Bonnell refers to documents provided by the Applicant that she stated clearly exonerated her of any wrongdoing. Mr. Bonnell wrote that one of those documents was "from the Vancouver City Police". His report states that Det/Cst. Greenwood indicated that the document was related to the theft of money in Ontario allegedly committed by K.M.

[51] The Applicant submits that the letter did not come from the VPD but from the employer. It appears however that Mr. Bonnell and Det/Cst. Greenwood were actually discussing the letter from Mr. Cameron to the VPD and that Mr. Bonnell simply made a typographical error in the SRIR, reflecting "from" instead of "to". While Mr. McCarthy repeats the same error in his observations report, there is no indication that the DSO misunderstood the evidence. The Court will not interfere when a mistake is typographical in nature and of no consequence (see *Petrova v Canada (Minister of Citizenship and Immigration)*, 2004 FC 506 at para 51).

[52] The Applicant also identifies other inaccuracies in various reports including: misstating her age; stating that she was "suspended" from her employment rather than "terminated"; and that Garda "agreed" to mediation rather than "requested" it to avoid arbitration. In my opinion, this is nothing more than nit-picking undeserving of consideration. As stated in *Newfoundland Nurses* at para 18, perfection is not the standard: the question reviewing courts should ask is "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision". Following my review of the record and the parties' submissions, the DSO's decision letter adequately explains the basis for finding that the Applicant was lacking in honesty, integrity, and truthfulness due to her deceitfulness and incomplete disclosure of her involvement with the thefts.

[53] In my view, a flexible and deferential application of the TB and CBSA security screening standards and directives on security screening is more consistent with the *Dunsmuir* principles on interpreting reasons. In *Ng v Canada (Attorney General)*, 2017 FC 376 at paras 24 and 36 [*Ng*], Mr. Justice Peter Annis warns against effectively "judicializing" the security-screening

process. This is in line with the view that *Dunsmuir* seeks to "avoid an unduly formalistic approach to judicial review" (see *Newfoundland Nurses* at para 18, citing Evans J.A. in *Canada Post Corp v Public Service Alliance of Canada*, 2010 FCA 56, aff'd 2011 SCC 57).

[54] In an assessment of a person's character or propensities, evidence of the actual commission of an unlawful act is not required (see *Clue v Canada (Attorney General)*, 2011 FC 323 at para 20; *Salmon v Canada (Attorney General)*, 2014 FC 1098 at para 83 [*Salmon*]).

[55] This Court has held in the security-screening context that a decision-maker is under no obligation to verify or cross-check the accuracy of the information received from the RCMP in a LERC and is entitled to rely exclusively on information contained in a LERC even though, from an evidentiary standpoint, it constitutes hearsay (see *Sargeant v Canada (Attorney General)*, 2016 FC 893 at para 31; *Fontaine v Canada (Transport)*, 2007 FC 1160 at para 75; *Henri v Canada (Attorney General)*, 2014 FC 1141 at para 40; *Christie v Canada (Transport)*, 2015 FC 210 at para 23; *Singh Kailley* at paras 28-29).

[56] As long as a decision concerning an initial grant of security clearance advises an applicant of the facts giving rise to the negative finding regarding their honesty, integrity, or trustworthiness and whether they can be relied upon to protect the employer's interests, and makes a logical association with at least one of the grounds for rejection, the reasons should be found to be sufficiently intelligible (see *Ng* at para 37).

[57] There was evidence upon which the DSO could reasonably find the Applicant to be demonstrating questionable honesty, integrity, and truthfulness. First, the Applicant misrepresented the contents of the VPD GOR document in her written attachment to her Security Screening Form as exonerating her. The document simply stated that an investigation was conducted, the matter was reviewed, and the file was closed.

[58] Second, the Applicant did not disclose the true nature or duration of her relationship with D.R. She concealed his identity as a co-suspect and misrepresented their true relationship throughout the investigation process. When the facts of this relationship were discovered after the second interview, they provided reasonable grounds to suspect that the Applicant may be covering for D.R. or that she may have been actively involved in the thefts.

[59] Third, the Applicant denied that she had confessed when she was interviewed by K.M., claiming that Mr. Cameron had been present throughout the interview and did not hear any confession. However, when questioned, Mr. Cameron stated that he sat in only on part of the Applicant's interview.

[60] The Applicant also claimed that K.M. should not be trusted because he was charged with theft. However, the Applicant did not suggest that K.M. had developed any personal animus against her or that he had any motive to lie when he made a statement to the police back in 2012. In the circumstances, it was open to the DSO to prefer the information contained in the LERC. I should add that it is somewhat ironic that the Applicant, who was suspected of theft,

would suggest that K.M. should be disbelieved simply because he was suspected of theft two years later.

[61] Contrary to the Applicant's submissions, the impugned decision is not based on speculation or a finding that the Applicant was guilty of theft. Rather, the DSO relied on the information contained in the LERC, as well as findings of credibility based on the Applicant's own responses, both in terms of their content and her demeanour.

V. Conclusion

[62] Overall, the decision-making process was both thorough and clear. The DSO's decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. Moreover, the DSO's decision is consistent with the purposes of the legislation and policies, standards, and directives applicable to security screening for CBSA personnel. For the above reasons, the application is dismissed, with costs.

[63] The parties agreed at the conclusion of the hearing that costs should be awarded to the successful party and fixed in the amount of $5000.00, inclusive of disbursements and taxes.

JUDGMENT IN T-1843-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is amended with immediate effect to remove the Canadian Border Services Agency as a Respondent.

3. Costs of the application, hereby fixed in the amount of $5000.00, inclusive of disbursements and taxes, shall be paid by the Applicant to the Respondent.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1843-16
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