Date: 20071206

Docket: T-2032-06

Citation: 2007 FC 1286

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, December 6, 2007

PRESENT: The Honourable Madam Justice Johanne Gauthier

BETWEEN:

THI THUY NGUYEN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Thi Thuy Nguyen is seeking to have the Court review the lawfulness of a decision made by the delegate of the Minister of Public Safety and Emergency Preparedness[1], which confirms the final forfeiture of the undeclared currency (CAD$25,400.00 and USD$7,060.00) seized at Pearson International Airport in Toronto on July 25, 2005, pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act).

[1] At the hearing following an uncontested oral motion, the Court amended the style of cause to replace the Attorney General with the Minister of Public Safety and Emergency Preparedness.

Background

[2] In July 2005, Ms. Nguyen, her spouse, Van The Tran, and their five children were planning a vacation in Vietnam[2]. When they arrived at Pearson Airport to board their flight, a customs officer asked Mr. Tran if he or any member of his family was in possession of currency of a value equal to or greater than $10,000.00. Mr. Tran answered no.

[3] According to the official reports of the various customs officers who were present during the incident, Mr. Tran was apparently asked to present all of the currency in his family's possession. Mr. Tran handed over his wallet and stated that his wife also had some currency. The applicant, to whom the officer repeated the question, took out a billfold from her bag that contained a wad of banknotes. The officer subsequently found other envelopes that contained currency in her bag. When she was asked if she had more, the applicant responded by shaking her head. The officer subsequently asked the applicant's husband to translate the question to ensure that she fully understood. After they repeated that they did not have any other currency, the officer asked if Ms. Nguyen had any money under her clothes, especially near her waist. At that point, the applicant took another wad of banknotes out from what appeared to be a pocket inside her undergarments.

[4] Once again, the officer asked whether they had any other currency, and he was told that they did not. The officer then specifically asked whether the children had money in their bags. Mr. Tran, after speaking with the applicant in Vietnamese, responded that they did not. Nonetheless, the

[2] The applicant's flight made an initial stop in Hong Kong.

officer decided to search the bag of one of the daughters and found another folder containing $10,000.00. This amount was eventually handed back to the family to cover their travel expenses[3].

[5] The officers went on to ask the applicant and her spouse a few questions to obtain further details about the origin of this currency and their income. Mr. Tran stated that only $20,000.00 belonged to the couple. According to him, it was savings generated from the operation of their nail salon. Mr. Tran also stated that the currency was issued by the bank but that he did not have a receipt. He then corrected himself and stated that some of the money had actually been kept at their home.

[6] The rest of the money was reportedly from the couple's family and friends, who wanted to send money to their families in Vietnam. In this regard, Mr. Tran handed over a sheet listing the total amount of money received from his family (names and amounts). However, that list accounted for only $2,750.00. When confronted about this, Mr. Tran stated that the rest was from friends.

[7] Given that the applicant and her spouse reported a total income of $20,000.00 (for the couple) per year and that they had recently purchased a house for which they had paid an amount in excess of $85,000.00 ($245,000.00 x 35 percent) and also that the monthly payments for their mortgage and one of their cars amounted to $1650.00, the officer asked them further questions to determine how they had been able to pay for the seven plane tickets required for their vacation. The applicant's spouse stated that a friend had paid for them on his American Express card.

[3] One hundred $100 bills.

[8] The customs officers also reported that Ms. Nguyen and her spouse were rather evasive as they were questioned. They even declined to provide the contact information for their nail salon and to confirm the name of the friend who had paid for the plane tickets.

[9] Ms. Nguyen and her spouse were subsequently advised that the currency would be seized for failure to report (section 12 and subsection 18(1) of the Act) and that it would be forfeited without possibility of its return (subsection 18(2) of the Act). Officer Tone gave them an information booklet and informed them of their right to dispute the seizure. The applicant and her family chose not to wait for an official receipt to be issued. They left for their month-long vacation, satisfied with the promise that the official receipt would be mailed to them.

[10] The wads of banknotes were counted and amounted to 242 $100 bills, 47 U.S. $100 bills, 25 $50 bills, 46 U.S. $50 bills, and three U.S. $20 bills, totalling $25,400 and USD$7,060.00.

[11] When this currency was passed through an ion scanner, significant traces of drugs were found on one of the wads. Lastly, Officer Tone received a call from the Canadian Police Information Centre confirming that Mr. Tran was listed in their records.

[12] Pursuant to section 19.1 of the Act, the customs officers involved prepared a written report that described the events surrounding the seizure made under subsection 18(1) of the Act.

[13] On August 30, 2005, counsel for the applicant (who stated that he was representing Mr. Nguyen) wrote to Terminal 1 of Pearson Airport, indicating that he was mandated to dispute the

seizure and that transporting the money of Canadian friends to their families in Vietnam is a Vietnamese custom. Although his letter states that letters from the family were attached to corroborate this statement, nine small notecards (2½" x 3") were found in it instead, most of which (eight) were written by the applicant. They contain the following information and are signed by Ms. Nguyen and the other persons involved[4]:

> [TRANSLATION] "I, Thi Thuy Nguyen, received the sum of (X) from (name of sender), on July (X), 2005, to be sent to (person's name) in Vietnam."
>
> _____ _____
> Ms. Nguyen Signature of sender

[14] The total of the sums written on these notes amounts to over $28,000.00[5] and USD$6,000.00. It therefore seems that this version of the facts also differs from the original version the applicant gave at Pearson Airport to the effect that a total of $20,000.00 belonged to them personally.

[15] On September 9, 2005, the Seizures Unit of the Canada Border Services Agency informed Ms. Nguyen that the Adjudications Division was responsible for her case and that an officer would contact her soon. On September 23, 2005, Ms. Nguyen was informed that her application for review had been received, and she was given the name of the adjudicator assigned to her case (Marc Gobeil) and his contact information, including his phone number. She was also informed that, after receiving an initial letter from Mr. Gobeil explaining the reasons for the seizure, she would have time to present more information to support her application.

[4] All of the notes are dated between July 14 and 22, 2005.
[5] The amount written on one of the notes dated July 20 (Hoang Van Viet) is illegible.

[16] That letter was followed by a letter from Marc Gobeil dated September 29, 2005, in which he explains the reasons for the seizure made under subsection 18(1), as follows: the failure to report currency equal to or greater than $10,000.00 and the discovery of this currency after the applicant had denied having it in her possession, concealed on her person ($10,000.00), in her bags ($9,000.00), in her purse ($6,400.00 and USD$7,060.00) and in her daughter's bag ($10,000.00). Mr. Gobeil informed the applicant that she had 30 days to provide any additional documents or information that she considered helpful in making a decision in her case.

[17] The applicant chose not to provide any additional information, and Adjudicator Gobeil prepared a summary of the facts in the case based on the various reports made by the customs officers involved and the correspondence that had already been received from the applicant. That document is entitled "Case Synopsis and Reasons for Decision". The adjudicator states that the evidence on file establishes that the applicant failed to comply with the obligation to report the currency, in violation of subsection 12(1) of the Act, and that the customs officer provided sufficient evidence to support the suspicions that this currency was proceeds of crime. This evidence is described as follows:

- Traveling across an international border with a large sum of money
- The money was not declared
- Currency concealed on person, in a carry on, in diaper
- Contradicting statements
- $10,000 in small child's purse
- Tran and Nguyen reported $20,000 on income taxes last year combined
- They were traveling with equivalent of one years income in cash for one trip
- Minimal income between two people
- Both parties work in a nail salon
- Indicated they earned the money at the nail salon
- When asked if he had a withdrawal receipt, he said no

- Recently purchased house for $245,000 with 35% down
- Tran indicated that only $20,000 of the money belonged to him
- Balance of money was given to him by friends and family
- Had a breakdown of cash given to him from people but only totaled $2,750
- The family's airline tickets were purchased by a friend
- Asked if this friend had given him any money, Tran was avoiding answering and kept changing the subject
- CPIC positive
- Contradicting statements

He concludes the following: "Be it decided that: [TRANSLATION] under section 29 of the [Act] the currency or monetary instruments be seized as forfeit." This report was initialed on February 22, 2006, by Jean-Marc Dupuis, the Senior Program Advisor.

[18] On February 24, 2006, Mr. Proceviat, the manager of the Recourse Directorate, informed Ms. Nguyen of the Minister's decision, namely to confirm the seizure and forfeiture of the currency [TRANSLATION] "without terms of release." The succinct reasons provided in that letter will be described later in the analysis of the arguments presented.

Legislative scheme

[19] Sections 18 and 29 of the Act read as follows:

Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000, c. 17	Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes 2000, c. 17
Seizure and forfeiture	Saisie et confiscation
18. (1) If an officer believes on reasonable grounds that subsection 12(1) has been	18. (1) S'il a des motifs raisonnables de croire qu'il y a eu contravention au

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

Return of seized 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.

If there is a contravention

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,

(*a*) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(*b*) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(*c*) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (*a*) or (*b*) on being informed of it.

Limit on amount paid

(2) The total amount paid under paragraph (1)(*a*) shall, if the currency or monetary instruments were sold or otherwise disposed

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

Mainlevée

(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.

Cas de contravention

29. (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :

a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;

b) soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);

c) soit confirmer la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en est informé, prend les mesures nécessaires à l'application des alinéas *a*) ou *b*).

Limitation du montant versé

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la *Loi sur l'administration des biens saisis*, le montant de la somme versée en vertu de l'alinéa (1)*a*) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais

of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.
2000, c. 17, s. 29; 2006, c. 12, s. 15.

afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.
2000, ch. 17, art. 29; 2006, ch. 12, art. 15.

All other relevant provisions are reproduced in the appendix.

[20] The legislative scheme of the Act regarding seizure and forfeiture for violation of the obligation to report under section 12 of the Act and the effect of these various provisions have been addressed extensively by our Court in a number of recent decisions, such as *Tourki v. Canada (Public Safety and Emergency Preparedness)*, [2006] F.C.J. No. 52; *Hamam v. Canada (Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 940; *Ondre v. Canada (Attorney General)*, [2007] F.C.J. No. 616; *Dupre v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 1177; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, [2007], F.C.J. No. 280; *Yusufov v. Canada (Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 615; *Thérancé v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 136; and *Dag v. Canada (Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 591.

[21] It is unnecessary to add to the complete summary provided by the Federal Court of Appeal in *Tourki*, [2007] F.C.J. No. 685, at paragraphs 23 to 31, but it is worth noting—as the Federal Court of Appeal did, incidentally—that the reporting requirement is the cornerstone of the system established for monitoring cross-border movements of currency and monetary instruments.

[22] Furthermore, while the Act sets out the criterion at subsection 18(2) that must guide customs officers in deciding whether it is necessary to seize as forfeit the currency pursuant to subsection 18(1), the Act does not specify on what basis the Minister must make a decision under section 29. However, the case law seems to state unanimously that the test in subsection 18(2) also applies to the Minister's confirmation under paragraph 29(1)(c), given that the Minister may have access to explanations and evidence that were not before the officer.

[23] Furthermore, unlike the officer, who must record in writing the reasons for the decision to perform a seizure under subsection 18(1), the Act does not impose such an obligation on an officer who performs a seizure under subsection 18(2) or on the Minister.

[24] In her memorandum, the applicant seemed to contest the validity of the Minister's decision to confirm the seizure of the currency under section 27[6]. At the hearing, counsel for the applicant confirmed that only the decision made under section 29, namely the forfeiture without possibility of release, is being disputed in this case. Additionally, the Court notes that, pursuant to subsection 30(1), the Minister's decision under section 27 may be contested only by way of an action (appeal) (*Tourki*, above). For the purposes of this application, the Minister's decision confirming the seizure of the currency is therefore final.

[6] For example, she argued that the officer had not considered her explanations as to why she had concealed the currency (see paragraphs 7 to 14 of the memorandum).

Analysis

[25] In her written representations, the applicant essentially argues that the decision is not well-founded for the following reasons:

i) The Minister's delegate did not have any proof of intent before him, an essential element of the offence set out in subsection 462.31(1) of the *Criminal Code* and a factor to be considered in determining whether the applicant had knowingly violated the Act;

ii) The Minister's delegate did not have any valid argument to support his decision and clearly either disregarded or gave insufficient weight to the applicant's explanations and evidence.

[26] At the hearing, the applicant acknowledged that the offence set out in subsection 462.31(1) of the *Criminal Code* did not pertain to this case. Subsection 18(2) refers instead to subsection 462.3(1) of the *Criminal Code*, which simply defines the expression "proceeds of crime".

[27] Justice Max Teitelbaum noted the following in *Hamam* at paragraph 24:

> "... It is important to recall that the issue before the Court is not whether there are reasonable grounds to suspect that the person who failed to declare the currency has committed a crime but it is whether there are reasonable grounds to suspect that the currency itself is proceeds of crime."

(see, similarly, *Ondre* at paragraph 16; *Dupre* at paragraph 36; *Sellathurai* at paragraph 66; *Yusufov* at paragraph 17; and *Dag* at paragraph 30).

[28] In this regard, the Federal Court of Appeal made it very clear at paragraph 44 of *Tourki*: the forfeiture of seized currency is a civil collection mechanism against a thing (the undeclared currency) and not a proceeding against a person.

[29] Since no charges have been brought against the applicant, the Minister's delegate was not required to examine whether there was proof of *mens rea* (intent) when he made his decision under section 29 of the Act.

[30] Thus, the merit of the application rests entirely on the second argument raised by the applicant. As the Court noted at the hearing, in a judicial review, the Court cannot simply substitute its own analysis of the evidence for that of the decision-maker. This is not an appeal, and the Court reviews decisions based on the standard of review that applies to the issue raised.

[31] Although the applicant does not address this point in detail in her written representations, she submitted[7] that the reasonableness standard applies to the Minister's decision on the merits.

[32] As for the Minister, having carried out a pragmatic analysis, he argues that it is rather the patent unreasonableness standard that applies in this case.

[33] In a number of recent decisions regarding the application of the legal test set out in subsection 18(2) and section 29 of the Act to the specific facts of a case, the judges carried out a

[7] See paragraphs 35 to 37 of the memorandum.

pragmatic and functional analysis and concluded that this question of mixed fact and law is in some cases reviewable on the standard of reasonableness (*Sellathurai* at paragraphs 46–60; *Dupre* at paragraphs 18–23; *Dag* at paragraphs 17–26) and in other cases on the patent unreasonableness standard (*Thérancé* at paragraphs 13–20; *Tourki* at paragraphs 18–25; *Yusufov* at paragraphs 31–42; *Ondre* at paragraphs 35–47; *Hamam* at paragraphs 14–23).

[34] Though their conclusions differ, nearly all of the judges agree on the following points:

i) The Act includes a clear privative clause (section 24). Although it provides for a right to appeal the Minister's decision before the Federal Court under section 27, it does not provide such a right with respect to a decision made under section 29. This suggests that greater deference is required.

ii) Parliament itself established the balance between the public interest and the interests of citizens in adopting the provisions under review. Thus, the Minister's role in this case does not involve a polycentric analysis. This suggests less deference.

iii) The issue of whether, in a particular case, there are reasonable grounds to suspect that the undeclared currency is proceeds of crime is a question of mixed fact and law and suggests a certain level of deference.

[35] It is with respect to the Court's expertise that the judges' analyses differ. In this case, it seems rather clear to me that in assessing factors such as the denomination of the currency, or even the purchase of a ticket by a third party whose contact information the applicant refuses to provide (*Gregory v. Canada*, [2002] F.C.J. No. 523 at paragraph 13), the Minister's delegates at the

Recourse Directorate, who have received special training from the Royal Canadian Mounted Police (*Sellathurai* at paragraph 49), have greater expertise than the Court. This suggests a certain level of deference.

[36] In light of the preceding, the Court is satisfied that it must apply the reasonableness standard to determine whether, in this case, the Minister's decision to confirm the forfeiture contains a reviewable error. For the benefit of the applicant, it is appropriate to reiterate what this standard implies. In *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, the Supreme Court of Canada explained the standard as follows:

> **54** How will a reviewing court know whether a decision is reasonable given that it may not first inquire into its correctness? The answer is that a reviewing court must look to the reasons given by the tribunal.
>
> **55** A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).
>
> **56** This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[37] Since the applicant placed special emphasis on this argument at the hearing, it is first appropriate to examine whether, as she submits, the Minister's delegate disregarded her explanations or failed to give them sufficient weight.

[38] Unless there is evidence to the contrary, decision-makers are presumed to have considered all the material before them (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (FCA)); thus, the mere fact that the delegate did not refer to these explanations in the letter dated February 24, 2006, provides no basis to conclude that the Minister's delegate did not take them into consideration.

[39] Furthermore, it is evident in this case that Adjudicator Gobeil's report was before Mr. Proceviat. A plain reading of the case law indicates that preparing such a document is an integral part of the decision-making process under section 29. On page 4 of his summary, Adjudicator Gobeil specifically and correctly describes Ms. Nguyen's explanations. Furthermore, the structure of the document indicates that the adjudicator first considered the reasons given in the reports and the applicant's explanations before concluding that the officer had submitted sufficient evidence to support the suspicions that the currency was proceeds of crime.

[40] In her written representations, the applicant submits that she did not attempt to conceal the currency to deceive the customs officers, but rather as a precautionary measure to prevent it from being lost or stolen.

[41] In her affidavit in support of the application, the applicant addresses this issue; however, she does not indicate that either the customs officer at the airport or the Minister were provided with such an explanation as part of the application for review. Neither the reports from the customs officers nor the letter dated August 30 make any mention of this explanation, either.

[42] In the context of a judicial review, the Court cannot consider information that was not before the decision-maker. In this case, there is no evidence to suggest that the decision-maker should have considered this explanation.

[43] At the hearing, the applicant insisted on the fact that neither she nor her spouse fully understand English or French. Once again, there was no evidence or allegation to this effect before the Minister's delegate. Even the applicant's most recent affidavit does not address it. The applicant and her husband are Canadians. They have been living and working in Canada for years. There is no indication that they expressed the need for an interpreter at the airport. Furthermore, it is clear that the officers gave Mr. Tran the time and the opportunity to translate their questions and discuss them with the applicant.

[44] Thus, this explanation is hardly plausible with respect to the failure to report the currency in her daughter's bag, since the applicant was given many opportunities to report all the currency the family was carrying.

[45] This alleged language-related problem cannot explain the contradictions between the explanations that were actually provided by the applicant and her spouse with respect to the origin

of the currency ($20,000.00 in savings) and the documents that were provided in August indicating that nearly the entire sum seized had been given to them by third parties.

[46] The language problem also cannot explain why, after having consulted a legal advisor in August, and even afterward, as part of the review, she did not provide the Minister with more detailed explanations supported by one or more sworn statements containing more specific information on her relationships with the various third parties who were presumably involved, how they had obtained the currency, and why the members of her community do not use the banking system to transfer such considerable sums.

[47] Under the circumstances, and considering the content and lack of probative value of the limited explanations and evidence the applicant provided on August 30, 2005, the applicant failed to discharge the burden of convincing the Court that the Minister's delegate did not consider her explanations.

[48] The task that remains is to consider whether the reasons support the decision.

[49] However, before addressing this final point, we must first consider the brief reasons provided in the letter dated February 24, 2006.

[50] As I stated above, Mr. Proceviat endorsed Adjudicator Gobeil's conclusion. First, he states the following in his letter: [TRANSLATION] "A forfeiture without terms of release aligns with the Agency's guidelines." The Court's understanding is that, according to the Minister's delegate, the

customs officer who carried out the forfeiture complied with the test set out in the Act, namely the existence of reasonable grounds to suspect that the currency is indeed proceeds of crime.

[51] The Minister's delegate goes on to state: [TRANSLATION] "In this case, there are reasonable grounds to believe that the money was proceeds of crime. These grounds include employment inconsistent with the funds transported, the concealment of the money, the availability of electronic funds transfers and the denominations of the currency seized."

[52] Though the applicant did not raise this issue in her written or oral representations, the Court invited the parties to specify whether they thought the reference in the letter to [TRANSLATION] "reasonable grounds to believe" (subsection 18(1)) rather than to [TRANSLATION] "reasonable grounds to suspect" (subsection 18(2)) could have any effect on the validity of the decision in this case. This point did not generate any controversy, and the Court is satisfied that the answer is no. Firstly, as the Supreme Court of Canada states at paragraph 49 of *R. v. Monney* [1999] 1 S.C.R. 652, S.C.J. No. 18, the existence of reasonable grounds to suspect is a standard that can be viewed as being less stringent than reasonable and probable grounds to believe, even though it is included within that standard.

[53] Secondly, as I stated earlier, Adjudicator Gobeil refers very clearly to the test in subsection 18(2), and the Minister's delegate notes that the forfeiture is consistent with the Agency's guidelines.

[54] In his comments on the reasonableness of the grounds, the Minister refers not only to the four factors described in the letter dated February 24, 2006, but also to those listed by Adjudicator Gobeil to justify confirming the forfeiture (see paragraph 17 above).

[55] He submits that the list in the letter dated February 24, 2006, is not exhaustive because Mr. Proceviat uses the word [TRANSLATION] "included"[8] and that, in light of the Supreme Court of Canada's remarks in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, S.C.J. No. 39, particularly at paragraph 39, Mr. Proceviat's letter must be read jointly with Adjudicator Gobeil's report, which—as the title indicates—provides reasons for the decision.

[56] In a context that is more similar to the one before the Court in this case, the Federal Court of Appeal affirmed at paragraphs 36 to 39 of *Canada (Attorney General) v. Sketchley*, [2005] F.C.J. No. 2056, that the investigator's report containing the recommendation to the Human Rights Commission could be considered to be part of the Commission's reasons during the judicial review when the Commission adopts the investigator's recommendation and provides succinct reasons.

[57] Furthermore, thus far the Court has not hesitated to refer to the synopsis prepared by the adjudicator as part of the judicial review of decisions made by the Minister's delegates under section 29 of the Act.

[58] The Court is satisfied that it must also consider the adjudicator's report in its review of the reasons behind the decision made by the Minister's delegate in this case. However, to avoid any

[8] Probably "include".

controversy on this matter, the Court performed a two-stage analysis of the validity of the decision: first in light of all the reasons listed in the letter dated February 24 and in Adjudicator Gobeil's report and, second, on the sole basis of the four factors specifically described in the letter dated February 24, 2006.

[59] As the Supreme Court of Canada stated in *R. v. Jacques*, [1993] 3 S.C.R. 312 at paragraph 24, and in *Monney*, cited above, at paragraph 50, the factors considered by the Minister's delegate and which served as a basis for his conclusion must not be assessed separately. It is the cumulative effect of the various factors considered by the decision-maker that must be examined.

[60] After a rather extensive analysis of the case, and in light of the letter dated August 30, 2005, the Court is satisfied that the Minister's delegate had reasonable grounds to suspect that the seized currencies were proceeds of crime and that the reasons put forward support his decision to confirm the forfeiture.

[61] To arrive at this conclusion, and considering the poor quality and inadequacy of the applicant's explanations and evidence, the Court was not even required to consider the scope of the burden of proof that was on the applicant at the time of the Minister's review, and it did not apply the strict test established by the Court in *Sellathurai*.

[62] Even by limiting the analysis to the four factors described in the letter dated February 24, the Court is satisfied that the decision is reasonable.

[63] After having heard all the parties' representations, the Minister offered a discontinuance without costs to the applicant, who refused it. Under the circumstances, the Court has no reason not to award the costs requested by the Minister.

[64] The application is therefore dismissed, with costs.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed, with costs.

"Johanne Gauthier"
Judge

Certified true translation
This 12th day of December 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-2032-06**
STYLE OF CAUSE:	**THI THUY NGUYEN v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 27, 2007
REASONS FOR JUDGMENT AND JUDGMENT:	Gauthier J.A.
DATED:	December 6, 2007

APPEARANCES:

Gerardo Nicolo	FOR THE APPLICANT
Frédéric Paquin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gerardo Nicolo 450-967-9807	FOR THE APPLICANT
Frédéric Paquin 514-496-1065	FOR THE RESPONDENT