

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180920

Docket: A-273-17

Citation: 2018 FCA 168

**CORAM: GAUTHIER J.A.
WEBB J.A.
GLEASON J.A.**

BETWEEN:

MARK DEL VECCHIO

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 20, 2018.
Judgment delivered from the Bench at Toronto, Ontario, on September 20, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 20, 2018).

GLEASON J.A.

[1] In this appeal, the appellant seeks to set aside the Federal Court's decision in *Del Vecchio v. The Attorney General of Canada*, 2017 FC 696 (per McVeigh, J.). In that decision, the Federal Court dismissed the appellant's application for judicial review of the July 13, 2016 decision of the Director General, Aviation Security, made on behalf of the Minister of Transport, cancelling the appellant's transportation security clearance.

[2] The appellant alleges that the Federal Court erred in finding that there had been no breach of his procedural fairness rights and in finding the Minister's decision to be reasonable.

[3] As this is an application for judicial review, in accordance with the Supreme Court of Canada's decision in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46, this Court is required to step into the shoes of the Federal Court and determine whether the Federal Court selected the appropriate standard of review and, if so, whether it correctly applied the standard it selected.

[4] Here, the Federal Court selected the appropriate standards of review, namely, no deference (or correctness) on the procedural fairness issue and reasonableness for the merits of the Minister's decision.

[5] The content of the duty of procedural fairness in a case such as this was comprehensively detailed by this Court in its recent decision in *Henri v. Canada (Attorney General)*, 2016 FCA 38, 395 D.L.R. (4th) 176, leave to appeal to SCC refused 36944 (15 September 2016). There, this Court held that someone, like the appellant, who might be facing revocation of his security clearance is entitled to be informed of the facts alleged that might lead to revocation and to be given an opportunity to respond to those facts. For the reasons given by the Federal Court, we agree that the Minister provided the appellant with these facts and afforded him an opportunity to respond and therefore concur with the Federal Court's conclusions on the procedural fairness issue. This ground of appeal therefore fails.

[6] As concerns the merits of the Minister's decision, we fully appreciate how significant this decision is for the appellant. However, despite this we must agree with the Federal Court that it was reasonable for the Minister to revoke the appellant's security clearance for essentially the same reasons as those given by the Federal Court. We in particular concur that the risks associated with aviation safety and the membership of the appellant's father as a full patch member in a motorcycle club with ties to criminal activities and other criminal organizations like the Hell's Angels provided ample basis for the Minister to have reasonably believed, on the balance of probabilities, that the appellant may have been prone or induced to commit or to assist or abet another person to commit an act that may unlawfully interfere with civil aviation. The Minister's decision to revoke the appellant's security clearance was therefore reasonable.

[7] This appeal will accordingly be dismissed. In the circumstances, no costs are awarded.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-273-17

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
MCVEIGH OF THE FEDERAL COURT DATED JULY 18, 2018 IN FILE NO.
T-1383-16.**

STYLE OF CAUSE: MARK DEL VECCHIO v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 20, 2018

**REASONS FOR JUDGMENT OF THE COURT
BY:** GAUTHIER J.A.
WEBB J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

APPEARANCES:

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