Federal Court  Cour fédérale

Date: 20150730

Docket: T-1569-14

Citation: 2015 FC 937

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 30, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

MAY HAMOD

Applicant

and

DEPARTMENT OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In July 2012, the applicant May Hamod, a Canadian citizen of Syrian origin, returned to Canada from a trip to Syria. She declared to the customs officer at the primary inspection line that she was importing $300 in goods, including a pack of cigarettes and a bottle of alcohol. She

was referred to the secondary inspection line. She informed the customs officer there that she was also bringing back certain goods from Syria, including jewellery the value of which she did not know. The jewellery was seized by the customs officials because Ms. Hamod had not reported it in accordance with the law. An expert report later established its value at more than $40,000.

[1] Ms. Hamod challenged the seizure of the jewellery and attempted to have it reversed through proceedings with the Canada Border Services Agency (CBSA). Through her representative, she has gone to considerable effort and spoken several times with the CBSA adjudicator in charge of her file, submitting various documents to prove that the jewellery belonged to her before July 2012. The customs officials nevertheless concluded that Ms. Hamod had acted contrary to the applicable legislation because she had failed to demonstrate that the jewellery had been acquired in Canada or legally imported.

[2] In a decision rendered on June 5, 2014, the Minister of Public Safety and Emergency Preparedness followed the recommendations of the CBSA adjudicator and confirmed that there had been a violation of the *Customs Act*, RSC (1985), c 1 (2nd supp) (the Act), and the *Reporting of Imported Goods Regulations*, SOR/86-873 (the Regulations), with respect to several of the pieces of jewellery that Ms. Hamod had in her possession when returning from Syria in July 2012 and had failed to report. The Minister asked Ms. Hamod to pay an amount of $4,562.58 in forfeiture for the release of the seized jewellery.

[3] On July 11, 2014, Ms. Hamod filed this application for judicial review against the Minister's decision imposing the payment of $4,562.58 for the release. She is asking the Court to consider the seized jewellery used, recalculate its value accordingly and amend the amount sought by the Minister in forfeiture. The Minister's response is that his decision falls within the range of reasonable outcomes in this case and that the Court's intervention is not warranted.

[4] Ms. Hamod's application raises a single issue: was the Minister's decision to require the amount of $4,562.58 in forfeiture unreasonable? For the reasons that follow, Ms. Hamod's application must fail because the Court finds that the decision of the customs officials regarding the value of the confiscated items was reasonable.

II. Background

A. *The CBSA report*

[5] On August 20, 2012, after Ms. Hamod's jewellery was seized upon her arrival in Canada on July 9, the CBSA adjudicator assigned to her case explained to her the reasons for the seizure: it was not clear whether Ms. Hamod was importing the jewellery to Canada for the first time, and she had not reported it in accordance with the Act.

[6] Starting in September 2012, Ms. Hamod's representative had several exchanges with the CBSA adjudicator in an attempt to have the seizure lifted. In his submissions to the adjudicator, the representative sent, among other items, copies of bills and photographs of Ms. Hamod wearing the jewellery. The adjudicator regularly reminded Ms. Hamod's representative that the

burden of proof rested with her and that she had to demonstrate that the jewellery had been obtained in Canada or legally imported into the country. In November 2012, the adjudicator sent Ms. Hamod's representative the final report of an independent gemologist hired by the CBSA to appraise the seized jewellery. The report contained a detailed, itemized analysis of the condition of the seized jewellery (new or used) and an estimate of its monetary value. The report concluded that the jewellery had a total market value of approximately $43,000, and the gemologist found that $34,500 of that amount applied to jewellery that he considered to be in new condition.

[7] In a letter dated November 19, 2012, the adjudicator informed Ms. Hamod's representative, in response to an inquiry, that he could submit a second expert report and appraisal of the jewellery if he disagreed with the gemologist's appraisal. Over a period of more than 18 months, until May 2014, much correspondence was exchanged between the CBSA adjudicator and Ms. Hamod's representative; during that period the adjudicator frequently raised the fact that Ms. Hamod could make any submissions she wished and file her own expert report.

[8] The jewellery was to be appraised in January 2013 by an expert engaged by Ms. Hamod, but the expert could not get access to the jewellery, which was then still being held by a CBSA investigator looking into the criminal offences and the charges against Ms. Hamod of illegal importation of goods. In fact, in September 2013, Ms. Hamod pleaded guilty to three charges relating to the importation of the seized jewellery.

[9] In November 2013, the adjudicator contacted the new representative acting on Ms. Hamod's behalf to inform him that he could make written submissions, which he did in January 2014. On March 5, 2014, the adjudicator also reminded the new representative that he could submit a second expert report and appraisal of the jewellery, and she explained to him the procedure used by the CBSA for evaluating goods. Ms. Hamod never did submit an expert report.

[10] On May 14, 2014, the adjudicator filed her final report. The report provided a detailed timeline of the exchanges between the adjudicator and Ms. Hamod's representatives. The adjudicator referred to the many invitations extended to Ms. Hamod to make submissions and mentioned the receipts and photographs that Ms. Hamod had sent. The adjudicator indicated that the receipts, which were in Arabic, had been translated and verified, but that she could not accept them because they were made out to somebody other than Ms. Hamod, so she could not connect them to the seized jewellery. In her analysis, the adjudicator accepted Ms. Hamod's submissions with respect to the jewellery categorized as [TRANSLATION] "used" by the gemologist and removed it from the list of seized goods. However, the adjudicator rejected the submissions on the other jewellery considered to be new and upheld its seizure.

[11] On the basis of the gemologist's report and estimate of the jewellery's value, the adjudicator set at about $15,200 the value for duty of the jewellery considered to be in new condition, in accordance with the adjustments and deductions normally applied in such cases, and set at $4,562.58, or 30% of the value for duty, the amount that Ms. Hamod would have to pay for the release of the seized goods.

B. ***The Minister's decision***

[12] In his decision of June 5, 2014, the Minister adopted the findings of the adjudicator's report. He confirmed that there had been no violation of the Act and Regulations with respect to the jewellery described as used. However, for the jewellery described as [TRANSLATION] "new", given Ms. Hamod's failure to report it upon entering Canada in July 2012, the Minister confirmed that under section 131 of the Act, an offense had been committed.

[13] The Minister also specified that under section 133 of the Act, the jewellery would only be returned to Ms. Hamod upon receipt of an amount of $4,562.58 retained in forfeiture. In support of his decision, the Minister indicated that Ms. Hamod was responsible for reporting any goods she acquired while travelling outside Canada and that the onus was on her to present evidence of the legitimate importation or Canadian origin of the jewellery, which she did not do for the jewellery that was considered new. However, the submissions and documentary evidence were accepted for the used items. The Minister noted that Ms. Hamod had stated, upon entering Canada in July 2012, that [TRANSLATION] "several of the pieces of jewellery were new and were being imported to Canada for the first time".

[14] In his decision, the Minister referred to the extensive correspondence with Ms. Hamod during the CBSA appeal process, and the suggestion that Ms. Hamod provide a second appraisal of the jewellery, which she never followed. The Minister also explained to Ms. Hamod the separate procedures for appealing the decisions rendered under sections 131 and 133 respectively.

C. *Statutory provisions*

[15] The relevant provisions of the Act are sections 131, 133 and 135. Section 131 deals with the ground of a contravention of the Act and Regulations established by the Minister justifying a seizure of the imported goods. In this case, it involves the illegal importation of jewellery by Ms. Hamod. Subsection 131(3) is a privative clause setting out that a contravener may only appeal the decision rendered on the statement of contravention (in this case, the illegal importation of jewellery) by way of an action in the Federal Court in accordance with section 135 of the Act.

[16] Section 133 sets out that, where the Minster decides that there has been a contravention of the Act, he may impose various remedies such as the restitution of the goods upon receipt of a determined amount. This decision under section 133 is dependent on the statement of contravention of the Act, but it relates only to the penalty imposed in respect of the contravention. In this case, the penalty took the form of a forfeiture amount required of Ms. Hamod to recover her seized jewellery. To appeal a decision under section 133, the penalized person may file an application for judicial review with the Federal Court in accordance with subsection 18.1(1) of the *Federal Courts Act*.

[17] As pointed out by the Minister's counsel, the Minister rendered more than one decision on June 5, 2014: he issued a first decision under section 131 with respect to the illegal importation of jewellery committed by Ms. Hamod and a second decision under section 133 with respect to the amount of forfeiture she would have to pay for the release of the seized goods. The

case law has clearly established that these two decisions are distinct and must be challenged separately (*Pounall v Canada (Border Services Agency)*, 2013 FC 1260 at para 15; *Mohawk Council of Akwesasne v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 1442 at para 21; *Akinwande v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 963 at paras 10-11; *Nguyen v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 724 at paras 19-22 [*Nguyen*]; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255).

[18] Section 131 of the Act enables the Minister to decide whether there has been a contravention of the provisions relating to the importation of goods (*Nguyen* at paras 19-20). The Act requires that decisions made pursuant to section 131 of the Act be "subject to review only as described in s. 135(1) of the Act. Subsection 135(1) of the Act requires that a Minister's decision made under s. 131 of the Act be appealed by way of an action" (*Nguyen* at para 19). As her counsel admitted during the hearing, Ms. Hamod therefore cannot challenge the Minister's decision on the illegal importation of jewellery through an application for judicial review.

[19] On the other hand, the Minister's decision under section 133—the determination of the amount of the forfeiture—may be challenged by way of an application for judicial review (*Nguyen* at para 20). This is the only decision that can be considered by the Court in this application.

D. *Standard of review*

[20] The standard of review of a decision rendered under section 133 of the Act is reasonableness because it is a discretionary decision of the Minister (*United Parcel Service Canada Ltd v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 204 at paras 40 and 43; *Shin v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 1106 at paras 46-48; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61at para 53 [*Alberta Teachers*]; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99).

[21] In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47). The Court must show deference to the Minister's decision and may not substitute its own conclusions. If necessary, however, it may look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland Nurses* at para 15).

III. Was the Minister's decision to require Ms. Hamod to pay $4,562.58 in forfeiture reasonable?

[22] The only issue before this Court is whether the Minister's decision to impose the amount of $4,562.58 in forfeiture for the jewellery illegally imported by Ms. Hamod was reasonable.

[23] In support of her claims that this decision was unreasonable, Ms. Hamod submits that she would take extended trips to Syria and bring with her anything she might need, including jewellery. The goods that she was transferring from one country to another were for her personal use only, and she states that all of the jewellery seized has belonged to her for a long time. She sent the customs authorities the documents and photos available to her, but other evidence that may have existed in Syria was no longer available as a result of the civil war in that country. She specifies that, during her most recent trip to Syria, before her return to Canada in July 2012, she and her family quickly had to gather their personal effects because of the imminent civil war, which explains why she did not know the value of all of the jewellery then in her possession.

[24] Ms. Hamod also states that the pieces of jewellery characterized as new by the gemologist and the Minister were not new, and that the photos demonstrate this. She adds that she never told the customs officer that the jewellery was new and that the Minister erred in basing his decision and the amount of the forfeiture on this inaccurate statement. Finally, Ms. Hamod argues that she never submitted a second expert appraisal because the adjudicator had told her that she would be under no obligation to accept it.

[25] The Court does not share Ms. Hamod's opinion and cannot accept these arguments.

[26] Throughout the adjudication process conducted by the CBSA, full explanations were given to Ms. Hamod and her representatives, and she had several opportunities to make any submissions or ask any questions she wished. Because she did not know the value of the jewellery, an expert gemologist analyzed and appraised them. The expert concluded, after having access to the pieces of jewellery, that several of them were in new condition. Ms. Hamod submitted photos to demonstrate that all of the jewellery was used. The adjudicator considered them, but the Court notes that the photos were generally undated, they were often not very clear and it was difficult to tell with any certainty which pieces of jewellery they featured. The Court is therefore of the view that it was reasonable for the adjudicator not to accept them as sufficient or conclusive evidence of the dates by which Ms. Hamod had acquired the jewellery or of its condition. Ms. Hamod also sent receipts, which the CBSA reviewed and considered but could not accept because they could not be connected with Ms. Hamod and were not made out in her name.

[27] In the end, all of the documents submitted by Ms. Hamod were analyzed. The adjudicator informed Ms. Hamod on several occasions that she could have a gemologist of her choice appraise the jewellery to produce a second report. She did not do so. The gemologist hired as an independent expert by the CBSA established the market value of the seized jewellery, and it was on this basis that the customs value was calculated and the customs officials set the forfeiture amount. Ms. Hamod and her counsel submit that they were dissuaded from providing another expert report by the adjudicator's statement that the second report might not be accepted. The Court does not find at all convincing this explanation for why a second expert report was not provided, especially given that Ms. Hamod and her first representative had taken steps to file

such an expert report even after receiving the supposedly dissuasive information from the adjudicator. Ms. Hamod ultimately chose not to submit a second expert report and not to take advantage of the opportunity that was offered to her multiple times.

[28] In the circumstances, having examined and analyzed the gemologist's report and the documents filed by the parties, the Court cannot agree that the Minister's decision is unreasonable on the basis of the one expert report in the record. There is nothing in the record to refute the appraisal that was obtained from the gemologist and that underlies the amount of forfeiture sought by the Minister (*Thomas v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 734 at paras 26-28). It is not for this Court to review the findings drawn by the Minister from the evidence or substitute its opinions for those of the decision-maker, as Ms. Hamod is asking it to do by claiming that the seized jewellery should be considered used, especially in a case where no evidence or expert reports have been filed in support of her position (*Canada (Minister of Human Resources Development) v Rafuse,* 2002 FCA 31 at paras 13-14).

[29] The Court understands that it may have been difficult for Ms. Hamod to file receipts or evidence regarding the importation or possession of the jewellery. Once the illegal importation of the jewellery and the failure to report it had been established, the issue that had to be decided by the customs authorities was the value of the jewellery and the resulting amount of forfeiture. Because Ms. Hamod did not know the value of the seized jewellery upon her arrival in Canada in July 2012, it was appraised by an expert gemologist who identified which pieces he considered to be in new condition and which he described as being in used condition. Ms. Hamod did not

submit a second expert report despite repeated invitations to do so throughout the process. If she had produced an expert report, it would have been considered by the adjudicator, who would have decided how much weight to give it. In the absence of such a report, and without any other satisfactory evidence in the record, the Court has no choice but to consider the Minister's determination reasonable.

[30] All of the documents submitted by Ms. Hamod were in the records of the adjudicator and the Minister. For the jewellery described as new, the customs officials gave more weight to the expert report than to Ms. Hamod's photos and documents. Ms. Hamod's mere disagreement as to the persuasiveness of the evidence in the Minister's record and the weight given to it is not sufficient to render the decision unreasonable and warrant this Court's intervention.

[31] The Court notes and acknowledges that, in his decision, the Minister erred in stating that Ms. Hamod had told the customs officer that [TRANSLATION] "several of the pieces of jewellery were new". There is nothing in the record to support this statement that appears in the Minister's decision. However, the Court cannot conclude that this inaccurate reference to Ms. Hamod's statements is enough in itself to render the Minister's determination of the amount of the forfeiture unreasonable. The decision has to be read as a whole, and this Court is satisfied that the Minister's determination of the amount of the forfeiture was not based on this statement erroneously attributed to Ms. Hamod. The decision is instead based on the whole of the evidence received by the adjudicator, in particular the report of the expert gemologist, who examined the jewellery directly, estimated that several pieces were in new condition and produced the resulting monetary appraisal.

[32] The Minister could no doubt have used more precise terminology in his decision, referring to pieces of jewellery that were in new condition, as did the gemologist in his report, rather than simply writing that the jewellery or items were [TRANSLATION] "new". This would have avoided some of Ms. Hamod's apparent confusion in this respect. However, the standard that this Court must apply is not perfection, but rather reasonableness (*Newfoundland Nurses* at paras 15-16; *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 353 at paras 27-28). In the circumstances, the Court finds that the Minister's decision is neither illogical nor irrational and falls within the range of acceptable and rational solutions in respect of the facts and law.

[33] The Court also agrees with counsel for the Minister about the interpretation of section 113 of the Act. That section sets out a prescription period of six years for seizures made under the Act. A reading of the provision shows that this six-year period begins running from the date the contravention is committed and not the date the goods were acquired. The seizure of Ms. Hamod's jewellery in July 2012 was therefore not time-barred under section 113.

[34] Ms. Hamod and her counsel finally argue, particularly in their submissions at the hearing before this Court, that inadequate reasons were provided in support of the Minister's decisions. The Court disagrees.

[35] *Newfoundland Nurses* established that the inadequacy of reasons is not a stand-alone basis for quashing a decision. The Court may look to the record and the evidence if the decision under judicial review has certain deficiencies or flaws. Rather, the reasons must be read together

with the outcome and must enable one to determine whether the latter falls within a range of possible outcomes. The Court may look to the record to assess the reasonableness of the outcome: "Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion …" (*Newfoundland Nurses* at para 16).

[36] The reasons for a decision are adequate where they allow the Court to understand why the decision was rendered and establish whether it falls within the acceptable outcomes. "If there exists a reasonable basis upon which the decision maker could have decided as it did, the court must not interfere" (*Alberta Teachers* at para 53).

[37] In this case, it is true that the Minister's decision is relatively succinct. However, the reasons must be read alongside the adjudicator's report, which provides a detailed review of the evidence before the customs authorities, particularly the gemologist's report. Because the decision was short and adopted the recommendation from the adjudicator's report, that report and the record associated with it form part of the reasons (*Newfoundland Nurses* at para 15). As explained above, the CBSA's reasons and decision allow the Court to understand how and why the Minister reasonably arrived at the forfeiture amount of $4,562.58. There is nothing to indicate that the customs officials failed, at any stage of the process, to consider Ms. Herod's comments or arguments.

[38] Even though the decision does not refer to every argument or detail from the evidence, this does not impugn its validity or reasonableness (*Newfoundland Nurses* at para 16). The Court therefore finds that the decision is supported by adequate reasons, makes reference to the provisions of the Act and Ms. Hamod's submissions and constitutes an adequate and reasonable decision that falls within the range of possible outcomes in the circumstances.

IV. Conclusion

[39] For the reasons above, Ms. Hamod's application for judicial review is dismissed, as the amount of forfeiture established by the Minister falls within the range of possible outcomes available to the Minister in light of the evidence before him. The Court's intervention in this decision is not warranted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed, with costs.

"Denis Gascon"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1569-14
STYLE OF CAUSE:	MAY HAMOD v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 8, 2015
JUDGMENT AND REASONS :	GASCON J.
DATED:	JULY 30, 2015

APPEARANCES:

Marco Zuliani	FOR THE APPLICANT
Maguy Hachem	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marco Zuliani Avocats Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT