

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171115

Docket: A-302-16

Citation: 2017 FCA 222

[ENGLISH TRANSLATION]

**CORAM: NOËL C.J.
GAUTHIER J.A.
DE MONTIGNY J.A.**

BETWEEN:

LYNN TERESA NEALE

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montreal, Quebec, on November 15, 2017.

Judgment delivered from the bench at Montreal, Quebec, on November 15, 2017.

REASONS FOR JUDGMENT OF THE
COURT BY:

DE MONTIGNY J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Montreal, Quebec, on November 15, 2017.)

DE MONTIGNY J.A.

[1] After reviewing the file and the written and oral submissions of the parties, the Court is of the opinion that the Federal Court judge did not commit a reviewable error in concluding that the Minister's decision to suspend the appellant's security clearance was not unreasonable in

respect of the facts and the law. On the contrary, the decision under appeal is consistent with the case law of this Court in that the Minister can consider a person's ties to an individual facing criminal charges related to marine transportation security to conclude that there are reasonable grounds to suspect a risk of subornation under paragraph 509(c) of the *Marine Transportation Security Regulations*, SOR/2004-144: see, in particular, *Reference re Marine Transportation Security Regulations (CA)*, 2009 FCA 234, and *Canada (Minister of Transport, Infrastructure and Communities) v. Jagjit Singh Farwaha*, 2014 FCA 56 [*Farwaha*].

[2] The judge could also conclude that the Minister's decision was not based on the appellant's marital status and therefore did not engage section 15 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 [the *Charter*]. Regarding the argument related to the presumption of innocence protected by paragraph 11(d) of the *Charter*, this Court has previously held in *Farwaha* that the refusal to grant a security clearance cannot be likened to a conviction.

[3] Finally, the appellant did not convince us that the judge erred in striking the affidavits of Mr. de Bastos, Mr. Robert Doré and Ms. Langevin, and Exhibit D-6 from the affidavit of Ms. Neale. That evidence served in large part to support the appellant's case and was not before the initial decision-maker.

[4] For these reasons, the appeal must be dismissed with costs.

“Yves de Montigny”

J.A.

Certified true translation,
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-302-16

STYLE OF CAUSE: LYNN TERESA NEALE v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: NOVEMBER 15, 2017

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
GAUTHIER J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: DE MONTIGNY J.A.

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Michelle Kellam

FOR THE RESPONDENT

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