Federal Court Cour fédérale

Date: 20250527

Docket: T-1392-23

Citation: 2025 FC 951

Ottawa, Ontario, May 27, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

PETER TAIT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview and Relevant Facts

[1] Peter Tait [Applicant] was a municipal employee of the City of Richmond who worked under the direction of the Royal Canadian Mounted Police [RCMP].

[2] The Applicant brings an application for judicial review of an "apparent decision" by the RCMP to revoke the Applicant's Top Secret security clearance. I refer to the decision as

"Apparent Decision" because it is unclear whether a decision was made to revoke, administratively cancel or simply to stop the update of the Applicant's Top-Secret Security Clearance [Clearance], which was in the process of being updated following its expiration on June 16, 2021. As a result, the Applicant was rendered without the requisite clearance needed to continue working in his professional as a criminal intelligence analyst.

[3] For the reasons to follow, I find that the lack of transparency leading to this confusion was enough to have severe consequences on the Applicant. This engages the Applicant's procedural fairness rights.

[4] The Applicant's entire career as an intelligence officer is premised on holding a security clearance, which he maintained throughout his career. From 2006, when he first obtained his security clearance until this case, the Applicant has maintained and renewed the Clearance as required. Since April 2007, the Applicant has worked primarily for the RCMP in various capacities, all related to criminal intelligence analysis. The only break from his employment with the RCMP was between September 2018 and December 2019, when he worked for INTERPOL in Zimbabwe.

[5] A Top-Secret security clearance must be updated every five years, and during the processing of that application, the clearance remains valid. The applicant's clearance expired on or about June 16, 2021, and the Applicant applied to update it on or around the same time.

[6] The Apparent Decision rendered the Applicant without a clearance, and it had the same effect as though his application had been denied.

[7] In June 2020, the Applicant commenced working as a Criminal Intelligence Analyst Supervisor at the Richmond, BC RCMP Detachment [Richmond Detachment]. Although working at the Richmond Detachment, under the direct control of the RCMP, the Applicant was employed by the City of Richmond [City]. This is the result of the Municipal Police Unit Agreement between British Columbia and the City of Richmond, by which municipalities like the City provide support staff to the RCMP in return for the provision of police services within the municipality.

[8] Here is the unequivocal evidence on what was communicated to the Applicant about his security clearance:

> On March 14, 2023, the RCMP manager of client services told the Applicant to attend a meeting with the City of Richmond that same day. During the meeting, the Applicant was told that the RCMP had informed the City of Richmond that they had revoked his security clearance. On the same day, a follow up letter printed on the City of Richmond letterhead and signed by the manager of RCMP client services was sent to the Applicant that reads as follows:
>
> This letter is in follow up to our meeting today, attended by you, Kamran Salmasi (CUPE 718), Lori Miletich (Senior HR Advisor) and myself.
>
> **As a result of an RCMP internal investigation, the RCMP have decided to <u>revoke</u> your Enhance Security Clearance, you were informed of this decision at our meeting today. Your position with the City of Richmond as a Crime Analyst Supervisor requires that you maintain this clearance as a condition of employment.**

> You are advised that you are not to report to your regular shift effective March 15, 2023. This letter is to confirm that effective March 15, 2023, you have been placed on leave with pay pending the City's investigation.
>
> The City will complete the investigation as soon as feasible and will set up another meeting to convey the results. Should you have any questions or concerns, please e sure to contact me (*emphasis added*).

[9] The RCMP alleges that on the same day, i.e. on March 14, 2023, they proceeded with the "administrative cancellation" of the Applicant's security clearance. An RCMP letter dated March 14, 2023, to the Chief Administrative Officer and General Manager, Public Safety of City of Richmond, signed by the RCMP Superintendent of the Richmond Detachment, Dave Chauhan, reads as follows:

> As you are aware, Peter Tait is a Municipal Employee with the City of Richmond, who performs duties as a supervisor analyst at the Richmond RCMP Detachment. I find that Peter Tait is no longer a suitable Municipal Employee here at our detachment. As per the Municipal Police Unit Agreement (2012 - 2032), Articles 3.6 and 3.7, 1 am exercising my authority to return Peter Tait to the City of Richmond and terminate his access to the Richmond RCMP Detachment.
>
> Under Article 3.6, Peter Tait no longer meets lhe [sic] job and other related requirements. <u>I will be requesting an administrative cancellation of his security clearance, effective today</u>. Under Article 3.7, the City of Richmond and the RCMP will need to discuss his replacement (my emphasis).

[10] The Applicant never learnt about the above RCMP letter until while in the course of the current litigation, when it was attached as Exhibit D to the affidavit of Grant Pretchuck dated September 13, 2023, an RCMP Risk Reviewer with the Pacific Region Department Security. Mr.

Pretchuk also stated that the information in the City of Richmond letter of March 14, 2023, letter was incorrect because the security clearance was never revoked.

[11] During the course of the judicial review litigation, it became the Respondent's position that the Applicant's security clearance was neither revoked nor administratively cancelled. In fact, when it became clear to the RCMP that the Applicant was no longer suitable to perform his duties, they "returned" him to the City of Richmond and simply stopped updating his clearance, the renewal of which was pending since June 2021. This was because the Applicant no longer required access to RCMP information requiring security clearance. It is the Respondent's position that the City of Richmond's letter dated March 14, 2023, contained an error when it referred to the revocation of the security clearance.

[12] Nearly two months later, on May 2, 2023, the City of Richmond wrote another letter to the Applicant with the Subject: "Re: Loss of Enhanced Security Clearance", advising him that since the security clearance was condition precedent to holding his position, the loss of the security clearance was the reason for the Applicant's loss of employment:

> As you know, the RCMP has made the decision to cancel your RCMP Enhanced Security Clearance. The granting and revocation of such security clearance is entirely within the exclusive purview of the RCMP, and the City is required to act accordingly. Given that you have failed to maintain the necessary qualification for your position, you are no longer eligible for continued employment. As the security clearance is a condition for ongoing employment with the City of Richmond, your employment is effectively terminated.
>
> On a WITHOUT PRECEDENT and WITHOUT PREJUDICE basis the Employer is prepared to provide you with 60 days from the date of this letter to secure an alternate position within the City. If you secure a position within 60 days, this letter of termination will be rescinded. If you have not secured employment during that

> time, your employment will terminate on July 2, 2023. You will be placed on unpaid leave during the 60 day search period, commencing on tomorrow's date.

[13] The parties do not dispute that the Apparent Decision was made without notice to the Applicant and without any opportunity to address the RCMP's basis for stopping the update of his Top-Secret security clearance. The dispute is over whether the Applicant was owed any duty of procedural fairness.

[14] Both parties agree that the policy document the Treasury Board, *Standard on Security Screening*, (Ottawa: Treasury Board of Canada Secretariat, 20 October 2014) [*Standard*] has created a sophisticated procedural fairness safeguard for revocation of security clearance that allows input from the affected individuals, as well as recourse, such as a right to appeal, for an unfavourable result. By contrast, administrative cancellation or the discontinuance of the renewal process require a progressively lesser degree of fairness. The *Standard* speaks to "administrative cancellations" and describes those as: "A decision recorded on an individual's security screening file that the security screening process has been discontinued and that is not recorded as a denial or revocation." The Respondent argues that the stoppage of the renewal is not recorded anywhere, and as such, does not have any consequence on the individual affected.

[15] The Respondent argues that a security clearance is a privilege, not a right. It is a privilege the RCMP is authorized only to issue to those individuals who require access to classified information and facilities as part of their work for or with the RCMP. Once an individual no longer works for or with the RCMP, the *Standard* requires that the individual's security clearance be automatically terminated because that individual no longer needs access to

classified information or facilities. Therefore, when the RCMP "returned" the Applicant to the City of Richmond, the Applicant no longer worked with the RCMP, he no longer needed access to information, and the RCMP simply stopped the update of his security clearance, as it was entitled to do so, and closed his file.

[16] The Respondent, therefore, agrees that even though prior to the Meeting on March 14, 2023 [March Meeting], the RCMP had not interviewed the Applicant or initiated any of the processes related to a review for cause, it had no such obligation to do so.

[17] Following the March Meeting, the RCMP did not contact the Applicant about the apparent revocation of his security clearance. Instead, it was the Applicant who contacted the Officer in Charge of the Richmond Detachment, Chief Superintendent (C/Supt.) Dave Chauhan. On April 12, 2023, and on the Chief Superintendent's suggestion, the Applicant met with C/Supt. Chauhan at a Tim Hortons.

[18] During the meeting at Tim Hortons, C/Supt. Chauhan advised the Applicant that he had acted upon information that had been provided to him by Superintendent Drotar. C/Supt. Chauhan did not provide the Applicant with any information about what steps the RCMP had taken with respect to the security clearance, any reasons for the loss of the clearance, or any avenues of redress available to the Applicant. In response to the Applicant's questions about his Clearance, C/Supt. Chauhan advised the Applicant that he would get back to him with further information. The Applicant did not hear anything further from C/Supt. Chauhan, or from anyone else at the Richmond Detachment or the RCMP following the April Meeting.

[19] Around this same time in early 2023, the Applicant had been interviewed and selected for a role with the Criminal Intelligence Service of Canada (CISC), an organization that is part of Canada's intelligence regime and is separate from the RCMP. After being informed by the City that the RCMP had revoked his Clearance, the Applicant proactively informed the CISC of what had occurred and advised that he was attempting to address the revocation. The Applicant believes that as a direct result of the uncertainty regarding his security clearance, and his inability to address its apparent revocation in a timely fashion, he lost the opportunity to accept a position with CISC. The Respondent argues that the Applicant's security clearance was never revoked, and he was not under any obligation to provide this information, which happened to be inaccurate, to CISC. As stated above, it was only during the course of this case and as late as September 2023 when Grant Pretchuk provided his affidavit, that the Applicant learnt that the Respondent's explanation for the loss of his security clearance had evolved from revocation to administrative cancellation and/or simply stoppage of renewal.

[20] The parties agree that the Applicant did not withdraw, retire, resign, terminate his contract or withdraw his consent to the application to update his security clearance and that he continues to require the Clearance in order to continue working in his chosen field as a criminal intelligence analyst.

[21] On July 2, 2023, following several months of administrative leave, the City terminated the Applicant's employment as it did not have any suitable policing or intelligence-related work for him outside the Richmond Detachment. It was after this decision that the Applicant started the current litigation.

II. The *Standard* and the security screening system

[22] At the time of Mr. Tait's interactions with the RCMP, security clearances and the security screening regime that regulated their granting, revocation, denial and cancellation, fell under the purview of the Treasury Board's *Standard* made pursuant to section 7 of the *Financial Administration Act,* R.S.C. 1985, c. F-11. The *Standard* was recently replaced by the *Directive on Security Screening* on January 6, 2025 (Ottawa: Treasury Board of Canada Ottawa: Treasury Board of Canada Secretariat, 6 January 2025), online: *Canada.ca* <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32805&section=procedure&p=C> [*Directive*].

[23] The *Standard* applies to multiple departments and agencies, including the RCMP, and defines the roles and responsibilities of those who administer the delivery of security screening services. The *Standard* establishes a range of security practices that are to be implemented throughout an individual's engagement with the Government of Canada, from initial screening through to aftercare, and it imposes obligations pertaining to human resources management as well as legal and privacy imperatives (*Standard,* ss 3.10 & 3.11).

[24] The *Standard*'s primary objective is to ensure that "security screening in the Government of Canada is effective, rigorous, consistent and fair" (s 5.1.1). The *Standard* further requires that, when "arriving at a security screening decision, officials are expected to provide a fair and objective evaluation that respects the rights of the individual"; and that when a decision is being considered to deny or revoke a security status or clearance, "departments and agencies must, while ensuring that the interests of government are protected, ensure that decisions are made

using a fair procedure, and that actions and decisions are appropriate to the situation" (s 2, Appendix D; s 1, Appendix E).

[25] The RCMP's *Security Screening Guide: Mandatory Practices for Security Screening Practitioners*, version 1.2 (Ottawa: Royal Canadian Mounted Police, 1 January 2021) [*Guide*] purports to supplement the requirements in the *Standard* and sets out the processes for the administration of the RCMP's security screening regime.

[26] The *Guide* similarly recognizes, and obliges the RCMP to abide by, the requirements of procedural fairness when officials engage in security screening practices and procedures. Section 1.1 of Module 4 of the *Guide* expressly incorporates the *Standard*'s statement on procedural fairness.

[27] The *Standard* and the *Guide* establish two primary levels of security status, Facility Access status and Enhanced Reliability status, and two primary levels of security clearance, Secret and Top Secret. Top Secret security clearance applies to a very limited amount of information, the unauthorized disclosure of which could be expected to cause exceptionally grave injury to the national interest. Again, the Applicant has held a Top Secret security clearance throughout his career in the criminal intelligence field.

[28] The process for obtaining a Top Secret security clearance is extensive and involves a multitude of steps and different background checks, which can include:

a. The verification of identity, background, and educational and professional credentials,
b. personal and professional reference checks,
c. a financial inquiry,
d. an open-source inquiry,
e. a security interview,
f. a criminal record check,
g. an employment check with all employers for the previous ten years,
h. a security assessment conducted by the Canadian Security Intelligence Service, and
i. possibly, a polygraph examination.

[29] Given the number of steps, and the extent of the background checks that need to be completed, the processing of a Top Secret security clearance application can take a significant amount of time.

[30] The *Standard* describes a "revocation" as "an administrative decision to withdraw, following an update or a review for cause, the security status or clearance previously granted to an individual." A review for cause is conducted any time that adverse information with respect to a status/clearance holder's reliability and/or loyalty is uncovered, and the process is to include a security interview with the individual concerned. A decision to revoke an individual's security clearance is non-delegable and must be made by the deputy head, here the Commissioner of the RCMP.

[31] The *Standard* states that in all cases, when a decision is made to revoke an individual's security clearance, the individual concerned must be informed in writing of the decision and of their rights of review or redress, meaning the individual is owed a duty of procedural fairness.

[32] By contrast, The *Standard* speaks to "administrative cancellations" and describes those as: "A decision recorded on an individual's security screening file that the security screening process has been discontinued and that is not recorded as a denial or revocation."

[33] The *Guide* provides the following as examples "that may warrant an administrative cancellation", including instances where:

> a. The individual withdraws their request for a security status or security clearance;
>
> b. The individual voluntarily retires or terminates their contract; or
>
> c. The individual rescinds, in writing, their ongoing consent to maintain an enhanced reliability status or security clearance.

[34] The *Guide* further states that an individual's "security file will contain all evidence to support the decision that would have been made had the individual not withdrawn, retired, resigned, terminated their contract or withdrawn their consent. The rationale for the decision that would have been made and the reason for the administrative cancellation will be documented in the security file."

[35] Furthermore, where a security clearance is administratively cancelled, the holder can seek to have it reactivated if the period of absence from the RCMP is 12 months or less. If a security clearance expires during that period of absence, then it will be updated upon reactivation. The reactivation process is far less extensive than the process for obtaining a new security clearance, and its focus is upon having the individual account for the circumstances surrounding their departure from the RCMP and their activities since their last day of work.

[36] Applicant alleges that this apparent revocation occurred contrary to the procedural steps outlined in the Treasury Board's *Standard* made pursuant to section 7 of the *Financial Administration Act*, RSC, 1985, c F-11.

[37] Generally, the Applicant says that the RCMP failed to provide procedural fairness in the process leading up to the apparent revocation.

[38] Specifically, the Applicant claims that contrary to the *Standard*, the RCMP failed to:

a. inform the Applicant of any concerns or adverse information that it held prior to the apparent revocation;
b. conduct a security interview with the Applicant prior to the Decision;
c. provide the Applicant with an opportunity to respond to any adverse information or concerns it may have prior to the apparent revocation;
d. directly communicate the apparent revocation to the Applicant in writing;
e. provide any reasons or information upon which the apparent revocation was based; and

f. inform the Applicant of his rights to redress.

[39] The Applicant seeks an order quashing "any decision of the Richmond Detachment to revoke and/or cancel the Applicant's Top Secret security clearance", an order to perform the procedural steps required under the *Standard* and *Guide*, and costs.

III. Legal Issue and Standard of Review

[40] The main issue raised by the Application is whether the Respondent owed any duty of procedural fairness and if so, whether the Respondent provided the Applicant with the requisite level of procedural fairness when they made the Apparent Decision.

[41] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16).

[42] Questions of procedural fairness ask whether the procedure was fair having regard to all of the circumstances with the ultimate question being whether the applicant knew the case it had to meet and had a full and fair chance to respond (*CPR* at paras 54, 56).

[43] The Respondent argues that the Apparent Decision does not engage the Applicant's procedural fairness rights because it did not engage any of his "rights, privileges, or interests." The RCMP's decision did not engage the Applicant's privileges because a security clearance is a privilege given to individuals working for or with the RCMP so they can access classified information and facilities. Nor did the RCMP's decision impact the Applicant's interests in pursuing criminal intelligence jobs. If the Applicant is accepted for a new job with the RCMP, or any other federal departments or agencies which require a security clearance, the Applicant can re-apply for a clearance. The RCMP's decision does not prejudice or adversely impact his ability to re-apply for a clearance.

[44] According to the Respondent, the only outstanding issue is whether the Apparent Decision is reasonable. The Respondent argues that since the Applicant no longer worked with the RCMP, and under both the *Standard* and the *Guide*, he could not have a security clearance as he no longer required access to classified RCMP information and facilities.

[45] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12–15 and 95 [*Vavilov*]). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent

and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85).

[46] In conducting reasonableness review, the Court must determine whether the decision is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31). A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at paras 91-95, 99-100).

[47] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[48] I must also add that *Vavilov* has moved the focus of judicial review from a primarily deferential approach based on the decision-maker's expertise to a more context-specific inquiry that considers the effects of a decision on the individual. This shift means that administrative decision-makers must now demonstrate they have considered the consequences of their decisions. While reasonableness is a deferential standard, the *Vavilov* decision focuses more on the justification of a decision. The decision must be justifiable, transparent, and intelligible. This is particularly true when the consequences for the affected individual are severe (*Vavilov* at para 133 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 25 [*Baker*]). This means a failure to address such consequences may render the decision unreasonable.

IV. Preliminary Issue: Style of Cause

[49] The Applicant has named the Commissioner of the RCMP, the Attorney General of Canada, the Minister of Public Safety, and the Treasury Board as Respondents. The style of cause shall hereby be amended to note the “Attorney General of Canada” as the Respondent, in accordance with rule 303 (2) of the *Federal Courts Rules, Federal Courts Rules*, SOR/98-106 [Rules].

A. *Litigation History*

[50] On February 8, 2024, Mr. Justice Manson of this Court dealt with two motions regarding this litigation concurrently (*Tait v Canada (Royal Canadian Mounted Police)*, 2024 FC 217 [*Tait 2024*]). The first was a motion by the Respondent for an order to strike the application for judicial review [motion to strike]. The second was a motion by the Applicant for leave to amend the underlying Notice of Application [motion to amend] pursuant to Rule 75 of the Rules. In addition, the parties sought leave to file further affidavits, and for the Court to make other consequential orders. The Court also awarded costs to the Applicant.

[51] On the motion to strike, the Court found that it must meet a high threshold, requiring the application to be "so clearly improper as to be bereft of any possibility of success." The Court noted that while affidavits are generally inadmissible on a motion to strike, they can be admitted in cases involving mootness, jurisdiction, prematurity, and filing delay. The Court determined that closing the renewal request was a positive action by the RCMP that had legal consequences for the Applicant. The Court also stated that it is not plain and obvious that the application will

fail on its merits. The Court stated that the 30-day limit for commencing the application was not exceeded. It was also found that the application should not be struck for prematurity. As such, the motion to strike was dismissed.

[52] On the motion to amend the notice of application, the Court granted the Applicant's motion. The Court considered several factors in making this decision, including the timeliness of the motion to amend, the extent to which the proposed amendment would delay the expeditious resolution of this matter, the extent to which a position taken originally by one party has led the other party to follow a course of action in the litigation that would be difficult or impossible to alter, and whether the amendments sought would facilitate the Court's consideration of the true substance of the dispute on its merits.

[53] The Court also granted the Applicant's request for leave to file a further affidavit. The Court denied the Respondent's request for leave to file a further affidavit, as the Respondent made no submissions in support. The time for cross-examination on the parties' affidavits was extended to 30 days after the release of the Court's orders.

[54] In granting the Applicant's request leave to file further affidavit, the Court considered the following to determine if it was in the interest of justice to grant leave: whether the evidence would assist the Court, whether it would cause substantial or serious prejudice to the Respondent, whether the evidence was available when the Applicant filed the first affidavit. Ultimately, the Court found that the second affidavit by the Applicant was relevant and admissible, based on the Applicant's first-hand knowledge, clarifying communication about his

security clearance and not containing improper or inadmissible evidence. Justice Manson found that the second affidavit would assist the Court by speaking directly to the issues of procedural fairness, including whether the Applicant received notice of any decision or the substance thereof, whether he was able to pursue any recourse, and the extent of the impact arising out of the Respondent's alleged conduct (*Tait 2024*, at para 61).

[55] The Respondent provided no objection at the time and there were no submissions before Justice Manson to indicate that substantial or serious prejudice would arise from admitting the second affidavit, and prejudice was unlikely to arise given the early stage of the proceeding (*Tait 2024*, at paras 62 –63). In fact, the Court found the Applicant's second affidavit responded to the Respondent's evidence from September 2023 (including Grant Pretchuk's evidence), and the Applicant could not have provided such response when he first filed his affidavit in July 2023.

[56] In the application for judicial review before me, the Respondent argues that parts of the Applicant's second affidavit are not admissible. I agree with the Applicant that this matter was already dealt with in detail by Justice Manson, and that Justice Manson's detailed reasoning related to the course of the litigation and not just for the purposes of dealing with the motions in front of him. The Respondent cannot relitigate this matter as per the doctrine of *res judicata* (see *Anokhina v Banovic*, 2018 ABQB 1012 at paras 14–22; *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2022 ABCA 111 at para 80; *Pocklington Foods Inc. v Alberta (Provincial Treasurer)*, 1995 ABCA 111 at paras 7–8). I, therefore, find that the second affidavit is admissible in its entirety.

V. Analysis

A. *The Duty of Procedural Fairness Applies to the Apparent Decision*

[57] I disagree with the Respondent's characterization that the Apparent Decision did not engage his rights, privileges or interests. The fact that a decision is administrative and affects the "rights, privileges or interests of an individual" is sufficient to trigger the duty of procedural fairness (*Baker* at para 20).

[58] The *Standard* itself explores the impact a decision to stop an individual's clearance would have on them. The *Standard*, at Appendix E, section 2 states that:

> Any action or inaction that results in an individual not being granted a security status or clearance will negatively impact the individual and may have serious consequences, up to and including termination of employment or termination of a contract. Individuals who choose to have a decision reviewed may do so through the appropriate channels and must be informed in writing of the redress or review mechanisms available to them.

[59] The Respondent's argument rests on the fact that all individuals working for or with the RCMP have a security clearance as a privilege, so they can access classified information and facilities. To follow the Respondent's argument to its full logical consequence, then all security clearances can be revoked at the pleasure of the RCMP, if and when the RCMP deems it necessary. This argument ignores how the *Standard* provides significant procedural fairness safeguards for those whose security clearance is revoked. An administrative cancellation is also marked on the Applicant's file and therefore, the consequences of the cancellation invoke procedural fairness rights. The Respondent's logic offers no procedural safeguards to anyone and would fall below

the regime created by the *Standard*. Second, the record clearly shows that the Apparent Decision had a serious impact on the Applicant's ability to pursue other jobs in his career, namely intelligence jobs.

[60] While it is unclear whether the RCMP revoked, administratively cancelled or simply stopped the security clearance from running its renewal course, it is clear that at least until September 2023 when Grant Pretchuk provided his evidence in the course of the current litigation, all communications to the Applicant pointed only to a "revocation." This is what the City letter that was prepared as a follow up to the meeting of March 14, 2023, stated. Shortly after that and in early April 2023, the Applicant contacted the Superintendent in an attempt to understand what had happened. This would have been the Respondent's opportunity to shed light on what had actually happened. Rather than a formal meeting with a follow up email to clarify, Mr. Chauhan took the Applicant to a Tim Hortons and provided no clarification. Neither Mr. Chauhan, nor anyone else from the RCMP or the City, corrected the erroneous reference to revocation or did anyone provide a clear explanation as to what had happened to the Applicant's security clearance.

[61] A month later and in May 2023, the City of Richmond wrote another letter that pointed to the consequence of not having a valid clearance: the loss of employment. The letter of May 2023 further confirmed the City of Richmond's previous communication that the Applicant's security clearance's revocation was under the purview of the RCMP and that it was a condition precedent to continuing his employment. Without the security clearance, he could not continue to work. It was only in the course of this litigation and after the Applicant had started the current judicial review that Grant Pretchuk claimed in September 2023 that the reference to a revocation on the

City of Richmond letter was in error. By then, the Applicant had already suffered significant prejudice by not only losing his job with the City of Richmond, but also by communicating to CSIC that he could not be considered as a serious candidate because he did not meet the condition of employment. The Applicant had already shared the only information he had, that his security clearance was revoked. Whether this was the only reason why CISC did not offer employment is immaterial because based on the information the Applicant had, he had clearly communicated truthfully that did not meet a condition precedent of the potential job.

[62] The Respondent now argues that the information the Applicant provided CSIC was inaccurate, that his clearance was not revoked, that he could have gotten a job with them, and that he did not have to proactively tell them anything. The inaccuracy of the information he provided, to the extent that it existed, is only because of the Respondent's lack of engagement with him and an absence of transparency in explaining to the Applicant what had happened. This was despite the Applicant's effort to better understand what happened, which only resulted in a meeting, without much of an exchange, at Tim Hortons. The Respondent cannot use the inaccuracy/confusion that was created due to their lack of engagement, as defence that Mr. Tait suffered no consequence. This does not justify the Respondent's action to mislead the Applicant and/or not engage with him in a meaningful manner.

[63] The letter that followed what had transpired, i.e., the letter by the City in May 2023, states that the employee's security clearance—a condition required to keep his job—has been canceled, which in turn renders him ineligible for continued employment. In other words, losing the clearance automatically justifies termination. Regardless of what the Respondent would like to call

the process by which the Applicant lost his clearance certificate, there is no doubt that it had a serious consequence on him.

[64] This letter further confuses the Respondent's argument because it becomes unclear whether it was the cancellation of the security clearance that caused termination, or rather the termination that resulted in the cancellation of clearance.

[65] More importantly, there is nothing in the *Standard* or the *Guide* that would provide the basis for an automatic loss of clearance when employment ends. The *Standard* provide a regime for the affected individual to react, even after they leave their post, and there are provisions on options after the expiration of their security clearance (see *Standard*, Appendix F – Aftercare, s 10).

[66] In other words, the Respondent engages in a circular argument used to justify their actions, where the clearance is both the cause and the effect of the employment termination. The process relies solely on its own internal logic (i.e., clearance is needed to keep the job, and without it, termination occurs; then termination is used to justify the cancellation of the clearance) without offering an independent basis for the decision.

[67] I find that the Applicant has established that the Apparent Decision had a profound and critical consequence on him. Not only it resulted in the loss of his employment, but it also frustrated his alternate employment option. This happened under the security clearance regime that has created safeguards for individuals to react to the loss of their clearance, both before the

decision is made, and after. Until the Applicant initiated the litigation, he had no reason to believe that anything other than revocation had happened to his security clearance. To the extent that there is a factual dispute on what actually happened, the record is clear that he had to learn about his unsuitability for his existing position for the first time in the course of a litigation, which then triggered his “return” to the City, and the “stoppage” of the renewal process. The Apparent Decision had a profound impact on the Applicant, and the lack of transparency with what decision, how and why it was taken in effect completely kept the Applicant in the dark until after he initiated the litigation. Without litigation, he could not have reasonably be expected to answer accurately or truthfully to any question that would ask whether he was ever subjected to cancellation or revocation of a security litigation. If he had not litigated, a process that is neither cheap nor simple, he would have never learnt what had transpired. Before initiating litigation, his attempt to a get an explanation was frustrated and was limited to a meeting at Tim Hortons with no substance.

B. *Procedural Fairness: Consequences and Nature of the Apparent Decision to the Applicant*

[68] The case of *Baker* provides a framework for analyzing the procedural fairness owed to the Applicant in the context of the Apparent Decision. The core principles of procedural fairness established in *Baker* are broadly applicable to administrative decisions that affect an individual's rights, interests, or privileges.

[69] *Baker* outlines several factors to determine the content of the duty of fairness:

- **Nature of the decision and process**: While a security clearance decision involves an assessment of an individual's reliability and loyalty, administrative cancellation is meant

to be a procedural matter, not a determination based on negative information. However, the decision in here makes it clear that an administrative action can have legal consequences and therefore requires a procedural element.

- **Statutory Scheme**: The *Baker* decision emphasizes the importance of the statutory scheme and the terms of the statute pursuant to which the body operates. The Security Screening Standards themselves acknowledge an obligation to conduct screenings fairly and objectively. Justice Manson's decision notes that even if the standards are not legally binding, the common law duty of procedural fairness applies.

- **Importance of the decision**: The *Baker* decision stresses that the more important a decision is to the lives of those affected, the more stringent the procedural protections that will be mandated. Losing a security clearance has significant impacts on employment and career prospects.

- **Legitimate expectations**: If the applicant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness (*Baker* at para 26). The regular practices of the administrative decision maker will be taken into account. In this case, the *Standard* and references to fair and objective process for those who lose their clearance, in a variety of situations, could give rise to a legitimate expectation of transparency and an opportunity to respond, to which they were not adhered.

- **Choices of procedure made by the agency itself**: *Baker* explains that the choices of procedure made by the agency should be given weight. The *Standard* suggests a detailed process for denying, revoking or suspending a clearance, that includes reasons and an

opportunity to respond. Regardless of what label to accept, the Applicant was neither given the procedure made for revocation nor for administrative cancellation.

[70] Procedural fairness is intended to prevent arbitrary decision-making and is meant to allow individuals affected to respond to potential substantive concerns. The more dire the consequence, the more important the procedural safeguards. Regardless of what exact decision was made in this case, the Apparent Decision had critical consequences, but no procedural safeguards were taken. Therefore, regardless of how many times the Respondent's evidence changed or what the Respondent would like to call the Apparent Decision ultimately, the Applicant's procedural fairness rights must be engaged.

[71] I must also note that in his decision, Justice Manson signaled that while the RCMP may have had the right to return Mr. Tait to the City, the manner in which they handled the situation could have violated the Applicant's right to procedural fairness. Now, with a complete record and having heard the parties' arguments, I am satisfied that the Respondent has indeed violated the Applicant's right to procedural fairness under common law principles, and the denial of those rights resulted in a prejudice against him.

[72] The decision to close the Applicant's security clearance renewal request, which the RCMP referred to as an "administrative cancellation," in their March 14, 2023, internal letter, and later called discontinuation of renewal, had significant consequences for him, as it effectively ended his security clearance and impacted his present and future employment.

[73] Considering all these factors in this case, the duty of fairness would require more than minimal process, even if the process is described as an administrative cancellation. Factually, the Applicant was even denied that minimal process. In *Baker,* the court determined an affected individual must have a meaningful opportunity to present evidence and have it fully considered.

C. *Did the Respondent breach the Applicant's rights by not engaging with him?*

[74] I find that regardless of the label, the action to cancel/intervene with the renewal of the security clearance had serious legal consequences for the Applicant.

[75] While the *Standard* provides the holder of security clearance opportunity to make submission before the revocation and remedies after, it defines the parameters to which administrative cancellation applies. This includes namely when an individual delays, refuses to provide, or withdraws consent for an initial security screening. Further, refusal to provide supporting documentation such as vital events credentials or biometrics. These conditions also apply to valid security screening. The individual's security status or clearance is suspended, pending the required documentation or information they must provide. When an individual's security screening is being renewed, they are deemed to hold it until a final decision is made. Therefore, the intervention with the renewal process cannot be seen as a clerical decision with no consequence. It is similar in consequence to at least an administrative cancellation. There is no evidence to suggest that the Applicant contributed in any way to its non-renewal as there is no allegations of delays or consent issues.

[76] There is a consequence to administrative cancellation: the individual will no longer be considered for appointment, employment, contract, or assignment. Also, the individual no longer meets the condition of employment, which can result in termination or cancellation of contract.

[77] An administrative cancellation is not the same as a denial or revocation of security status or clearance. A denial or revocation is a negative decision made based on adverse information concerning an individual's reliability or loyalty, whereas administrative cancellation is due to a procedural issue such as lack of consent. The decision to administratively cancel a security screening must be recorded on the individual's security screening file.

[78] The *Standard* outlines procedural safeguards against revocation that the parties do not dispute exist, and they were not adhered to in this case.

[79] While the *Standard* does not explicitly state that individuals facing administrative cancellation are owed “due process,” it does outline procedures and considerations that suggest at the very least, a need for fairness and transparency. Moreover, our legal tradition is less concerned about label and more about whether an administrative decision can still have significant consequences, which will therefore require procedural fairness.

[80] The basic principle of a procedurally fair system is to provide the affected party with an opportunity to respond prior to a final negative determination is made. The *Standard* provides that individuals facing security screening are required to provide personal information and documentation, and they must give their consent for the screening to occur. If an individual delays,

refuses to provide, or withdraws consent or supporting documentation for an initial screening, the process will cease and be administratively cancelled. However, before this action is taken, the individual must be informed that their lack of consent or information will result in their not being considered for the position, and that the screening action will be cancelled. This suggests an obligation to inform the individual of the reason for the administrative cancellation and the impact of that decision. There is no dispute that none of this happened to the Applicant here.

[81] The *Standard* further emphasizes that administrative cancellation is not a denial or revocation. This distinction suggests it's not based on an assessment of an individual's reliability or loyalty, but rather a procedural issue. However, even if not a negative determination, it is an action that prevents them from being considered for a position, which might suggest a due process consideration.

[82] If an individual refuses to provide consent or information while their security status is being updated or upgraded, the existing status is suspended and reviewed. This suggests that some form of review is involved, and there is a requirement to consult with human resources. Again, this never happened until at least after the Applicant had already launched this litigation.

[83] The decision to administratively cancel security screening must be recorded on the individual's security screening file, indicating that a formal process is being followed. This further suggests that the decision, though administrative, is not taken lightly, and there is an obligation to record it. It is hard to imagine that a system contemplates a lesser degree of procedural fairness to those such as the Applicant with years of valid security screening awaiting renewal. Therefore, the

Respondent's suggestion that the renewal can be stopped at any time with no procedural safeguard is absurd.

[84] The Guide creates requirements for maintaining security files with accurate and up-to-date information, which suggests a standard of care is owed to individuals during the process of security screening. This information, including actions taken and decisions made, must be recorded.

[85] There is no dispute between the parties that in this case, the RCMP failed to inform the Applicant of concerns of adverse information, if there were any, did not conduct a security interview and did not provide him with an opportunity to respond. Moreover, they never communicated their decision in writing, other what Mr. Tait received from the City in the form of the letter dated March 14, 2023, that referred the action as a revocation of his Clearance. With no written decision, the Respondent also failed to provide reasons for the Apparent Decision. With no communication, the Applicant was not informed of his rights to redress.

[86] I note that the Respondent argues that the *Guide* does not legally bind an organization. However, the Respondent must still contend with the common law duty of procedural fairness. In summary, given the dire consequence of even administrative cancellation (which I find interference with renewal is similar), individuals facing administrative cancellation are owed a degree of procedural fairness, including the opportunity to know why the cancellation is being considered and an opportunity to respond. The need to record actions and the review process for suspension of a security status further suggests that an administrative cancellation is not an arbitrary process but one that requires an element of procedural fairness.

D. *Remedies*

[87] The Applicant relies on *DiMartino v Canada (Minister of Transport)*, 2005 FC 635; *Koulatchenko v Financial Transactions and Reports Analysis Centre of Canada*, 2014 FC 206; and *Xavier v Canada (Attorney General), 2010 FC 147* to seek that the Apparent Decision be quashed and remitted to the Respondent for redetermination with the appropriate procedural safeguards. The Respondent argues that these cases can be distinguished because they deal with revocation, denial and cancelation of security clearance, all of which have a consequence to those affected. Since the Respondent denies that the Apparent decision had a consequence on the Applicant, they argue that these cases do not apply. I have already explained why I disagree with the Respondent's characterization of the Apparent Decision.

[88] The Applicant is also seeking a *mandamus*, an order to restore the Applicant's security clearance to the point that his procedural rights are engaged before loosing it (so that he can make submissions against loosing it, etc.). To this, the Respondent replies that not only has the Applicant not met the test for *mandamus*, but that even if the Court finds that a breach of procedural fairness has taken place, it is simply no longer possible to turn back the clock. The Applicant has no remedy because the *Standard* were replaced by the *Directive* on January 6, 2025. The *Directive* makes it impossible for the Respondent to issue a security clearance without the need to access classified information. Since the Applicant no longer needs access, he cannot be issued security clearance.

[89] *Mandamus* is an equitable remedy that is used to compel the performance of a public duty. This Court's ability to grant a writ of *mandamus* is provided for under subsections 18.1(3)(a) and 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7. As set out in *Apotex v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), to be entitled to an order of *mandamus* the following criteria must be met:

a) there must be a public legal duty to act;

b) the duty must be owed to the applicant;

c) there must be a clear right to performance of that duty;

d) where the duty sought to be enforced is discretionary, certain additional principles apply;

e) no other adequate remedy is available to the applicant;

f) the order sought will have some practical value or effect;

g) there is no equitable bar to the relief sought; and

h) on a balance of convenience an order of *mandamus* should be issued.

[90] The Respondent is arguing that the Applicant has not satisfied that the first two conditions. I disagree, these reasons are focused on how common law and the *Standard* creates a public duty to act fairly and that the duty is owed to the Applicant. I find that the other elements are also met.

[91] To the extent that the Applicant is "out of luck" because of the new *Directive*, this is because of the situation he found himself in when the Respondent did not engage with him. His attempt to get clarity from the RCMP was limited to having coffee with Mr. Chauhan in Tim Hortons where no substance was discussed. If we do not take issue with the credibility of what happened, he could not have reasonably learnt about it until he litigated this case. I find that the Respondent's suggestion that he could have filed an Access to Information and Privacy request instead to be irrelevant to how they fell short in exercising their duty to engage with him, especially when he provided them with the opportunity to clarify when he initiated the call.

[92] The situation the Applicant finds himself is analogous to the Applicant in *Saeedy v Canada (Citizenship and Immigration),* 2025 FC 354 (CanLII) [*Saeedy*] where the breach of procedural fairness by the Respondent resulted in the termination of an immigration program available to him. In that case, as well as a case on which the Court in *Saeedy* relied, *Kaur v Canada (Minister of Citizenship and Immigration),* 2022 FC 1690, the Court remedied it by sending the matter back to the administrative decision maker with direction to include certain information in the file. I find that the same logic applies here. The Respondent cannot be the party that benefits from the prejudice suffered by the Applicant, as a result of the breach of procedural fairness.

[93] Notwithstanding the current litigation, the Applicant would not have learnt about the nature of the Apparent Decision. It was the current litigation that resulted in a long enough delay for the *Directive* to replace the *Standard*. It is therefore important to assess the reasonableness of the delay. In assessing the reasonableness of the delay, I am guided by the criteria described in

Conille v Canada (Minister of Citizenship and Immigration) (TD), [1999] 2 FC 33, 1998 CanLII 9097 (FC) , which set out three factors for consideration:

> (1) Has the delay in question been longer than the nature of the process required, *prima facie*?
>
> (2) Is the applicant and/or applicant's counsel responsible for the delay? and
>
> (3) Has the authority responsible for the delay provided a satisfactory justification?

[94] Regarding the first factor, there has been a delay of almost two years only because of an unnecessary litigation that was only launched as a result of the Respondent's breach of procedural fairness. While not very long, it is a consequential delay during which the *Directive* replaced the *Standard*. The Applicant cannot be prejudiced as a result of a delay he did not cause and its consequence that he could not control.

[95] Regarding the second and third factors, I am satisfied that it was not the Applicant nor his counsel that caused it. The Respondent's contribution to it is a neutral factor because while they cannot be faulted for defending the case, they cannot benefit by frustrating the Applicant's reasonable remedy.

[96] Therefore, I find that Applicant was denied procedural fairness when the RCMP decided to stop the process of updating the Clearance. The Apparent Decision ought to be quashed and remitted to the RCMP for redetermination in accordance with the procedural requirements of the *Standard*.

[97] Specifically, in determining whether to approve or deny his application to update the Clearance, the RCMP should be required to notify the Applicant of any concerns that it might have, provide him with an opportunity to respond to those concerns, and then issue a formal decision in writing. This decision ought to include any rights to review or redress that the Applicant may have.

[98] The above process ought to apply regardless of the nature of the RCMP's concerns. The minimum requirements of procedural demand that the Applicant be notified, and provided with an opportunity to respond, before the RCMP makes such a fundamentally important decision.

E. *Costs*

[99] The parties have made joint submission on costs. They agree that an all inclusive award of $4,800 must be made to the successful party. As such, I order that the Respondent pay the Applicant $4,800 in costs, inclusive of taxes and disbursement.

VI. Conclusion

[100] The application for judicial review is granted because the Respondent has breached the Applicant's procedural fairness rights. The Apparent Decision ought to be quashed and remitted to the RCMP for a determination in accordance with the procedural requirements of the *Standard* and the *Guide*.

[101] In determining whether to approve or deny his application to update the Clearance, the RCMP should be required to notify the Applicant of any concerns that it might have, provide him with an opportunity to respond to those concerns, and then issue a formal decision in writing. This decision ought to include any rights to review or redress that the Applicant may have.

[102] The Respondent pay the Applicant $4,800 in costs, inclusive of taxes and disbursement.

ORDER in T-1392-23

THIS COURT ORDERS that:

1. The style of cause is amended to reflect that the Attorney General of Canada is the Respondent.

2. The Judicial Review is granted because the Respondent has breached the Applicant's procedural fairness rights. The Apparent Decision ought to be quashed and remitted to the RCMP for a determination in accordance with the procedural requirements of the Treasury Board *Standard on Security Screening* and the RCMP *Security Screening Guide* dated 20 October 2014 that was in place at the time of the breach of the Applicant's procedural fairness.

3. In determining whether to approve or deny his application to update the security clearance, the RCMP should be required to notify the Applicant of any concerns that it might have, provide him with an opportunity to respond to those concerns, and then issue a formal decision in writing. This decision ought to include any rights to review or redress that the Applicant may have.

4. The Respondent pay the Applicant $4,800 in costs, inclusive of taxes and disbursement.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1392-23
STYLE OF CAUSE:	PETER TAIT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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ORDER AND REASONS:	AZMUDEH J.
DATED:	MAY 27, 2025

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