

Federal Court



Cour fédérale

Date: 20150928

Docket: T-1814-14

Citation: 2015 FC 1117

Ottawa, Ontario, September 28, 2015

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

WILLIAM RYAN MITCHELL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision by the Acting Director General of Aviation Security, on behalf of the Minister of Transport [the Minister], made on July 24, 2014 to cancel the Applicant's transportation security clearance [TSC], thereby preventing his continued employment at the Lester B Pearson International Airport. The Applicant requests that such cancellation be set aside and the matter be remitted to the Minister for redetermination.

[2] For the reasons that follow, this application is dismissed.

I. **Background**

[3] The Applicant is a Pilot at the Lester B. Pearson International Airport.

[4] On February 11, 2014, the Applicant was provided with a letter from Transport Canada, Safety and Security Strategies and Programs Integration, indicating that his TSC would be reviewed because of information that had been made available regarding his involvement in four incidents of a sexual nature described in the letter.

[5] Following the first incident, occurring on August 5, 2011, he was cautioned by the police about being nude when in view of the public but was not charged. Following the next two incidents, occurring on December 13, 2011 and December 24, 2011, which involved exposing himself to minors, he was spoken to by the police and made an admission of guilt but was not charged. He also provided anonymous letters of apology to the victims and proof of counselling. The Applicant wanted the matter kept out of the courts, stating that he did not wish for it to affect his job.

[6] The most recent incident, on November 9, 2012, involved online luring of a child of a close friend. Although the Applicant was contacted by the police to discuss the matter, the victim and parents did not wish to press charges. The Applicant admitted through his lawyer that there was a problem with his behaviour and that he wished to work with the police. He had previously stopped counseling due to the cost, but he agreed to resume counselling with his father covering the cost. The Applicant was not charged.

[7] The Applicant submitted, through counsel, a response to the February 11, 2014 letter, enclosing letters from his treating psychiatrist and psychologist, his employer, a colleague, a family friend, his pastor, and the Windsor-Essex Children's Aid Society.

[8] On July 24, 2014, the Applicant's was advised that the Minister had cancelled his TSC, following which he applied for judicial review on August 22, 2014.

II. The Impugned Decision

[9] The Minister's decision is captured in a Record of Decision dated July 19, 2014, which referred to the four incidents described in the February 11, 2014 letter as raising concerns regarding the Applicant's judgment, reliability and trustworthiness. The Acting Director General, Aviation Security, on behalf of the Minister, stated that, after reviewing all the information on file, she had reason to believe on a balance of probabilities that the Applicant 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. She therefore concurred with the Advisory Body's recommendation and cancelled the Applicant's TSC.

[10] This decision was communicated to the Applicant by letter dated July 24, 2014.

[11] The Advisory Board referred to in the Record of Decision is the Transportation Security Clearance Advisory Body. Its Record of Recommendation dated May 20, 2014 recommends cancelling the Applicant's TSC based on a police report detailing four incidents of escalating sexual criminal activities. The Advisory Board noted that the incidents demonstrated a recent

pattern of explicit sexual behaviour, which brought into question the Applicant's judgment, trustworthiness and reliability. These factors led it to reasonably believe on a balance of probabilities that he may unlawfully interfere with civil aviation. Furthermore, the written statement and supporting documents provided by the Applicant's lawyer did not provide sufficient information to dispel the concerns.

[12] In a Record of Discussion also dated May 20, 2014, the Advisory Body captured a summary of its discussions, including:

- A. Criminal record checks indicated that the Applicant had no criminal convictions or charges.
- B. Transport Canada, Security Screening Programs received a report from the RCMP on February 5, 2014 detailing the four incidents.
- C. The Applicant made an admission of guilt to police regarding two of the incidents and provided anonymous letters to the four victims.
- D. The Applicant stated to police during the interview in December 2011 that he wanted the matter kept out of the courts because he did not wish for this to affect his job as a pilot.
- E. The Advisory Body was of the opinion that an attempt to lure a child of a close friend was an abuse of a position of authority, and his actions have led it to question his judgment, reliability and trustworthiness.

- F. The Advisory Body noted the Applicant's submissions and supporting documents, including the statement from a forensic psychiatrist who had been treating the applicant since November 19, 2012. The statement described the Applicant as a minimal risk of reoffending; however, the Advisory Body was of the opinion that the best predictor of future behaviour was past behaviour.
- G. The Applicant was cautioned by police for his behaviour and, even though he knew that his job may be at stake, his behaviour continued to escalate.
- H. Due to the recent nature of the incidents, the Advisory Body was of the opinion that not enough time had elapsed to demonstrate a change in his behaviours.

III. Issues and Standard of Review

[13] The Applicant raises the following two issues

- A. Was there a breach of procedural fairness, as a result of inadequacy in the reasons supporting the Minister's decision?
- B. Is the Minister's decision reasonable?

[14] The Applicant submits that procedural fairness issues are reviewable on a standard of correctness, including in the context of the cancellation of a security clearance (*Russo v Canada (Minister of Transport, Infrastructure and Communities)*, 2011 FC 764 at para 22 [*Russo*]). The Respondent also refers to the standard of correctness as applicable to review of issues of procedural fairness but notes the conclusion in *Newfoundland and Labrador Nurses Union v*

Newfoundland and Labrador, 2011 SCC 62 at paras 20-22 [*Newfoundland Nurses*] to the effect that, as long as reasons are provided, the duty of procedural fairness is met and the question for the Court is whether the conclusions reached were reasonable.

[15] The parties agree, and I concur, that in security clearance cases the appropriate standard of review applicable to the Minister's decision is reasonableness (*Canada (Minister of Transport, Infrastructure and Communities v Farwaha*), 2014 FCA 56 [*Farwaha*] at para 86).

IV. Relevant Statutory Provisions

[16] The legislation and policy documentation relevant to this matter are as follows:

Aeronautics Act, RSC 1985, c A-2 [the Act]:

4.8 The Minister may, for the purposes of this Act, grant or refuse to grant a security clearance to any person or suspend or cancel a security clearance.

4.8 Le ministre peut, pour l'application de la présente loi, accorder, refuser, suspendre ou annuler une habilitation de sécurité.

Canadian Aviation Security Regulations, 2012, SOR/2011-318

146.(1) The operator of an aerodrome must not issue a restricted area identity card to a person unless the person

146. (1) Il est interdit à l'exploitant d'un aéroport de délivrer une carte d'identité de zone réglementée à une personne à moins qu'elle ne réponde aux conditions suivantes :

...

(c) has a security clearance;

...

c) elle possède une habilitation de sécurité;

165. A person must not enter

165. Il est interdit à toute

or remain in a restricted area unless the person	personne d'entrer ou de demeurer dans une zone réglementée à moins qu'elle ne soit, selon le cas :
(a) is a person to whom a restricted area identity card has been issued; or	a) titulaire d'une carte d'identité de zone réglementée;
(b) is in possession of a document of entitlement, other than a restricted area identity card, for the restricted area.	b) en possession d'un document d'autorisation, autre qu'une carte d'identité de zone réglementée, pour la zone réglementée.

Transportation Security Clearance Program Policy [the Policy]

The objective of this Program is to prevent the uncontrolled entry into a restricted area of a listed airport by any individual who;	L'objectif de ce Programme est de prévenir l'entrée non contrôlée dans les zones réglementées d'un aéroport énuméré de toute personne :
1. is known or suspected to be involved in activities directed toward or in support of the threat or use of acts of serious violence against persons or property;	1. mêlée ou soupçonnée d'être mêlée à des activités relatives à une menace ou à des actes de violences graves commis contre les personnes ou les biens;
2. is known or suspected to be a member of an organization which is known or suspected to be involved in activities directed towards or in support of the threat or use of acts of serious violence against people or property;	2. membre ou soupçonnée d'être membre d'une organisation connue ou soupçonnée d'être mêlée à des activités de menace ou à des actes de violence graves commis contre les personnes ou les biens;
3. is suspected of being closely associated with an	3. soupçonnée d'être étroitement associée à

individual who is known or suspected of;

- being involved in activities referred to in paragraph (a);
- being a member of an organization referred to in paragraph (b); or
- being a member of an organization referred to in subsection (e) hereunder.

4. the Minister reasonably believes, on a balance of probabilities, may be prone or induced to;

- commit an act that may be unlawfully interfere with civil aviation; or
- assist or abet any person to commit an act that may unlawfully interfere with civil aviation.

5. is now or suspected to be or to have been a member of or a participant in activities of criminal organizations as defined in Subsection 467.1 and 467.11 (1) of the Criminal Code of Canada;

6. is a member of a terrorist group as defined in Section 83.01 (1)(a) of the Criminal Code of Canada.

une personne :

- mêlée aux activités citées à l'alinéa (a);
- membre d'une organisation citée à l'alinéa (b);
- membre d'une organisation citée au paragraphe (e) ci-après.

4. que le ministre croit, en s'appuyant sur les probabilités, être sujette ou susceptible d'être incitée à:

- commettre un acte d'intervention illicite visant l'aviation civile;
- aider ou inciter toute autre personne à commettre un acte d'intervention illicite visant l'aviation civile.

5. mêlée à une organisation criminelle ou soupçonnée d'être ou d'avoir été membre de celle-ci ou d'avoir pris part à des activités d'organisations criminelles, telles que définies aux paragraphes 467.1(1) et 467.11(1) du Code criminel du Canada;

6. membre d'un groupe terroriste, tel que défini à l'article 83.01(1)(a) du Code criminel du Canada.

V. Submissions of the Parties

A. The Applicant's Position

[17] On the adequacy of the Minister's reasons, the Applicant submits that they amount to nothing more than bald and conclusory statements. There is no meaningful path of reasoning that can be ascertained to demonstrate: i) how or why the Applicant is prone or induced to commit an act that may unlawfully interfere with civil aviation; or ii) how or why the Applicant is prone or induced to assist or abet an individual to commit an act that may unlawfully interfere with civil aviation.

[18] On the reasonableness of the Minister's decision, the Applicant references recent jurisprudence surrounding the revocation of security clearances and notes that these cases include individuals who were members of criminal organizations, possessed weapons, were involved with drug activity, or committed fraud. Distinguishing these cases, the Applicant submits that 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. In particular, he argues that there is no adverse correlation between the circumstances of his impugned actions and his maintaining access to restricted areas of the airport.

[19] The Applicant also disputes that the acts he is alleged to have committed are relevant to his reliability or trustworthiness and argues that, even if they could be considered relevant to his judgment, there must be a link between the exercise of poor judgment and the protection of the security of aviation that that section 4.8 of the Act is intended to address. The Applicant argues

that this link is missing in his case and distinguishes his conduct from the association with criminals or acts of dishonesty that have been held to represent reasonable bases for cancellation of a TSC in the authorities cited by the Respondent.

[20] Rather, the Applicant describes his conduct as sexual indiscretions which are a function of a psychiatric or psychological disorder. He has not demonstrated bad judgment at large, only the propensity to commit a particular type of act linked to this disorder. He also notes that the evidence of his psychiatrist indicates that he poses a minimal risk of re-offending and takes issue with the Advisory Body's rejection of this evidence in favour of an opinion that the best predictor of future behaviour is past behaviour. The Applicant argues that there is no evidentiary basis for this opinion adopted by the Advisory Body. While the psychiatrist's evidence includes a statement that clinically the strongest predictor of future behaviour is past behaviour, this statement is made in the context of the psychiatrist's conclusion that the Applicant is at a very low risk to re-offend.

B. The Respondent's Position

[21] On the adequacy of the reasons, the Respondent submits that, where a decision is based on a recommendation, reasons may be gleaned not only from the ultimate written decision but also from the recommendation on which it is based (*Irani v Canada (Attorney General)*, 2006 FC 816 at paras 17-18)). The Respondent submits that in this case reasons for the decision clearly emerge from the Advisory Body's Record of Discussion.

[22] On the reasonableness of the Minister's decision, the Respondent notes that in *MacDonnell v Canada (Attorney General)*, 2013 FC 719, Justice Harrington emphasised the relatively low standard of proof applicable to transportation security clearance decisions. The rationale for this standard is that, unlike criminal proceedings which attempt to assign responsibility for clearly defined past events, security clearance decisions are an inherently more speculative exercise in predicting future risk (*Farwaha* at para 94). In weighing an applicant's privilege against the public interest in preventing acts of unlawful interference with civil aviation, this Court has held that the interests of the public take precedence and that the Minister "is entitled to err on the side of public safety" (*Farwaha* at para 85).

[23] In the Respondent's submission, the causal connection to the Applicant's allegations and civil aviation is clear. Security clearance provides the clearance-holder with access to highly sensitive areas within Canadian airports. The consequence if this access is abused is grave. Clearance-holders must be reliable, trustworthy and exercise sound judgment.

[24] The Respondent notes that, in assessing an applicant's reliability and judgment, this Court has held that the decision maker is not limited to considering past conduct in an aviation context. Other conduct, that has been found to reasonably support the inference that an applicant may be prone or induced to unlawfully interfere with civil aviation, has included insurance fraud (*Salmon v Canada (Attorney General)*, 2014 FC 1098 [*Salmon*] at para 79), retail theft (*Lavoie v Canada (Attorney General)*, 2007 FC 435 [*Lavoie*]), public mischief (*Rivet v Canada (Attorney General)* 2007 FC 1175 [*Rivet*] and prior involvement in drug trafficking (*Russo*).

[25] The Respondent also notes the decision's reference to the Applicant's escalating misconduct, despite persistent warnings and knowing his job was at stake, as displaying disregard for the legal and employment consequences of his actions.

[26] The Respondent submits that the Applicant's history of sexual misconduct involving children makes him uniquely vulnerable to coercion to assist or abet others' propensity to interfere with civil aviation. With his desire for secrecy, it is not unreasonable for the decision maker to infer that the Applicant could be vulnerable to inducement by others with knowledge of his misconduct.

[27] Further, the Respondent notes that it is unclear from his character references whether these individuals were aware of the Applicant's misconduct and that the psychiatric opinion is limited to the risk of sexual recidivism and does not address the Applicant's reliability or judgment in other contexts such as aviation security.

VI. Analysis

[28] On the issue of the adequacy of the reasons for the Minister's decision, I agree with the Respondent that the documentation generated on behalf of the Minister and that generated by the Advisory Board are to be considered part of the decision. In that respect, this case is similar to *Thep-Outhainthany v Attorney General of Canada*, 2013 FC 59, in which Justice Rennie held as follows at paragraph 15:

[15] ... The applicant has argued that an Advisory Board document entitled "Key Points for Discussion" should also be considered part of the Minister's decision. This document is a summary of the

Advisory Board's discussion. In my view, it forms an integral part of the reasons. Indeed, without it, the Minister's decision is arguably conclusionary. This document is, on its face, significant. It is titled "Key Points of Discussion" and the factors listed in the document were "noted" by the Advisory Body in formulating its recommendation. This document also formed part of the record that was before the Minister.

[29] The letter sent to the Applicant on behalf of the Minister, communicating the decision, expressed that:

- A. the decision was based on four incidents of sexual indiscretion and/or sexual violence, which raised concerns about the Applicant's judgment, reliability and trustworthiness;
- B. the Applicant had a valid TSC at the time of these incidents and appeared to want to hide his actions from the public and Transport Canada in order to maintain his TSC;
- C. the conclusion was that the Applicant may be prone or induced to commit an act, or assist or abet an individual to commit an act that may lawfully interfere with civil aviation.

[30] The Record of Decision dated July 17, 2014 expressly noted that the Acting Director General, Aviation Security, on behalf of the Minister, concurred with the Advisory Body's recommendation. When that decision is combined with the material generated by the Advisory Board, the decision also includes the following content:

- A. the incidents demonstrated an "escalating pattern of sexual indiscretion";
- B. this escalation occurred continued despite multiple warnings by police and the Applicant's own apparent recognition that his job could be affected;
- C. an attempt to lure a child of a close friend was an abuse of a position of authority, which actions led the Advisory Body to question the Applicant's judgment, reliability and trustworthiness;

- D. the recency of the latest incident is noted; and,
- E. despite the Applicant's submissions and the opinion of his treating psychiatrist that he posed a minimal risk of reoffending, the Advisory Body concluded that the best predictor of future behaviour is past behaviour.

[31] I have no difficulty concluding that these reasons meet the minimum threshold for procedural fairness, as referred to at paragraph 20 of *Newfoundland Nurses*, such that the main issue for consideration in this case is whether the reasoning and result of the decision are reasonable. In my view, this is consistent with the approach taken by the Federal Court of Appeal in *Farwaha* where Justice Stratas at paragraphs 104-106 considered the adequacy of the Minister's reasons, which included the record upon which the Minister made his decision, as part of the Court's overall assessment whether the decision was reasonable.

[32] Turning to the reasonableness of the decision, the operation of Section 4.8 of the Act, the Policy and the jurisprudence considering their application was canvassed as follows by Justice Kane in *Salmon* at paras 71-81:

[71] Section 4.8 of the *Aeronautics Act* gives the Minister, and the Director General on his or her behalf, wide discretion to "grant or refuse to grant a security clearance to any person or suspend or cancel a security clearance" and to take into account any relevant factor in doing so.

[72] The Director General requires only a reasonable belief on a balance of probabilities that an individual "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" (subsection 1.4(4) TSCPP).

[73] The Director General based her decision on Mr. Salmon's conduct, regardless of his association with Subject "A". The reliable human source information, the RCMP investigation and

the TPS observations of his drug deals were more than sufficient to support the Advisory Body and Director General's belief. The applicant's conduct in providing a false address to benefit from lower insurance was also a relevant consideration in assessing his judgment and character.

[74] As noted, by Justice Harrington, in *MacDonnell v Canada (Attorney General)*, 2013 FC 719 at para 29, 435 FTR 202 (Eng):

The Policy is forward looking; in other words, a prediction. The Policy does not require the Minister to believe on a balance of probabilities that an individual "will" commit an act that "will" lawfully interfere with civil aviation or "will" assist or abet any person to commit an act that "would" unlawfully interfere with civil aviation, only that he or she "may".

This has been characterized as something less than a balance of probabilities (*Ho*, above; *Clue*, above).

[75] As noted, the Minister and the Director General on behalf of the Minister, has very broad discretion in relation to decisions regarding security clearances. Air safety is of substantial public importance and takes precedence over the interests of individuals.

[76] In *Rivet*, above, at para 15, Justice Pinard notes that in the balancing of interests, those of the public take precedence:

[15] Moreover, both the purpose of the Act and the nature of the question deal with protecting the public by preventing acts of unlawful interference in civil aviation. Although the Minister's decision directly affects the applicant's rights and interests, it is the interests of the general public that are at stake and that take precedence over the applicant's ability to have his TSC to be able to work as a pilot. The purpose of the Act emanates from a larger problem that encompasses the interests of society as a whole, not just those of the applicant.

[77] Contrary to the applicant's position, the decision to revoke the applicant's security clearance was not arbitrary. The allegations of involvement in drug possession and trafficking in his community and drug importation at the Airport, as well as the conduct related to insurance fraud are clearly linked to the TSCPP and civil aviation.

[78] The allegations speak to the applicant's trustworthiness and respect for the law, which, in turn, affects an assessment of his future propensity and the possibility of his committing or aiding and abetting another to commit an act that may unlawfully interfere with civil aviation.

[79] There is no requirement that the individual be directly involved in acts that interfere with civil aviation. That would be very limiting and would not serve the objectives of the policy.

[80] In *Thep-Outhainthany v Canada (Attorney General)*, 2013 FC 59, 224 ACWS (3d) 538 [*Thep-Outhainthany*], where the applicant's husband was involved in dial-a-dope scheme and the applicant denied any involvement, the Court notes the connection between trafficking drugs at the community level and aviation security. Specifically, Justice Rennie notes at para 27:

Cocaine and heroin are imported into Canada and the applicant's access to a restricted area of an Airport could attract the attention of her husband or his criminal associates." In the present case, it is the applicant himself, an Airport employee, who is alleged to be trafficking drugs, and this is a more direct connection with unlawful interference with civil aviation.

[81] Other cases also support the proposition that the conduct at issue need not be directly interfere with aviation security; in *Pouliot*, above, the applicant, a get-away driver, denied knowledge of a scheme to rob a bank; in *Russo*, above, the applicant had a previous drug record and now only purchased marijuana; in *Rivet*, above, the applicant was charged with two counts of fraud; and in *Farwaha*, above, the applicant was associated with members of a known criminal organization. Yet in all these circumstances, the link with civil aviation was recognized.

[33] As noted by Justice Kane in *Salmon*, the conduct in issue need not itself directly involve interference with aviation security to reasonably support a decision to cancel or refuse to issue a TSC. Conduct that has supported such a decision in other cases has included involvement in a bank robbery (*Pouliot v Canada (Minister of Transport, Infrastructure & Communities)*, 2012

FC 347), drug cultivation and association with criminals through purchasing drugs (*Russo*), fraud (*Rivet*) and fraud and theft (*Lavoie*).

[34] *Rivet* addressed expressly an argument that the applicant's fraud conviction had nothing to do with his TSC or his employment as a pilot. Justice Pinard rejected this argument, holding at paragraph 22 that, given that the applicant had committed fraud while he was in a position of trust in another employment, it was not unreasonable to conclude that he could pose a risk to air security. Justice Pinard also noted the fact that the applicant had the opportunity to tell the Advisory Body about his fraud charges and chose not to do so in a full and frank manner.

[35] There are similarities between the reasoning in *Rivet* and that of the Advisory Body in the case at hand. The Advisory Body characterized the Applicant's attempt to lure a child of a close friend as an abuse of a position of authority, which caused it to question his judgment, reliability and trustworthiness. The Advisory Body, and later the Minister's decision, also referred to the Applicant's wish to hide his actions from the public and Transport Canada in order to maintain his TSC. As in *Rivet*, I do not find this reasoning to be unreasonable.

[36] It is apparent from the material generated by the Advisory Body that its recommendation was also influenced by the continuation and, as characterized by the Advisory Body, escalation of the Applicant's behaviour, notwithstanding the fact he had been cautioned by the police and was concerned about the implications for his employment. The Advisory Body commented that not enough time had passed since the incidents to demonstrate a change in this behaviour, following which it expressed its conclusion that it had reason to believe, on a balance of

probabilities, that the Applicant 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.

[37] I have considered the Applicant's argument that his conduct is of a different nature than the incidents of drug possession and trafficking, robbery, theft, fraud and association with criminals that were the subject of the authorities relied on by the parties. While noting that the Applicant had not been charged or convicted of any criminal offence, the Applicant's counsel did not dispute that his conduct could constitute an offence. Rather, he argued that there is a difference because the Applicant's conduct did not represent either association with criminals or intentional dishonesty.

[38] I agree that there is a difference, which might have influenced the Minister to decide not to cancel the Applicant's TSC. However, I am conscious that the Court's role in judicial review is not to substitute its opinion for that of the decision-maker but rather to consider whether the decision is within the range of acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47). I am guided in particular by the analysis at paragraphs 77-78 of *Salmon*, upholding the cancellation of a TSC based on conduct which spoke to the applicant's trustworthiness and respect for the law which, in turn, affected an assessment of his future propensity and the possibility of his committing or aiding and abetting another to commit an act that may unlawfully interfere with civil aviation. While the Applicant's conduct does not involve dishonesty as did the conduct in *Salmon*, it does speak to his respect for the law and it is not unreasonable for the Advisory Board to have analyzed the matter as it did and for it and the

Minister to have reached an adverse conclusion as to the Applicant's trustworthiness, reliability and judgment based on such conduct.

[39] The Advisory Body considered the psychiatrist's opinion that the Applicant was at minimal risk of re-offending but adopted instead the opinion that the best predictor of future behaviour is past behaviour. I appreciate that, when the Applicant's psychiatrist expressed this clinical principle in his letter, it was a prelude to the expression of his opinion that the absence of any history of relationship or employment problems, past non-sexual violent offences or past non-violent offences, or causing physical harm to others correlated with low recidivism risk. However, given the record before the Advisory Body, which included the number of incidents, their recency, their escalation, and the fact that the Applicant had received but stopped counselling before the online luring incident, I cannot conclude that it was unreasonable for the Advisory Body to rely on the clinical principle expressed by the psychiatrist without accepting the psychiatrist's opinion that the Applicant was at minimal risk of re-offending.

[40] It is accordingly my conclusion that the Minister's decision falls within the range of acceptable outcomes and is reasonable, such that this application must be dismissed.

VII. Costs

[41] Each of the parties claimed costs and, at the hearing of this application, counsel agreed that the appropriate quantification of such costs, regardless of which party prevailed, was in the amount of \$2500. I accordingly award costs of \$2500 to the Respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed with costs of \$2500 payable to the Respondent.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1814-14

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

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 8, 2015

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