

Security Clearance Refused Where Employee Has Possible Criminal Ties

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In a recent decision, the Federal Court of Canada commented on the scope of Transport Canada's power to grant or refuse to grant security clearance under the *Aeronautics Act*. [Charlebois v. Canada \(Attorney General\)](#) (in French only) (September 22, 2015) confirmed that the Minister of Transport can refuse to grant or renew a security clearance to work in the aviation sector where the individual applying for the clearance poses a risk to aviation security.

In *Charlebois*, the employee was a pre-flight mechanical engineer for an airline operating out of Mirabel Airport in Montreal. He had been employed by the airline since 1997 and had security clearance to enter restricted areas of the airport for 11 years. In 2013, Mr. Charlebois applied for a renewal of his security clearance which required that checks be made with the RCMP and CSIS.

As a result of the checks carried out Mr. Charlebois's security clearance was not renewed because it was discovered that he had links with persons associated with the Hells Angels motorcycle gang. Mr. Charlebois was given details of the incidents which had given rise to the concern and was given an opportunity to make written submissions. He responded by letter through his lawyer stating that he had been at work at the time of the alleged incidents and had loaned his vehicle to his former neighbour who had used it to associate with the Hells Angels without his knowledge. These explanations were unsatisfactory to the Minister and as a result Mr. Charlebois sought judicial review of the decision by the Federal Court of Canada.

The Federal Court determined that the Minister had met its duty of procedural fairness by requesting and considering explanations from the applicant for the activities in question. It was noted that the Minister's decision was made in conformity with the [Transportation Security Clearance Policy](#) (Policy) and s.4.8 of the *Aeronautics Act*. The Policy allows the Minister to refuse to grant aviation security clearance to individuals where the Minister or his/her delegate has reasonable grounds to believe, on a balance of probabilities, that a person could be prone or induced to commit an act which would put aviation security at risk. The Court went on to find that the decision maker in this case reasonably concluded that the explanations provided by Mr. Charlebois were not sufficient to displace the conclusions that arose from the evidence on record. These conclusions gave rise to serious concerns about his judgement and reliability, making it reasonable to believe that he could be likely to be encouraged to commit an act which would put aviation security at risk.

The *Charlebois* decision makes it clear that courts will be extremely hesitant to overturn ministerial decisions concerning aviation security clearance where considerations have been given to the requirement for procedural fairness and where the decision made is in conformity with the appropriate law and policy.

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