Federal Court  Cour fédérale

Date: 20160422

Docket: T-794-14

Citation: 2016 FC 456

Ottawa, Ontario, April 22, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NAVJEET SINGH DHILLON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

A. *Facts*

[1] The applicant, Navjeet Singh Dhillon [Mr. Dhillon or the applicant], was approached by a Border Services Officer [BSO] as he was boarding an aircraft departing from Calgary to Europe in August, 2013. In response to questioning from the BSO, Mr. Dhillon advised that he was in possession of more than $10,000, Canadian, in cash. The BSO advised Mr. Dhillon that

exporting cash in excess of $10,000, Canadian, not previously declared to the Canada Border Services Agency [CBSA], was in contravention of section 12 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the Contravention]. Mr. Dhillon reported that he was unaware of the obligation to declare currency exports. The currency in Mr. Dhillon's possession was seized. Mr. Dhillon was forthright and fully cooperative with the BSO.

[2] The BSO provided Mr. Dhillon with the option of having the currency returned to him and to continue on his journey upon payment of a fine in the amount of $250, the lowest penalty available for a contravention of section 12 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Act] pursuant to paragraph 18(a) of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412. Mr. Dhillon opted to pay the fine and he was permitted to board his flight. Mr. Dhillon states in his affidavit that prior to agreeing to pay the fine he asked the BSO if there would be any customs or immigration related consequences. The BSO responded in the negative. Mr. Dhillon did not challenge the BSO's finding of the Contravention, an option that was open to him for a 90 day period under section 25 of the Act.

[3] Between August, 2013 and November, 2014, Mr. Dhillon re-entered Canada after international travel on eleven occasions. On each of these occasions he was referred to a secondary examination by CBSA officials. In each case his luggage was searched and he was delayed for 15 to 45 minutes. He was never provided a reason for the referrals.

[4] Mr. Dhillon believed, contrary to what he had been told by the BSO in August, 2013, that the referrals were related to the Contravention. He commenced this application for judicial review challenging the decision that he believed had been made to place him on a lookout list. As a result of this application, Mr. Dhillon became aware that the Contravention had triggered the application of what CBSA refers to as the Previous Offender Regime and Mr. Dhillon refers to as the Previous Offender Process. The Previous Offender Process led to his automatic referral to secondary examination on ten occasions between August, 2013 and November, 2014, the eleventh referral to secondary examination in that time occurred as a result of a discretionary decision by a BSO.

B. *The Previous Offender Process*

[5] The Previous Offender Process is described by the respondent's affiant, Dawn Lynch, Manager of Enforcement Systems in the Enforcement and Intelligence Programs Section of the Business Systems Integration Division in the Programs Branch of the CBSA.

[6] CBSA maintains and monitors enforcement information within the Integrated Customs Enforcement System [ICES]. The Previous Offender Process is a component of the ICES.

[7] When a traveller enters the country identity documents are scanned and the traveller's name is queried against the ICES records. Where a traveller has a record of contravention there is a possibility that the Previous Offender Process will automatically generate a direction to the BSO to refer the traveller for a secondary examination.

[8] The inclusion of an individual in the Previous Offender Process is non-discretionary. Where a contravention is recorded and a penalty imposed within the ICES a point value is automatically generated. The point value has been determined for each category of offence and is dependent upon a combination of the type of offence, the value of the commodities involved and the type of commodity. The points value becomes the percentage frequency that a computer generated referral to a secondary examination will occur on subsequent entries into Canada. An individual can only be removed from the Previous Offender Process where an enforcement action is determined to have been invalid pursuant to section 25 of the Act.

[9] In the case of Mr. Dhillon, upon the entry of the Contravention into the ICES, the system assigned 45 points for the failure to report the export of currency and a further 45 points on the basis that the commodity involved was currency. With a total point score of 90, Mr. Dhillon's subsequent entries into Canada would result in a computer generated referral to secondary examination 90% of the time.

[10] The Previous Offender Process recognizes and accounts for subsequent compliance through the reduction of the point score on an annual and then semi-annual basis. Where a traveller demonstrates compliance the point score will be reduced to zero within a maximum of six years resulting in no further automatic referral through the Previous Offender Process, assuming one's continued compliance.

[11] The entire Previous Offender Process is automated and controlled within the ICES. CBSA officials do not possess any discretionary authority over the process. While section 25 of

the Act provides a right of review of a CBSA officer's decision that section 12 of the Act has been contravened, there is no independent ability to review the application of the Previous Offender Process to an individual who has been found in contravention of the Act.

II. Relevant Legislation

[12] Relevant extracts from the *Canada Border Services Agency Act*, SC 2005, c 38 [CBSA Act], the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, the *Customs Act*, RSC 1985, c 1 (2nd Supp), the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] and the Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412 are reproduced in Appendix "A" to this Judgment and Reasons.

III. Issues

A. *Position of the Parties*

[13] In initially advancing this judicial review application, Mr. Dhillon took the position that CBSA lacked jurisdiction to subject him to the Previous Offender Process and that the mandatory referrals to secondary examination violated his section 10 rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. The applicant's written submissions did not address the *Charter* argument and in oral submissions counsel for the applicant advised that Mr. Dhillon is not pursing arguments relating to either the *Charter* or CBSA's jurisdiction to create and implement the Previous Offender Process. Mr. Dhillon also did not take issue with CBSA recording the history of its interactions with him into the ICES. Nor did he take issue with a

BSO, at the point of entry, complying with a system generated mandatory referral to secondary examination.

[14] Instead the applicant's arguments focused on the manner in which CBSA subjected him to the Previous Offender Process. The applicant maintains that CBSA's implementation of the Previous Offender Process constitutes a fettering of discretion, a breach of procedural fairness, and is contrary to the applicant's legitimate expectations. The applicant submits that this application is not challenging the policy reflected by the Previous Offender Process but rather the manner in which CBSA applied the policy to him. The applicant's issue is with the decision to enter him into the system in the first place.

[15] The respondent takes the position that the Previous Offender Process is an administrative consequence arising from Mr. Dhillon's admitted Contravention, that there is no decision for this Court to review and as such there is no discretion to fetter nor has there been a denial of procedural fairness.

B. *Issues to be Addressed*

[16] The application requires that I address the following issues:

1) Is there a decision or matter to review?

2) What standard of review applies?

3) What are the consequences of subjecting the applicant to the Previous Offender Process?

4) If the applicant is successful, what is the appropriate remedy?

IV. Analysis

A. *Issue 1 – Is there a Decision or matter to review?*

[17] The respondent submits that CBSA, in advancing its mandate under section 5 of the CBSA Act to manage risk while facilitating the flow of goods through Canada's borders relies on a variety of indicators to identify which travellers will be subject to a full examination and which will benefit from an abbreviated examination on entry. This is reflected in a policy framework that automatically places individuals who have previously contravened the Act or other statutes administered by CBSA into a class that will be selected for full examination on a specific proportion of their entries into Canada. The respondent further submits that within this framework the only decision made in respect of the applicant was to find that he contravened section 12 of the Act, a fact that the applicant concedes. No specific or individual decision was made to subject the applicant to the Previous Offender Process.

[18] The respondent further argues that as the Previous Offender Process does not involve the exercise of discretion, the applicant's complaint is about the policy underpinning the Previous Offender Process. The respondent argues that other than its legality, a policy decision is not subject to judicial scrutiny on judicial review (*Canadian Assn of the Deaf v Canada*, 2006 FC 971 at paras 75-77, 298 FTR 90 [*Canadian Assn of the Deaf*]; *Moresby Explorers Ltd v Canada (Attorney General)*, 2007 FCA 273 at para 24, 284 DLR (4th) 708).

[19] The applicant argues that he is not seeking a review of the CBSA policy rather he is seeking a review of the decision to apply that policy to him. The applicant argues that the

respondent cannot escape judicial scrutiny of its process simply because it has chosen to remove all discretion within that process through its automation.

[20] While I take no issue with the respondent's position that the grounds upon which government policy can be challenged are limited, this does not, in my view, foreclose consideration of this application.

[21] In order to determine whether or not an application engages questions of policy it is necessary to first properly characterize the circumstances of the dispute (*Smith v Canada*, 2009 FC 228 at paras 30-31, 307 DLR (4th) 395). In this case the applicant's concern arises out of the failure of CBSA to provide him with any notice of the possibility of a more detailed examination upon entry into Canada as a result of the Contravention. The applicant is not seeking a review of CBSA policy but rather seeks a review of the manner in which the Previous Offender Process has been applied in light of the impact that his inclusion in the process has had upon him.

[22] I am further of the view that the absence of a "decision" to capture the applicant in the Previous Offender Process is not determinative of this Court's jurisdiction under the *Federal Courts Act*. In this respect I agree with the view expressed by Justice Anne Mactavish in *Shea v Canada (Attorney General)*, 2006 FC 859 at paras 42-44, 296 FTR 81 where she states:

> [42] The absence of a "decision" is not a bar to an application for judicial review under the *Federal Courts Act*, as Section 18.1 provides the Court with jurisdiction to grant relief to a party affected by "a matter" involving a federal board, commission or other tribunal: *Canadian Museum of Civilization Corp. v. Public Service Alliance of Canada, Local 70396* [2006] F.C.J. No. 884, 2006 FC 703, at para. 47.

> [43] The role of this Court thus extends beyond the review of formal decisions, and extends to the review of "a diverse range of administrative action that does not amount to a 'decision or order', such as subordinate legislation, reports or recommendations made pursuant to statutory powers, policy statements, guidelines and operating manuals, or any of the myriad forms that administrative action may take in the delivery by a statutory agency of a public programme.": *Markevich v. Canada*, [1999] 3 F.C. 28 (QL) (T.D.), at para. 11, reversed on other grounds, [2001] F.C.J. No. 696, reversed on other grounds, [2003] S.C.J. No. 8. See also *Nunavut Tunngavik Inc. v. Canada (Attorney General)* [2004] F.C.J. No. 138, 2004 FC 85, at para. 8.
>
> [44] A wide range of administrative actions have been found to come within the Court's jurisdiction: see, for *example Gestion Complexe Cousineau (1989) Inc. v. Canada (Minister of Public Works and Government Services)*, [1995] 2 F.C. 694; *Morneault v. Canada (Attorney General)*, [2001] 1 F.C. 30 (C.A.), and *Larny Holdings (c.o.b Quickie Convenience Stores) v. Canada (Minister of Health)*, [2003] 1 F.C. 541 (T.D.) .), 2002 FCT 750.

[23] Similarly, in *Canadian Assn of the Deaf* at para 76, Justice Richard Mosely states "Judicial review is not restricted to decisions or orders that a decision maker was expressly charged to make under the enabling legislation. The word "matter" found in section 18.1 of the *Federal Courts Act* is not so restricted but encompasses any matter in regard to which a remedy might be available under section 18 or s-s18.1(3)".

[24] The matter to be reviewed here arises out of CBSA's statutory mandate set out in section 5 of the CBSA Act to provide integrated border services that supports national security and public safety priorities while facilitating the flow of persons and goods through Canada's borders. The respondent stresses that there is an inherent tension between the mandated security and safety responsibilities and the facilitation responsibility resulting in risk management being an inherent part of the CBSA function, and the Previous Offender Process is one such risk

management strategy. The issues raised however relate not to policy itself but the manner in which it has been implemented. This is a "matter" coming within the scope of section 18.1 of the *Federal Courts Act* and is justiciable.

B. *Issue 2 – What is the Standard of Review?*

[25] The applicant raises questions relating to procedural fairness and the fettering of discretion in this application and submits that the correctness standard of review applies. The respondent has not advanced a position on the standard of review instead arguing that in the absence of a decision there is nothing to be reviewed.

[26] The jurisprudence establishes that in considering questions related to the fettering of discretion and breaches of procedural fairness the correctness standard applies (*Okomaniuk v Canada (Minister of Citizenship and Immigration)*, 2013 FC 473 at paras 20-21, 432 FTR 143).

C. *Issue 3 – What are the Consequences of Subjecting the Applicant to the Previous Offender Process?*

[27] This judicial review application turns on whether or not the nature of the consequence resulting from applicant's inclusion in the Previous Offender Process is such that it triggered an obligation upon the respondent to provide the applicant with notice, an opportunity to respond and to maintain the discretion for individual decision makers to consider and reach a determination on the applicant's inclusion in the Previous Offender Process.

[28] The applicant argues in his Amended Notice of Application and written submissions that subjecting him to repeated referrals to secondary examination due to the Contravention constitutes an additional penalty or sanction. In oral submissions the applicant clarified this position arguing that while mandatory referral to secondary examination is not a penalty or sanction, it is a repercussion or consequence which impacts the applicant. The applicant argues that he is singled out from other travellers and is being detained in the physical sense, but not the legal sense, as the secondary examination is conducted. As such the applicant argues the respondent had a duty to provide notice of the potential for more detailed examinations on subsequent entries into Canada and to consider the underlying circumstances of a contravention when determining whether or not to subject him to the Previous Offender Process.

[29] The respondent submits that it is well-established in the jurisprudence that CBSA has the right to conduct a full examination of every traveller seeking to enter Canada. The respondent further submits that the jurisprudence establishes that a full examination includes both the primary and secondary examination undertaken by a BSO. The respondent argues, relying on the evidence of Ms. Lynch, that while CBSA has the right to conduct a full examination of all travellers it does not do so in every case because of the practical challenges this presents in ensuring the efficient movement of goods and people across the border. Instead the CBSA has adopted a risk management strategy at Canada's borders that allows some travellers to undergo a less rigorous examination. However, this risk management policy does not create a right or expectation that any traveller will avoid a full examination upon entry into Canada.

[30] I agree with the respondent. A process that results in an individual's mandatory referral to secondary examination upon entry into Canada, based on a prior contravention by that individual of program legislation which CBSA administers, does not trigger procedural fairness obligations on the part of CBSA. I find support for this conclusion in the jurisprudence, much of which the respondent cited, on the nature of the different types of searches and examinations at the border and ports of entry. Although in that jurisprudence *Charter* rights are at issue, the reasoning on the consequences of primary and secondary examinations apply to the present case.

[31] In *R v Simmons*, [1988] 2 SCR 495 Chief Justice Dickson describes, at paragraph 27, the three categories or types of border searches to which a traveller entering Canada may be subject:

> It is, I think, of importance that the cases and the literature seem to recognize three distinct types of border search. **First is the routine of questioning which every traveller undergoes a port of entry, accompanied in some cases by a search of baggage and perhaps a path or frisk of outer clothing. No stigma is attached to being one of the thousands of travellers who are daily routinely checked in that manner upon entry to Canada and no constitutional issues are raised** [emphasis added]. It would be absurd to suggest that a person in such circumstances is detained in a constitutional sense and therefore entitled to be advised of his or her right to counsel. The second type of border search is the strip or skin search of the nature of that to which the present appellant was subjected, conducted in a private room, after a secondary examination and with the permission of a customs officer in authority. The third and most highly intrusive type of search is that sometimes referred to as the body cavity search, in which customs officers have recourse to medical doctors, the x-rays, to a medics, and to other highly invasive means.

[32] In *Dehghani v Canada (Minister of Employment and Immigration)*, [1993] 1 SCR 1053 at paras 38-39 [*Dehghani*], Justice Iacobucci, writing for a unanimous Supreme Court of Canada explained that the first type of border search or examination described in *Simmons* encompasses

both the primary and secondary examination that a traveller is subject to undergo upon entry into Canada. This routine examination does not attract any stigma nor, as conceded by the applicant, does it amount to a detention in the Constitutional sense (*R v Jones* [2006] OJ No 3315, at paras 32-37, 81 OR (3d) 481 (CA) [*Jones*]).

[33] Similarly, in *R v Nagle*, 2012 BCCA 373 at para 34, 97 CR (6th) 346 [*Nagle*], Justice Chiasson and Justice Bennett held for a unanimous British Columbia Court of Appeal that:

> In the context of border crossings, routine questioning, the search of baggage and pat-down searches are standard practices, applicable to every ordinary traveller, and is expected and tolerated by anyone wishing to travel internationally. This conduct by border agents does not engage constitutional rights, including detention, the right to counsel or a reasonable expectation of privacy.

[34] It is clear that the jurisprudence does not distinguish between initial routine questioning that a traveller is subjected to on an initial screening and the baggage and pat-down search that occurs in a secondary examination (*R v Darlington*, [2011] OJ No 4168 at para 75, 97 WCB (2d) 370 (Sup Ct)). These are two parts of the first category of examination identified in *Simmons*. The jurisprudence demonstrates that a secondary examination within the framework of the first category of search does not attract or engage a different set of factors for legal analysis or consideration (*Dehghani* at paras 38-39; *Jones* at paras 32-36).

[35] In *R v Hudson*, [2005] OJ 5464 at paras 34-35, 77 OR (3d) 561 (CA) [*Hudson*] the Ontario Court of Appeal considered the impact of an automatic referral to secondary examination of persons refused entry to the United States. Citing *Dehghani*, the Court concluded

that an automatic referral to secondary examination arising out of that policy does not remove that examination from the first category of search set out in *Simmons*:

> [35] It is important to note that secondary inspection, in this context, does not remove it from the first category of search set out in *Simmons*. Iacobucci J. in *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053 at 1073 had this to say about a secondary inspection in the context of the *Immigration Act*, R.S.C., 1985, c. I-2:
>
> > [I]t would be unreasonable to expect the screening process for all persons seeking entry into Canada to take place in the primary examination line. For those persons who cannot immediately produce documentation indicating their right of entry, the screening process will require more time, and a referral to a secondary examination is therefore required. There is, however, no change in the character of the examination simply because it is necessary for reasons of time and space to continue it at a later time in a different section of the processing area. The examination remains a routine part of the general screening process for persons seeking entry to Canada.

[36] In summary the jurisprudence establishes that: (1) the first category of border search or examination is comprised of two components, primary and secondary examinations (*Simmons* at para 27; *Dehghani* at paras 38-39); (2) these components are "standard practices, applicable to every ordinary traveller" (*Nagle* at para 34); (3) a first category border examination does not engage constitutional rights, the right to counsel or a reasonable expectation of privacy; (4) a secondary examination within the first category does not attract or engage a different set of factors for legal analysis or consideration; and (5) that a mandatory referral to secondary examination arising out of a practice or policy does not remove it from the first category of border search described in *Simmons* (*Hudson* at paras 34-35).

[37] Referral to secondary examination as a result of the Previous Offender Process does not constitute an additional sanction, penalty or legal consequence.

[38] In the circumstances of this case, I am unable to conclude that the consequence Mr. Dhillon complains of, a consequence that is a standard practice and applicable to all travellers, imposes any procedural fairness obligations upon CBSA (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 20 [*Baker*]). CBSA has implemented the Previous Offender Process to strike a balance between the competing goals in discharging its statutory mandate under section 5 of the CBSA Act to support national security and public safety while at the same time facilitating the free flow of persons and goods. Relying on prior contraventions of program legislation which CBSA administers and enforces under paragraph 5(a) of the CBSA Act in pursuit of this objective is both rational and connected to the CBSA mandate.

[39] In addition, the evidence also demonstrates that the Previous Offender Process is intended to enhance the efficiency of the examination process at points of entry by automating some of the processes an experienced BSO would follow if they had the opportunity to fully review the history of individuals seeking to enter Canada (Cross-examination of Dawn Lynch on her Affidavits, Applicant's Application Record, Volume I, Tab 8 at page 282).

[40] The Previous Offender Process essentially functions as part of CBSA's institutional memory. Its automation does not constitute a fettering of discretion because the process does not lead to automatic referrals to secondary examinations upon every attempted entry into Canada.

Instead, the Previous Offender Process is designed to recognize future consistent compliance by decreasing the frequency of mandatory secondary examinations, presumably on the basis that compliance reflects a reduction in risk. This continued reduction in the frequency of automatic referrals through the Previous Offender Process demonstrates the latter's function as institutional memory: the longer Mr. Dhillon complies with the Act, the less likely that system will remember his Contravention at the time of Mr. Dhillon's entry into Canada.

[41] While there is no doubt that the applicant subjectively views the inconvenience of frequent referrals for secondary examination as a significant negative consequence, that subjective view is not objectively sustainable in the context of port of entry examinations.

[42] The applicant also takes issue with the lack of notice of the consequence in light of his specific request for information about the immigration and customs consequences at the time of the Contravention. The respondent notes that the applicant was not misled by the BSO since he specifically asked about consequences flowing from the payment of the fine as opposed to the commission of the Contravention.

[43] It would have been preferable had the BSO advised Mr. Dhillon that he may be subject to a more detailed examination upon entry as a result of the Contravention. Yet this information is set out in the publicly available CBSA publication entitled "**I Declare: A guide for residents of Canada returning to Canada**" and is accessible on the CBSA website. It states "A record of infractions is kept in the CBSA computer system. If you have an infraction record, you may have to undergo a more detailed examination on future trips. You may also become ineligible for

NEXUS and CANPASS programs" (Exhibit D to the Affidavit of Dawn Lynch, Applicant's Application Record, Volume I, Tab 6D at page 151). Moreover, the answer provided by the BSO is irrelevant to the consequence, in that it is the Contravention itself not the payment of the fine that led to Mr. Dhillon being included in the Previous Offender Process. As noted Mr. Dhillon has not disputed the fact of the Contravention.

[44] In light of my conclusions there is no need to address the question of remedy.

V. Costs

[45] The parties advised in oral submissions that they have agreed to a global costs award of $5000 inclusive of disbursements.

VI. Conclusion

[46] The subjection of the applicant to the Previous Offender Process as a result of his Contravention of section 12 of the Act and in turn his mandatory referrals for secondary examination is reviewable by this Court. However, the consequences arising out of CBSA's actions in these circumstances do not engage rights, privileges or interests that impose procedural fairness obligations upon the respondent (*Baker* at para 20). Nor, based on the circumstances of this case, does Mr. Dhillon's inclusion in the Previous Offender Process constitute a fettering of CBSA's discretion.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed with costs to the respondent in the amount of $5000.

"Patrick Gleeson"

Judge

Appendix A

Canada Border Services Agency Act, SC 2005, c 38 (CBSA Act), paragraph 5(1)(a) and subsection 12(1):

5.(1) The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation, by	5. (1) L'Agence est chargée de fournir des services frontaliers intégrés contribuant à la mise en œuvre des priorités en matière de sécurité nationale et de sécurité publique et facilitant le libre mouvement des personnes et des biens — notamment les animaux et les végé- taux — qui respectent toutes les exigences imposées sous le régime de la législation frontalière. À cette fin, elle :
(a) supporting the administration or enforcement, or both, as the case may be, of the program legislation;	a) fournit l'appui nécessaire à l'application ou au contrôle d'application, ou aux deux, de la législation frontalière;
[…]	[…]
12. (1) Subject to any direction given by the Minister, the Agency may exercise the powers, and shall perform the duties and functions, that relate to the program legislation and that are conferred on, or delegated, assigned or transferred to, the Minister under any Act or regulation.	12. (1) Sous réserve des instructions que peut donner le ministre, l'Agence exerce les attributions relatives à la législation frontalière qui sont conférées, déléguées ou transférées à celui-ci sous le régime d'une loi ou de règlements.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17:

2. The definitions in this section apply in this Act.	2. Les définitions qui suivent s'appliquent à la présente loi.

"Centre" means the Financial Transactions and Reports Analysis Centre of Canada established by section 41.
"President" means the President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act*.

[…]

12. (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

[…]

(5) The Canada Border Services Agency shall send the reports they receive under subsection (1) to the Centre. It shall also create an electronic version of the information contained in each report, in the format specified by the Centre, and send it to the Centre by the electronic means specified by the Centre.

[…]

18. (1) If an officer believes on reasonable grounds that subsection 12(1) has been

«Centre» Le Centre d'analyse des opérations et déclarations financières du Canada constitué par l'article 41.
« président » Le président de l'Agence des services frontaliers du Canada, nommé en application du paragraphe 7(1) de la *Loi sur l'Agence des services frontaliers du Canada*.

[…]

12. (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.

[…]

(5) L'Agence des services frontaliers du Canada fait parvenir au Centre les déclarations recueillies en application du paragraphe (1) et établit, dans la forme prévue par le Centre, une version électronique des renseignements contenus dans chaque déclaration qu'elle transmet au Centre par les moyens électroniques prévus par celui-ci.

[…]

18. (1) S'il a des motifs raisonnables de croire qu'il y a eu contravention au paragraphe

contravened, the officer may seize as forfeit the currency or monetary instruments.

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the Criminal Code or funds for use in the financing of terrorist activities.

[…]

20. If the currency or monetary instruments have been seized under section 18, the officer who seized them shall without delay report the circumstances of the seizure to the President and to the Centre.

[…]

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may, within 90 days after the date of the seizure, request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice to the Minister in writing or by any other means satisfactory to the Minister.

12(1), l'agent peut saisir à titre de confiscation les espèces ou effets.

(2) Sur réception du paiement de la pénalité réglementaire, l'agent restitue au saisi ou au propriétaire légitime les espèces ou effets saisis sauf s'il soupçonne, pour des motifs raisonnables, qu'il s'agit de produits de la criminalité au sens du paragraphe 462.3(1) du Code criminel ou de fonds destinés au financement des activités terroristes.

[…]

20. L'agent qui a saisi les espèces ou effets en vertu de l'article 18 fait aussitôt un rapport au président et au Centre sur les circonstances de la saisie.

[…]

25. La personne entre les mains de qui ont été saisis des espèces ou effets en vertu de l'article 18 ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander au ministre au moyen d'un avis écrit ou de toute autre manière que celui-ci juge indiquée de décider s'il y a eu contravention au paragraphe 12(1).

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412

(*Reporting Regulations*):

18. For the purposes of subsection 18(2) of the Act, the prescribed amount of the penalty is	18. Pour l'application du paragraphe 18(2) de la Loi, le montant de la pénalité est de :
(a) $250, in the case of a person or entity who	a) 250 $, si la personne ou l'entité, à la fois :
(i) has not concealed the currency or monetary instruments,	(i) n'a pas dissimulé les espèces ou effets,
(ii) has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and	(ii) a divulgué tous les faits concernant les espèces ou effets au moment de leur découverte,
(iii) has no previous seizures under the Act;	(iii) n'a fait l'objet d'aucune saisie antérieure en vertu de la Loi;
(b) $2,500, in the case of a person or entity who	b) 2 500 $, si la personne ou l'entité :
(i) has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or who has made a false statement with respect to the currency or monetary instruments, or	(i) soit a dissimulé les espèces ou effets, autrement qu'en se servant de faux compartiments dans un moyen de transport, ou a fait de fausses déclarations relativement aux espèces ou effets,
(ii) has a previous seizure under the Act, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments; and	(ii) soit a fait l'objet d'une saisie antérieure en vertu de la Loi pour une raison autre que celle d'avoir dissimulé des espèces ou effets ou d'avoir fait de fausses déclarations relativement à des espèces ou effets;

(c) $5,000, in the case of a person or entity who	c) 5 000 $, si la personne ou l'entité :
(i) has concealed the currency or monetary instruments by using a false compartment in a conveyance, or	(i) soit a dissimulé les espèces ou effets en se servant de faux compartiments dans un moyen de transport,
(ii) has a previous seizure under the Act for any type of concealment or for making a false statement with respect to the currency or monetary instruments.	(ii) soit a fait l'objet d'une saisie antérieure en vertu de la Loi pour avoir dissimulé des espèces ou effets ou pour avoir fait de fausses déclarations relativement à des espèces ou effets.

Customs Act, RSC 1985, c 1 (2nd Supp):

11. (1) Subject to this section, every person arriving in Canada shall, except in such circumstances and subject to such conditions as may be prescribed, enter Canada only at a customs office designated for that purpose that is open for business and without delay present himself or herself to an officer and answer truthfully any questions asked by the officer in the performance of his or her duties under this or any other Act of Parliament.	11. (1) Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions prévues par règlement, toute personne arrivant au Canada ne peut y entrer qu'à un bureau de douane, doté des attributions prévues à cet effet, qui est ouvert, et doit se présenter sans délai devant un agent. Elle est tenue de répondre véridiquement aux questions que lui pose l'agent dans l'exercice des fonctions que lui confère la présente loi ou une autre loi fédérale.

Federal Courts Act, RSC 1985, c F-7:

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en

première instance, pour :

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

[…]

[…]

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[…]

[…]

(3) On an application for judicial review, the Federal Court may

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont

to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

[…]

(f) acted in any other way that was contrary to law.

il a retardé l'exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

[…]

f) a agi de toute autre façon contraire à la loi.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-794-14
STYLE OF CAUSE:	NAVJEET SINGH DHILLON v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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APPEARANCES:

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