Federal Court  Cour fédérale

Date: 20241023

Docket: T-2356-23

Citation: 2024 FC 1673

Toronto, Ontario, October 23, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

LINDA SIDOLI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This application concerns the revocation of the Applicant's security status with the government of Canada. More specifically, the Applicant seeks judicial review of a decision by Public Services and Procurement Canada [PSPC] to revoke her reliability status and administratively close her secret security clearance. PSPC found that the Applicant's honesty and judgment were compromised when she provided falsified Certificates of Incorporation for one of

her companies, Stellar Integrated Solutions Inc., in order to meet the experience requirements for three government contract bids.

[2] For the reasons that follow, I will grant this application.

II. BACKGROUND

A. *Facts*

(1) *The Applicant*

[3] The Applicant - Linda Sidoli - is a "bilingual project management executive" who worked as a federal public servant from 2005 to 2016. After leaving the public service, Ms. Sidoli incorporated a number of companies, which obtained government contracts in the areas of business transformation, IT deployment, organizational change management, HR realignment and staffing. The Applicant has held a reliability status and secret security clearance, pursuant to PSPC's *Standard on Security Screening*, since 2014, which has been necessary for her business dealings with the Government of Canada.

[4] In September 2021, the Applicant incorporated, "Stellar Integrated Solutions Inc." [SIS], an Indigenous management consulting and training company. This business is not involved with any work that is subject to security requirements and does not have a security designation. It is owned and operated independently from the Applicant's other businesses. Prior to its incorporation, since 2019, the business was operating as a sole proprietorship under the name Stellar Integrated Solutions. This is distinct from another company that the Applicant had earlier

started – 9974563 Canada Corporation [997 Corp] – which she has operated since 2017 as "Stellar Integrated Business Solutions." SIS had five employees, one of whom was her spouse.

[5] The impugned business proposals in this matter are all to do with SIS.

(2) *Contract Bids and Investigation*

[6] In the fall of 2022, the Applicant's companies submitted the following proposals for contracts within the PSPC procurement processes, through a website interface maintained by PSPC:

a) Stellar Integrated Business Solutions submitted a proposal in response to a task and solutions professional services (TSPS), temporary help services (THS) and ProServices request for supply arrangements;

b) Aligned SI Corp. submitted proposals in response to the THS and ProServices requests for supply arrangements; and

c) SIS submitted proposals for: 1) TSPS; 2) THS; and 3) ProServices requests for supply arrangements (RFSA).

[7] It is only the last of these bids – those submitted by SIS – that are at issue in this matter.

[8] Each of these government supply arrangement processes included a 'months in business' requirement; this meant that organizations had to have been in business for specified time periods in order to qualify for the contracts. The 'months in business' requirements for the three proposals submitted by SIS were as follows:

- TSPS – three years in business
- THS – two years in business
- ProServices – one year in business

[9] Based on these requirements, and the timing of the bids in 2022, SIS would not have had the requisite experience to succeed in the TSPS or the THS processes. From the perspective of PSPC, this is where the mischief begins; according to the Applicant, this is where the mystery begins.

[10] In support of the bids, SIS was required to provide Certificates of Incorporation to corroborate that the business met the experience requirements of the contracts. At various times over the fall of 2022, it appears that falsified Certificates of Incorporation were provided to PSPC. While the correct Certificate of Incorporation is dated September 15, 2021, an altered Certificate was provided that was dated September 15, 2020. The decision under review also references a third Certificate of Incorporation dated September 15, 2019, although this document does not appear to be in the Record, which raises a concern that I will discuss below. In any event, the falsified Certificates of Incorporation were of potential benefit to the Applicant, as they indicated that SIS had the requisite experience when, in fact, it did not.

[11] In response to one thread of emails dated January 5, 2023, the Applicant appears to have responded to a request for various missing documents from the Department Oversight Branch of PSPC by providing, amongst other things, the correct Certificate of Incorporation.

[12] Shortly after this, on January 17, 2023, the Applicant received an email from the "THS Team" at PSPC, advising that her firm "submitted a certificate from Innovation, Science and Economic Development Canada that listed a date of 2020-09-15, but in reviewing this bid we have discovered that this does not match the information currently on record with the Canada Revenue Agency (CRA)."

[13] The email further explained that the CRA's records usually take precedence where there are discrepant dates, and requested that Ms. Sidoli send the original Certificate of Incorporation to confirm that Stellar Integrated Solutions Inc. had been in business for at least two years prior to the closing date for bid proposals, which was October 13, 2022.

[14] The Applicant responded to PSPC, stating that SIS had been in business since September 2020, but only received its CRA and business number in September 2021. Ms. Sidoli advised PSPC that if this was insufficient, SIS would withdraw its proposal and resubmit in 2023. She subsequently offered to withdraw the other proposals submitted by Stellar Integrated Solutions Inc., and other proposals submitted by her other companies. At this point, PSPC's Acquisition Branch notified the Contract Security Program, which is responsible for the department's security clearance processes, of their concerns.

[15] On May 18, 2023, Adam Baldwin-Parker, a Security Screening Investigator [the Investigator] with PSPC's Departmental Oversight Branch, phoned the Applicant and informed her that he would be performing a "for cause" review of her security status. The Investigator informed Ms. Sidoli that the review was prompted by bid submissions for a TSPS supply arrangement and a THS supply arrangement. She was asked to attend an interview.

[16] On May 18, 2023, the Applicant received an email from the Investigator, providing a summary of the telephone discussion, explaining why she was required to attend a face-to-face security screening interview, and identifying the documentation Ms. Sidoli would need to provide.

[17] According to the Applicant, it was only at this point that she became aware that incorrect Certificates of Incorporation for SIS had been provided to PSPC on October 27, 2022, and November 16, 2022. Ms. Sidoli allegedly made inquires to determine how this could have happened, and learned that an employee, Nathalie LeClair, sent an email to PSPC on October 27, 2022, with the Articles of Incorporation taken from the company website.

[18] However, there is little information in the Record to explain the November 16 email. The Investigation Report that was ultimately prepared in this matter (discussed in greater detail below) indicates that an incorrect Certificate of Incorporation (dated September 15, 2020) was emailed from the SIS email account. Ms. Sidoli's only explanation was that she suspected that either she or Ms. LeClair had, in good faith, accidentally emailed the wrong Certificates of Incorporation – presumably the same one found on the SIS website.

[19] On the question of *how* a falsified version of the Certificate of Incorporation came into existence, Ms. Sidoli states that in 2020 SIS was targeted by an "IT compromise" in which the company was the victim of multiple "phishing" emails, fraudulent attempts at e-transfers were made, and she lost access to her domain name. SIS retained an individual – Jennifer York – to assist in "cleaning up" their online presence.

[20] In preparation for the interview with the Investigator, Ms. Sidoli also realized that she had provided the correct Certificates of Incorporation for SIS in the January 5, 2023, email referred to above. This, she asserts, was prior to any concerns raised by PSPC.

(3) *The "For Cause" Interview*

[21] The "for cause" security screening interview took place on June 6, 2023. Ms. Sidoli was again informed that the reason for the interview was information received from the Department's Provisional Labour Services Division regarding two bid submissions for supply arrangements. The Investigator stated that there were two falsified Certificates of Incorporation provided for her company, one with a date of September 15, 2019, and one with a date of September 15, 2020.

[22] Over the course of the interview, the Investigator also disclosed that there was a third email from the Applicant's own email address, dated October 12, 2022, which also attached the September 15, 2020, falsified Certificate of Incorporation. This correspondence was in relation to the THS bid.

[23] Following the interview, and the revelation of yet another email attaching the incorrect Certificate of Incorporation, the Applicant claims that she realized that the above-mentioned IT compromise was "more involved and insidious" than she had previously appreciated. As a result, she conducted further investigations – she got back in touch with Jennifer York and retained a third party to further investigate how a message from her email address could have been sent to PSPC providing an incorrect Certificate of Incorporation for SIS.

[24] On August 18, 2023, the Investigator sent Ms. Sidoli an email entitled "Statement of Adverse Findings", in which he informed her that that after a thorough review of her file and the information received to that date, it had been assessed that unmitigated security concerns

remained present. He further stated that should these concerns remain unmitigated, it was possible that PSPC could revoke her existing reliability status, which would render her ineligible to hold a secret security clearance and nullify her status as a CSO for her remaining company, 997 Corp. This would terminate the Applicant's company from the Department's Contract Security Program. Ms. Sidoli was provided with 30 calendar days (until September 17, 2023) to provide an email response to the concerns.

[25] On September 15, 2023, Applicant's counsel provided a response to the Investigator's email. Also on September 15, 2023, the Applicant sent a separate response to the Investigator, describing the remediation efforts she had implemented since the security concerns had arisen. The remediation efforts consisted of IT security and resiliency, to address the allegedly fraudulent emails originating from the Stellar Integrated Solutions email address, which had enclosed the incorrect Certificates of Incorporation for SIS.

B. *Decision under Review*

[26] On October 13, 2023, the Applicant received a letter from Karine Loiselle, the Acting Director of PSPC's Industrial Personnel Security Services Directorate, revoking her Reliability security status, which resulted in the administrative closing of her secret security clearance. The letter outlined the process followed by PSPC in its investigation, and the reasons for the final decision.

[27] The Decision letter indicated that the primary concern was the incorrect Certificates of Incorporation for SIS, "purportedly for the purposes of meeting the number of years in business

requirement (two and three years, respectively)… on two separate bid submissions." It identified the bid submissions as:

a) the THS supply arrangement, where a Certificate of Incorporation with a falsified date of September 15, 2019, was provided in an e-mail dated October 12, 2022; and

b) the TSPS supply arrangement, where a Certificate of Incorporation with a falsified date of September 15, 2020, was provided by a SIS employee on October 27, 2022.

[28] The decision later referenced the third impugned email, dated November 16, 2022, in which a Certificate of Incorporation with a falsified date of September 15, 2020, was provided in respect of a ProServices bid submission.

[29] In her reasons, Ms. Loiselle referenced the Statement of Adverse Findings that was shared with Ms. Sidoli, which outlined all three impugned bid submissions and the associated unmitigated security concerns. Ms. Loiselle stated that the Applicant's responses to that statement were considered in coming to the Decision.

[30] Another important document, however, was not shared with the Applicant. Following the Statement of Adverse Findings, the Investigator prepared a detailed Security Screening Investigation Report, together with over 60 exhibits, which comprised all of the relevant documents associated with the investigation. It appears from the Certified Tribunal Record that the only document in front of Ms. Loiselle when she rendered her decision was the Investigation Report. The attached documents, which essentially constitutes the evidence in this matter, were not before the decision-maker.

[31] Ultimately, the decision-maker determined that there remained unmitigated security concerns related to the Applicant's reliability, including her honesty and judgment. Ms. Loiselle noted that Ms. Sidoli was not forthcoming, and that in the three bid submissions in question, she was dishonest and displayed poor judgment by providing SIS Certificates of Incorporation with falsified dates, for the purpose of meeting the years of experience requirement discussed above.

III. ISSUES

[32] It is common between the parties that this matter raises the following issues:

- Was the decision under review procedurally unfair?
- Was the decision under review reasonable?

IV. STANDARD OF REVIEW

[33] The parties do not dispute that the standard of review applicable to issues of procedural fairness is a standard "akin to correctness": *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69. As to the substance of the decision, the parties agree that the presumptive standard of review is reasonableness*: Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[34] As the Respondent submits, the content of the duty of procedural fairness in this matter is on the low end*: Lum v Canada (Attorney General)*, 2020 FC 797 at para 32 [*Lum*], citing *Henri v Canada (Attorney General)*, 2014 FC 1141 at para 27(e), (aff'd at 2016 FCA 38) [*Henri*], citing *Pouliot v Canada (Transport)*, 2012 FC 347 at para 10. A security status has been identified as a privilege and not a right, and therefore attracts a relatively low level of procedural fairness: *Lum*

at para 39. In addition, security clearance procedures are not akin to judicial processes and should not be treated as such: *Lum* at para 50.

[35] In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[36] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85). Reasonableness review is not a "line-byline treasure hunt for error" (*Vavilov* at para 102). Any flaws or shortcoming relied upon must be sufficiently central or significant, to render the decision unreasonable (*Vavilov* at para 100).

V. ANALYSIS

A. *The Decision was Procedurally Fair*

(1) *Statement of Adverse Findings*

[37] The Applicant first submits that the decision under review was reached in a procedurally unfair manner, because, while she was provided with the Statement of Adverse Findings, she was not provided the full Investigation Report, together with its annexed documents. She argues that the Statement of Adverse Findings was insufficient to discharge fairness requirements with

respect to notice. What was required, she argues, was information equal to that included in the Investigation Report. I disagree.

[38] First, as noted above, the content of the duty of fairness in this matter is on the lower end. As noted in *Lum* at para 32, citing *Henri*, this means that, in practical terms, "the procedural safeguards related to the process that may lead to the cancellation of a security clearance are limited to the right to know the alleged facts and the right to make representations about those facts". This is confirmed in case law also cited by the Applicant: *El-Helou v Courts Administration Service*, 2012 FC 1111 at para 76 [*El-Helou*]. This is not to diminish the importance of this decision for the Applicant; I recognize the impact that this decision has had on her businesses and, by extension, her ability to earn an income.

[39] Nevertheless, I find that the notice provided to the Applicant in this case clearly met the above requirements. Indeed, on my review of the Record, the core issues on which the matter turned were crystal clear; Ms. Sidoli was appraised of the material facts long before the Statement of Adverse Findings, and at the very latest by the June 2023 interview with the Investigator. The Statement of Adverse Findings provided further clarity on the concerns that animated the process.

[40] The Applicant also had ample opportunity to make representations and, indeed, she availed herself of this opportunity on several occasions – during the initial phone call with the Investigator, before the interview, the interview itself, immediately after the interview, and in response to the Statement of Adverse Findings.

[41] Despite the Applicant's submission that the Statement of Adverse Findings provided insufficient information to comply with fairness principles, she has provided no statutory or jurisprudential support for that proposition. I have equally been unable to find such support. The closest suggestion, as noted by the Applicant submission, can be found in *El-Helou*. There, this Court held that the requirement that an individual be made aware of the "substance of the case" or the "substance of the evidence obtained by the investigator" will "generally be satisfied by the disclosure of the investigator's report and the provision of an opportunity for comment": *El-Helou* at paras 75-76.

[42] However, Justice Mactavish (then of this Court) went on to note that, in the alternative, the provision of a summary of the witness interviews and other documentary evidence would have been sufficient to allow the applicant to know the case he had to meet and to respond to it. Therefore, it is clear from the jurisprudence that the notice requirement simply entails a right to know the alleged facts and substance of the evidence, and a right to respond. The Statement of Adverse Findings included that material information. In other words, just because the disclosure of an investigator's report will generally meet procedural fairness requirements does not necessarily establish it as a minimum requirement.

[43] Indeed, in *Plummer-Grolway v Canada (Attorney General)*, 2021 FC 444 [*Plummer*], this Court held that a Statement of Adverse Information would be sufficient. The Honourable Madam Justice Simpson granted the judicial review in that case because the applicant had *not* been provided with a Statement of Adverse Information. As such, the Applicant has failed to convince me in this case that the Statement of Adverse Findings that was provided to her was insufficient to meet comply with fairness principles.

[44] Further, the Applicant submits that the provision of the Statement of Adverse Findings (as opposed to the full Investigation Report) is inconsistent with the Treasury Board of Canada Secretariat's "Standard on Security Screening" [the Standard]. This does not appear to be the case. Section 2 of Appendix D of the Standard stipulates that:

> When consideration is being given to denying or revoking a security status or clearance, individuals must be informed in writing and be provided with reasons, unless the information is not to be disclosed under the Privacy Act or other applicable legislation. They must also be given an opportunity to validate or refute adverse information.

[45] Nowhere does the Standard establish a more onerous obligation than the requirements discussed above, namely the disclosure of material facts, and the granting of an opportunity to respond. To be more specific, nothing in the Standard suggests that individuals under security review investigations must be provided the full Investigation Report.

[46] The Applicant additionally argues, relying on *Canada (Attorney General) v Canada (Commission of Inquiry on the Blood System)*, 1997 CanLII 323 (SCC), [1997] 3 SCR 440 at para 56 [*Canadian Blood System*] that notice to parties suspected of misconduct should be "as detailed as possible." However, the *Canadian Blood System* case is factually distinguishable. It dealt with a Commission of Inquiry to examine the blood system after thousands of individuals contracted HIV and Hepatitis C from blood and blood products, and with related findings of misconduct. That is quite a different context than a security clearance review for cause and accrues a different level of procedural fairness. It is trite that the principles of procedural fairness are "eminently variable" and context-specific: *Vavilov* at para 77, *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653, at p. 682; *Baker v. Canada*

(Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at paras. 22-23 [*Baker*].

[47] In oral argument, the Applicant suggested that the rules of fairness in this matter somewhat merge with the substantive review of the decision, because had the full Investigation Report been disclosed to the Applicant, she could have disabused the Investigator of some of the errors that it contains (which I will discuss in greater detail below). Respectfully, while this may be true, the ability to foreclose potential errors is not typically viewed, as far as I am aware, as a standalone factor that informs the content of procedural fairness rights: *Baker* at paras 21-28.

[48] A final point on this issue, which I hope is self-evident: it is not the name or title of a particular item of disclosure that is important in evaluating the fairness of a proceeding, but its substance. In some cases, a poorly prepared or incomplete statement of adverse findings may indeed provide insufficient notice to comply with fairness principles. In other cases, a statement of adverse findings may provide more than is strictly necessary, depending on the administrative law context. The point is a simple one: individuals who are the subject of investigations, such as the one at issue here, have the right to know the core areas of concern to the investigator, and the right to make representations on those concerns. In this case, I am not persuaded that the Applicant's procedural fairness rights were violated by the decision not to share the Investigation Report.

(2) *Jennifer York*

[49] The Applicant also submits that the decision under review was procedurally unfair because the investigation was not conducted thoroughly. She argues that the Investigator failed to interview a key witness, Jennifer York, the individual contracted to "clean up" SIS's web presence in late 2022, after the alleged cybersecurity breach in 2020.

[50] It is true that a decision will be considered procedurally unfair if an investigator fails to complete a thorough investigation: *Jagadeesh v Canadian Imperial Bank of Commerce (CIBC)*, 2019 FC 1224 at para 46. It is equally true that an investigation will not be considered thorough, if the investigator failed to examine "crucial evidence" – including failing to interview a "key witness" that was an "obvious, crucial player": *Wong v. Canada (Public Works and Government Services)*, 2018 FCA 101 at para 14. In *Holder v USB Bank (Canada)*, 2019 FC 1597 at paras 49-50 [*Holder*] this Court held that

> Only witnesses who were "obvious/central players" must be interviewed as the failure to do so may amount to a failure to examine "obviously crucial evidence" (*Wong v Canada (Public Works and Government Services*), 2018 FCA 101 at paras 14, 23 [*Wong* FCA]). An "obviously crucial" witness generally describes a witness who was directly involved with an applicant's work related experiences, including supervisors and similarly situated co-workers (*Harvey v VIA Rail Canada Inc.*, 2019 FC 569 at para 39)…
>
> The "obviously crucial test" requires that it should have been obvious to a reasonable person that the evidence the Applicant argues should have been investigated was crucial given the allegations contained in the complaint; to make this determination, the Court must place itself at the time of the investigation and consider the

> information provided to the investigator (*Gosal v Canada (Attorney General)*, 2011 FC 570 at para 54).

[51] Despite the Applicant's submissions, I am not persuaded that Ms. York is a "key witness," such that the Investigator's failure to interview her constituted a breach of procedural fairness. While Ms. York would presumably be able to speak to her work cleaning up the SIS online presence, it is unclear to me that she would be of assistance in clarifying the controversy that lies at the core of this matter.

[52] It is also to be noted that Ms. York provided a detailed statutory declaration, that was shared with the Investigator, outlining her involvement in SIS. This was not, therefore, a situation in which her views on the core issues were unknown. In that statutory declaration, Ms. York discussed the differences between the ".ca" and ".com" versions of the SIS website. It also discussed her belief that the ".com" website, from which the false Certificate of Incorporation had possibly been downloaded, had been compromised by an outside intruder.

[53] None of this, however, speaks to the core concerns that arose in this case, namely: 1) how and why Certificates of Incorporation with false dates were created; and 2) how this may have resulted in those certificates being sent to PSPC in direct response to requests from the Department. In other words, there was essentially no indication in the Record that Ms. York could have helped clarify how an outside actor would have had access to SIS's email accounts, such that it could send false Certificates of Incorporation under Ms. Sidoli's name.

[54] Taken at its highest, Ms. York would presumably be able to confirm that the SIS website was subject to a cyberattack or security breach in 2020. She would be able to speak to whether that security breach could, technologically speaking, have resulted in the false Certificate of Incorporation being in the "Shareholder Documents" page, where it was eventually downloaded and sent to PSPC.

[55] As a result of the above, I do not believe that Ms. York was a "key witness" such that the Investigator was required to interview her. As noted above, her views were shared with the Investigator in her statutory declaration – the Investigator was obliged to consider this evidence, but was not, as a matter of procedural fairness, required to do more.

B. *The Decision was unreasonable*

[56] I have concluded that this application must be granted, as the Investigation Report contains at least one key error that renders the Decision unreasonable. As noted above, the decision-maker in this matter only had the Investigation Report before her; from the Certified Tribunal Record, it appears that none of the evidence underlying the Report was provided to the decision-maker. The consequence of this is that the decision-maker would have had no line of sight on any evidentiary errors contained in the Report. This, unfortunately, is precisely what occurred in this case.

[57] I start, as *Vavilov* instructs, with the reasons provided by the decision-maker. In that decision, Ms. Loiselle identified the core issue, as follows:

> The primary concern regarding you and your company, Stellar Integrated Solutions Inc., was the provision of Certificates of

> Incorporation wherein the date listed was incorrect, purportedly for the purposes of meeting the number of years in business requirement (two and three years, respectfully) as outlined in the Request for Supply Arrangements on two separate bid submissions.

[58] The Applicant does not dispute that falsified Certificates of Incorporation were sent to PSPC in support of the SIS bids. She does dispute, however, the suggestion that the Certificates were sent with any improper motive. Rather, she asserts, albeit somewhat obliquely, that the Certificates were sent in error, potentially related to the data breach that SIS had experienced.

[59] Central to this claim is the email that the Applicant sent to PSPC on January 5, 2023. As noted at para 11, above, the Applicant appears to have attached the correct Certificate of Incorporation to that email, which preceded any concerns raised by PSPC as to the authenticity of the Certificates of Incorporation. This, she argues, is a clear indication that there was no nefarious intent behind the earlier disclosure of the falsified Certificate.

[60] In the Investigation Report, the Investigator dismissed the relevance of the January 5 email, as follows:

> However, in reviewing the e-mail SIDOLI had submitted to PLSD, the bid was for a THS supply arrangement under her other corporation, 9974563 Canada Corp. As noted in the e-mail and RFSA, a THS supply arrangement requires proof that a company has carried on business as the same legal entity for a minimum of two years as of the solicitation closing date. As 9974563 Canada Corp. was incorporated on November 3, 2016, she would pass this prerequisite.
>
> While the correct Certificate of Incorporation was provided for 9974563 Canada Corp., the Investigator does not accept SIDOLI's statement where she claims that this bid "confirms that I have always been acting in good faith and with a view to providing

> accurate information to the Government of Canada.". The THS bid in January 2023 under 9974563 Canada Corp. is not considered by the Investigator to mitigate or negate the concerns associated with SIDOLI's bids under her other corporation, Stellar Integrated Solutions Inc., where different Certificates of Incorporation with falsified dates were provided that had been clearly altered to align with the experience required for THS, TSPS and ProServices supply arrangements.
>
> [References omitted]

[61] This finding is plainly wrong. A review of the January 5 email reveals that it related to the SIS bids, and attached the correct Certificate of Incorporation for SIS, not 997 Corp. The question, then, is whether this error in the Investigation Report sufficiently taints the decision under review, such that it is unreasonable. In the end, I have concluded that it does.

[62] Recall from above that there were two key elements to Ms. Loiselle's findings: 1) that the Applicant provided falsified Certificates; and 2) that she did so to meet the number of years in business requirement. In concluding that Ms. Sidoli provided the falsified documents to meet the number of years requirement, it was important for Ms. Loiselle to at least consider the January 5 email. She did not do this. Indeed, she could not have done this because she did not have the email in front of her, and the references to the email in the Investigation Report were erroneous.

[63] To be clear, the decision-maker was not obliged to accept that the January 5 email exonerated the Applicant from her earlier disclosure of the falsified Certificates. However, in considering whether the Applicant provided falsified documents with an intent to deceive, it was important that Ms. Loiselle at least consider the January 5 email, untainted by the error contained in the Investigation Report. In my view, it would have been preferable for the entire evidentiary

record compiled by the Investigator to be placed before the decision-maker – indeed, had this been done, the error that arose in this case could potentially have been avoided.

[64] While the Applicant has identified several other problems with the Investigation Report, I find that the error identified above is sufficiently central to the decision under review, such that judicial intervention is warranted. For the sake of completeness, however, I would note that I did not find any of the other alleged errors, to the extent they are made out, to be particularly significant, or central to the decision under review.

[65] Before concluding, I wish to make two final points.

[66] First, while the Investigation Report and the Decision refer to two different falsified Certificates of Incorporation – one dated September 15, 2019, and the other dated September 15, 2020 – I have not seen the 2019 Certificate in the Record before me. Indeed, this appears to reveal a further error: in the Decision, Ms. Loiselle states that the October 12, 2022 email from the Applicant attached the September 15, 2019 Certificate of Incorporation. In fact, it appears to attach the September 15, 2020 Certificate. While little turns on the point, I would note that the Court's review of this matter would have been greatly assisted by having a complete Certified Tribunal Record, including all of the evidence considered by the Investigator.

[67] Second, while this is a victory for the Applicant, it may be a Pyrrhic one. To this day, Ms. Sidoli has not provided any clear explanation as to how she could have: i) innocently come into possession of at least one, if not two, falsified Certificates of Incorporation; and ii) innocently shared with PSPC, on multiple occasions, those same falsified Certificates.

VI. CONCLUSION

[68] On the narrow grounds identified above, I will allow this application for judicial review and remit the matter for redetermination on the basis of a new investigation, to be conducted by a different investigator. If a newly prepared investigation report is not provided to the Applicant, a detailed Statement of Adverse Findings must be provided, and the Applicant should be given an opportunity to respond.

[69] In the exercise of my discretion, no costs are awarded.

JUDGMENT in T-2356-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.

2. The matter is remitted for redetermination on the basis of a new investigation by a different investigator.

3. No costs.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2356-23
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DATED:	OCTOBER 23, 2024

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