Federal Court  Cour fédérale

Date: 20101207

Docket: T-823-08

Citation: 2010 FC 1234

Ottawa, Ontario, December 7, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

DEREK PRUE	**Plaintiff**
and	
THE MINISTER OF PUBLIC SAFETYAND EMERGENCY PREPAREDNESS	**Defendant**

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a simplified action pursuant to section 135 of the *Customs Act*, R.S., 1985, c. 1 (2nd Supp.) ("*Customs Act*"), in which the plaintiff, Derek Prue, appeals a decision by the Minister of Public Safety and Emergency Preparedness ("the Minister") to uphold a notice of ascertained forfeiture requiring payment of a penalty in the amount of $18, 178.61 plus accrued interest relating to the importation of a Ford Expedition vehicle from the United Sates of America.

[2] The Act provides that a person who wishes to appeal such a decision may bring an action in the Federal Court. The parties filed an Agreed Statement of Facts for trial purposes. Mr. Prue

provided affidavit evidence and was cross-examined at the trial hearing in accordance with the simplified action procedure set out in Rules 292-299 of the *Federal Courts Rules*, SOR/98-106, as amended.

BACKGROUND:

[3] On or about January 22, 2001, the plaintiff entered Canada driving a Ford Expedition motor vehicle. The Expedition was leased by himself from the Ford Motor Company through a dealership in Texas. Mr. Prue did not report the vehicle to Canadian customs officers when he reached the border.

[4] On or about October 22, 2001, a member of the Royal Canadian Mounted Police (RCMP) on traffic patrol stopped the plaintiff in the Expedition on a highway. The Ford bore an Alberta license plate that belonged to Mr. Prue's father's vehicle. Mr. Prue says that the Texas plate issued for the vehicle had been stolen and that he had borrowed his father's plate. The theft of the Texas plate had not been reported to the police. The RCMP charged the plaintiff with operating an uninsured motor vehicle on a highway, failing to produce a license upon demand, operating an unregistered motor vehicle, and operating a motor vehicle with an unauthorized license plate.

[5] The vehicle was seized by the RCMP and removed by a towing company. Due to an error, and without authorization, the towing company returned the Expedition to the plaintiff. Mr. Prue says he became aware the following month that the Ford Motor Credit Company was attempting to locate the Expedition to have it returned to the US. He says that he took the truck to the nearest Ford

dealership in Edmonton, Alberta and voluntarily surrendered it. The defendant suggests that the vehicle was seized by the credit company. There is no dispute between the parties that it was returned to the leasing agency in the State of Texas.

[6] In February, 2002 Mr. Prue pleaded guilty and was convicted of operating an uninsured motor vehicle on a highway and operating an unregistered motor vehicle with an unauthorized license plate. He received approximately $2, 600.00 in fines.

[7] On May 8, 2002, and pursuant to section 124 of the *Customs Act*, the plaintiff was personally served with a copy of a notice of ascertained forfeiture ("forfeiture notice"). The notice alleged that "the goods [i.e., the Ford Expedition] were unlawfully imported into Canada and the payment of duties lawfully payable was not made in contravention of Sec 12, 17, and 32 of the Customs Act".

[8] Less than a month later, on June 5, 2002, and pursuant to sections 129(d) and 131 of the *Customs Act*, Mr. Prue filed a notice of appeal to the forfeiture notice requesting a decision of the Minister. He stated that the vehicle in question was not brought into Canada with the intention of keeping it in the country. He claimed that at the time he drove into Canada with the Ford Expedition he was working as a hockey coach in the US, had a residence in the state of Texas and had no reason, at the time, to believe he would not be returning to the US with the vehicle. The vehicle, he stated, was never in Canada for a period longer than six months. Between the entry into Canada and the seizure, he had returned to the US for a month.

[9] A few days after Mr. Prue's appeal notice was received by the RCMP Customs and Excise Section, a copy was faxed to the Customs Collections office in Calgary, Alberta. However, the fax was misplaced and the appeal notice was not brought to the attention of the Recourse Directorate of the Canada Border Services Agency ("CBSA") until December 9, 2005, more than three years later.

[10] On December 13, 2005 the Recourse Directorate mailed the plaintiff a letter acknowledging receipt of his appeal to an address (the "notification address") in Stony Plain, Alberta. Six days later, on December 19, 2005, CBSA sent another letter by registered mail to the notification address providing the reasons for the notice of ascertained forfeiture and affording the plaintiff 30 days to provide any additional information or documentation in relation to his appeal. That letter was returned by Canada Post marked "unclaimed". The letter was re-sent by regular mail on January 20, 2006 to the same address. Mr. Prue lived at the notification address sporadically from 2005 to 2007. He owned the home located at that address from when it was built in 2005 until it was sold in 2007.

[11] On January 24, 2007 the Minister's delegate sent a letter addressed to the plaintiff at the notification address informing him of the dismissal of his appeal. In the Agreed Statement of Facts, the parties have included excerpts of that letter. They read as follows:

> After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, there has been a contravention of the *Customs Act* or the Regulations in respect of the notice that was served, pursuant to section 124.
>
> …
>
> The evidence submitted by the issuing office established that the vehicle is of foreign origin and was not properly reported to Customs and duty paid as required. Therefore, a contravention of section 12 of the *Customs Act* did, in fact, occur.
>
> The evidence indicates that, on October 22, 2001, you were stopped by the R.C.M Police (RCMP). You were driving a Texas-registered vehicle bearing an Alberta license plate that

> belonged to another vehicle. You were unable to satisfy the RCMP that the vehicle was lawfully imported. In addition, a further investigation revealed that, although you claimed that you used an Alberta licence plate because the Texas licence plate had been stolen, this theft was never reported to the police. On this basis, the evidence would indicate that you unlawfully imported the vehicle into Canada. By placing an Alberta licence plate on it, you attempted to conceal its true identity. Although the RCMP initially seized the vehicle, you were able to regain possession of it and unlawfully disposed of it by returning it to Ford. Therefore, it was considered appropriate to issue an ascertained forfeiture, as the vehicle is no longer available for seizure. The penalty at the second level as assessed by the RCMP and the value assessed based on the lease agreement value were considerate [sic] appropriate in determining the penalty.

[12] The decision letter was returned to CBSA because Mr. Prue was not resident at the notification address. In or about January, 2008 Mr. Prue says that he became aware of a "Customs charge" against him in relation to the vehicle. The plaintiff says he wrote a letter to the Canada Customs and Revenue Agency at that time authorizing them to discuss the matter with his counsel. After being contacted by his representative, on February 29, 2008, CBSA sent another copy of the decision letter to Mr. Prue at an address in Alberta Beach, Alberta. In March, 2008 his counsel received copies of the correspondence mailed in 2005 and 2007.

[13] The plaintiff asserts that from June 5, 2002 until January, 2008, when he became aware of the outstanding Customs charge, he received no correspondence or notice relating to the vehicle, to the notice of ascertained forfeiture or to his notice of appeal. He states that from the time he filed his notice of appeal on June 6, 2002 until March 5, 2008, he had not received any notice of the Ministerial Decision nor was he made aware of it at any time prior to March 5, 2008.

[14] On cross-examination at trial, Mr. Prue acknowledged that in his Canadian personal income tax returns for the 2000 to 2002 taxation years he had not declared that he had ceased to be a resident of Canada and had listed his province of residence as Alberta. His explanation was that he

went back and forth across the border, the returns had been prepared by his accountant and he didn't recall ever discussing the question of residence. He filed in Canada in respect of the income earned in this country and in the US on his earnings there.

[15] The amount which the Minister seeks to recover from the plaintiff through the notice of ascertained forfeiture is the assessed value of the vehicle at the time of the notice plus interest accrued from that date; that is from May 8, 2002.

ISSUES:

[16] The issues to be determined are the following:

a. Whether the defendant failed to comply with subsection 131(1) of the *Customs Act*?
b. Whether the defendant breached the rules of procedural fairness or natural justice as a result of any delay on the part of the defendant in rendering his decision on the appeal of the notice of ascertained forfeiture?
c. If (a) or (b) are answered in the affirmative, whether the plaintiff was actually prejudiced and rendered unable to defend himself against the notice of ascertained forfeiture by any delay on the part of the defendant in rendering his decision?
d. Alternatively, whether the defendant's determination that the plaintiff contravened section 12 of the *Customs Act* was reasonable?

ARGUMENT & ANALYSIS:

[17] As outlined by Justice Morris Fish in *Martineau v. Canada (Minister of National Revenue – M.N.R.)*, 2004 SCC 81 at paras. 41-44, ascertained forfeitures under the *Customs Act* involve a four-step administrative process:

> **41** First, under s. 124 of the *CA* [*Customs Act*], a customs officer must have reasonable grounds to believe that a provision of the *CA* has been contravened. Once this precondition has been met, and once it has been established that it would be difficult to seize the goods

> and conveyances related to the customs offence, the officer may demand that the offender pay an amount of money equal to the value of the goods.
>
> **42** Second, the person to whom a notice of ascertained forfeiture applies has 90 days to ask the Minister to review the customs officer's decision (s. 129(1)(*d*) of the *CA*). The Minister then serves notice of the reasons in support of the imposed sanction (s. 130(1) of the *CA*). Within 30 days after notice of the reasons is served, the alleged offender may make submissions and give evidence, in writing, to the Minister (ss. 130(2) and 130(3) of the *CA*).
>
> **43** Third, the Minister decides whether the ascertained forfeiture is valid (s. 131 of the *CA*). This decision "is not subject to review or to be ... otherwise dealt with except to the extent and in the manner provided by subsection 135(1)" (s. 131(3) of the *CA*).
>
> **44** Fourth, and finally, the person who requested the Minister's decision may, within 90 days after being notified of the decision, appeal by way of an action in the Federal Court (s. 135(1) of the *CA*).

[18] The plaintiff submits that the Minister's decision that the Ford Expedition was imported unlawfully and in contravention of section 12 of the *Customs Act* is incorrect in law because the plaintiff never owned the vehicle in question and never had the intention to import it into Canada. Rather, it was leased from, and ultimately returned to, the Ford Motor Company in the United States. The vehicle was only temporarily in Canada at a time when he maintained a residence and was employed as a hockey coach in the United States.

[19] The plaintiff argues that subsequent to requesting the Minister's Decision under section 131 of the *Act* he was not served with written notice of the reasons for seizure, as required by section 130(1) of the *Customs Act*. Thus, he asserts that he was not provided with the statutorily granted right to furnish additional evidence to the defendant in a timely manner to oppose the claims made in the forfeiture notice. As a result of the lengthy delay that followed his request, he has been unable to refute the allegations made against him due to the loss of important evidence. This resulted in a

breach of the statutory and common law duty of procedural fairness owed by the defendant to the plaintiff.

[20] The defendant submits that ownership of the vehicle at the time of importation is immaterial. Section 12(1) of the Act requires the reporting of all goods imported into Canada even if the goods are not owned by the person importing them. This section is consistent with the general scheme of the *Customs Act* to ensure that Customs can control the entry of goods into Canada and determine whether such goods are subject to duties: *Sarji v. Minister of National Revenue* (1999), 174 F.T.R. 1 at para. 40, citing *R. v. Walker* (1980) 51 C.C.C. (2d) 423, 4 W.C.B. 246 at para. 10.

[21] In so far as notice is required, the defendant submits, service of the notice required by sections 130 or 131 of the *Customs Act* is sufficient if sent by registered mail to the person's latest known address, as set out in s.137 of the *Act*. Further, the defendant submits, delay does not constitute a ground for setting aside a decision on the basis of procedural fairness unless it caused significant prejudice to the plaintiff's ability to provide full answer and defence to the administrative action: *Blencoe v. British Columbia*, 2000 SCC 44, [2000] 2 S.C.R. 307 at paras. 101 and 102; *Côté v. Désormeaux* (1990), 49 Admin. L.R. 226, [1990] R.J.Q. 2476 at para. 59; *Marsh v. Royal Canadian Mountain Police Commissioner,* 2006 FC 1466, 305 F.T.R. 303 at para. 27.

[22] The defendant also asserts that time limits for ministerial action under legislation, like the *Customs Act*, are directory in nature rather than mandatory. If there is any remedy to be provided for breach of procedural fairness in this context, it is to compel timely action through mandamus. The plaintiff never sought the Court's assistance to receive the Minister's decision during the delay

period which he could have done through an application for a mandamus order. The plaintiff says that as he had heard nothing further, it was not unreasonable for him to assume that the Minister had decided in his favour.

Did the defendant fail to comply with subsection 131(1) of the Customs Act?

[23] Subsection 131 (1) requires that the Minister must, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide whether the Act or the regulations were contravened in the case of a conveyance with respect to which a notice was served under s. 124. There are two aspects to this requirement: a) the making of a decision that there was a contravention; and b) the decision must be made in a reasonably timely manner.

[24] It is clear from the evidence that the Minister did make a decision. The letter dated December 19, 2005 contains the decision together with written reasons concerning the enforcement action of May 8, 2002. The letter explains why the enforcement action was taken, outlines CBSA's position vis-à-vis the plaintiff's unlawful possession of the vehicle in Canada and includes a plain-language explanation of the relevant portions of the *Customs Act* which led the officer to serve the forfeiture notice in the first place. The letter also attaches a copy of the enforcement agency's Narrative Report to be used by Mr. Prue in responding to the allegations.

[25] The question of timeliness requires some interpretation of the statute. Here there was a three and a half year delay between the submission of the request for a decision and the making of the

decision. It is true that the decision was made rapidly once the request came to light. A further delay was incurred in notifying the plaintiff of the decision but that is attributable, at least in part, to the plaintiff's peripatetic lifestyle and failure to inform the defendant of his current addresses as they changed.

[26] In support of the contention that s. 131 (1) is not mandatory in nature but rather, is directory, the defendant relies on *Ha v. Minister of Public Safety and Emergency Preparedness*, 2006 FC 594, 292 F.T.R. 287 at paras. 18-21. *Ha* concerned the time stipulated for a ministerial decision under section 27(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17. In *Ha*, Justice Barnes distinguished between statutory time limits which apply to the "initiation of a process by which rights are protected or advanced, and other time limits which apply to the progression or completion of that process". He stated that the "strict observance of the former is intended to bring some certainty and finality to the process subject to the review but the directory nature of the latter is simply to ensure that the process, once begun, moves forward with some degree of dispatch".

[27] The object and purpose of the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* are different from those of the *Customs Act*. Such differences make it difficult to rely on *Ha* for the proposition that the language used in 131 of the *Customs Act* is merely directory. But even if *Ha* was to apply by analogy and this Court were to accept that 131(1) is intended to be directory, it cannot be said that a Minister's 3.5 year delay to respond to a request for a decision is consistent with a statutory direction to "move forward with some degree of dispatch". No action

was taken in this matter until the misplaced facsimile copy of Mr. Prue's appeal was discovered in the defendant's offices.

[28] In considering whether the delay was reasonable, it is helpful to draw on the jurisprudence of the Supreme Court of Canada in *Blencoe*, above. Justice LeBel's partial dissent in that case, at paragraph 160, outlines three factors that should be taken into account when assessing the reasonableness of an administrative delay:

> a. the time taken compared to the inherent time requirements of the matter before the particular administrative body, which would encompass legal complexities (including the presence of any especially complex systemic issues) and factual complexities (including the need to gather large amounts of information or technical data), as well as reasonable periods of time for procedural safeguards that protect parties or the public;
>
> b. the causes of delay beyond the inherent time requirements of the matter, which would include consideration of such elements as whether the affected individual contributed to or waived parts of the delay and whether the administrative body used as efficiently as possible those resources it had available; and
>
> c. the impact of the delay, considered as encompassing both prejudice in an evidentiary sense and other harms to the lives of real people impacted by the ongoing delay. This may also include a consideration of the efforts by various parties to minimize negative impacts by providing information or interim solutions. (Emphasis added)

[29] These factors were recently applied by this Court: *Pacific Pants Co. v. (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1050, 335 F.T.R. 114 at para. 50; *Canada (Minister of Citizenship and Immigration) v. Parekh*, 2010 FC 692 at para. 28 and ff.

> (a) The time taken compared to the inherent time requirements of the matter before the particular administrative body

[30] In considering under this heading whether there were any legal or factual complexities that would justify a delay of 3.5 years before communicating an official decision, it cannot be said that the delay was necessary due to any inherent time requirements. The facts of the matter, although disputed, are fairly clear that the Minister was in a position, based on the information the agency had as of 2002, to make the determination that was finally issued on December 19, 2005.

(b) the causes of delay beyond the inherent time requirements of the matter

[31] As the decision letter acknowledged in para. 2, the reason for the delay was because the "letter of appeal was misplaced". It was the responsibility of the Minister to respond in a timely fashion. There is no evidence to suggest that the plaintiff contributed or waived any part of the delay.

(c) the impact of the delay, considered as encompassing both prejudice in an evidentiary sense and other harms to the lives of real people impacted by the ongoing delay

[32] Mr. Prue did not take any steps to follow-up or inquire with the Minister as to the decision taken after he made his initial request. The question of prejudice will be discussed further below.

[33] On the evidence, I am satisfied that the defendant failed to comply with section 131(1) of the *Customs Act*, namely to provide reasons "as soon as is reasonably possible having regard to the circumstances".

Did the defendant breach the rules of procedural fairness or natural justice as a result of the delay in rendering his decision on the appeal?

[34] The defendant is correct to assert that delay in itself does not constitute a ground for setting aside an administrative decision on the basis of procedural fairness. In order for the Court to grant a remedy, the delay must have been unreasonable or inordinate, "…unacceptable to the point of being so oppressive as to taint the proceedings": *Blencoe,* above, at para. 101. It has also been held that as a ground for granting a remedy, delay must prejudice a party's ability to provide a full answer or defense to the opposing party's claims: *Marsh,* above, at para. 27.

[35] Whether the defendant breached the rules of procedural fairness or natural justice as a result of the delay cannot be answered without considering whether the plaintiff was actually prejudiced by the delay.

Was the plaintiff actually prejudiced such that he was unable to defend against the notice of ascertained forfeiture by the delay on the part of the defendant in rendering his decision?

[36] The plaintiff submits that the Minister's decision did not reach him until March 5, 2008. He claims, therefore, that the time between June 5, 2002 and March 5, 2008 is the period that constitutes an unreasonable delay amounting to a breach of natural justice. The letter of reasons was sent to the plaintiff on December 19, 2005 by registered mail. When the letter came back as unclaimed, the defendant re-sent the letter by regular mail on January 20, 2006. The letter was sent to the same notification address. The plaintiff lived at the said address sporadically from 2005 to 2007. The plaintiff also owned the home until 2007 at which point it was sold. Thus, the plaintiff both owned and spent at least some time at the notification address during the time period in which the letter of reasons was mailed.

[37] Section 137 of the Act stipulates that service of notice of the Minister's decision under s. 131 is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at his latest known address: *928412 Ontario Ltd. v. Canada* (1997), 130 F.T.R. 168, [1997] 3 C.T.C. 53 at para. 22; appeal dismissed 234 N.R. 99, 85 A.C.W.S. (3d) 332, application for leave to appeal dismissed, Dec. 2, 1999, [1999] S.C.C.A. No. 83. In the present case, the plaintiff submits that there is no evidence that he had provided the address to which the reasons were sent. But it was his address during the relevant time-frame even if he was not constantly in residence there.

[38] In *Sayers v. Canada (Minister of National Revenue, Excise – M.N.R.)* (1994), 87 F.T.R. 216, 50 A.C.W.S. (3d) 1119, one issue was whether the defendant Minister had properly served the plaintiffs with notice to their correct address. Prothonotary Hargrave found, at paragraph 24, that the defendant mistakenly sent the notice to an incorrect address and that it was within the defendant's power to send the Minister's decision to the proper address. Conversely, in the case at bar, the letter of reasons was sent to the correct address but during a period when the plaintiff was only sporadically residing there. It was within the plaintiff's capacity to have made adequate provisions to have his mail forwarded.

[39] Thus, the period of delay which may have caused the plaintiff prejudice is not from June 5, 2002 until March 5, 2008 as the plaintiff contends. It is from June 5, 2002 until the second letter of reasons was mailed to him on January 20, 2006.

[40] The plaintiff asserts that he could not properly respond to the notice of the Minister's decision by furnishing evidence as contemplated by subsection 130 (2) because of the delay. He

submits that it would have been easier for him in 2002 or 2003 to supply affidavit evidence of his residency status in the US to support the contention that he had no intention to import the vehicle when he brought it across the border. This amounts to little more than a claim that he would have had a better recollection of his comings and goings across the border at that time and could possibly have found some witnesses or documents to support his appeal. But, as he acknowledged on cross-examination, Mr. Prue declared on his Canadian tax returns that he was resident in Canada during the 2001 and 2002 tax years. Thus his Texas residence may be considered temporary and non-domiciliary.

[41] Were it only for the alleged difficulty in reconstructing his movements several years later, I would have difficulty finding that the plaintiff was prejudiced by the Minister's delay. However, the delay clearly worked to his disadvantage in that interest on the assessed value of the vehicle began to run from the date of the ascertained forfeiture, as counsel for the Minister conceded during the hearing. Counsel was unable to tell me what the total amount outstanding was now.

[42] It is correct, as the defendant submits, that the question of quantum is not before this Court and that the plaintiff's remedy against the amount of the penalty assessed against him was to bring an application for judicial review of that decision which he did not do. While I am unable to assess what the quantum of penalty and interest should be, I believe that the Court is entitled to take that factor into consideration in determining whether the plaintiff has been prejudiced. Accordingly, I find that the plaintiff has been prejudiced by the Minister's failure to consider his appeal in a timely manner during a period in which interest on the assessed value of the vehicle was accruing.

Was the defendant's determination that the plaintiff contravened section 12 of the Customs Act reasonable?

[43] Section 12 of the *Customs Act* imposes the obligation to report all goods being imported into Canada. There are certain exceptions but in general, this is the rule. The duty to report is part of the overarching framework of the legislative scheme to enable Customs to control the entry of goods into Canada and to determine whether such goods are subject to duties. As Justice Russell stated at paragraph 50 in *Leasak v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1397, 304 F.T.R. 78:

> It is well-settled that an importer is liable for failing to meet his obligation to account for goods and that the lack of intention on the part of the importer to evade duties and taxes is irrelevant in a seizure proceeding and the validity of a seizure.

[44] The evidence indicates that the plaintiff was maintaining two residences at the time he brought the vehicle into the country, one in Texas and another in Alberta. As counsel for the Minister conceded at the hearing, it is likely that had the plaintiff declared his intention to bring the vehicle into Canada for only a temporary period he likely would have been waived through with little difficulty. But the plaintiff did not do that. He kept the vehicle in Canada for several months during which he made no attempt to declare it, and, when stopped by the RCMP, was operating the vehicle with an Alberta license plate. The plaintiff's explanation that the Texas plate had been stolen is plausible but suspect. The use of the borrowed plate suggests an intent to pass the vehicle off as properly registered in Canada. In those circumstances, notwithstanding the plaintiff's plan to return the vehicle to the lessor in Texas, it was not unreasonable for the defendant to find that the plaintiff breached section 12 of the *Customs Act*.

Conclusion

[45] It is apparent that both parties involved in this matter have not diligently observed their responsibilities. Mr. Prue was obliged to declare the vehicle on bringing it into Canada which he failed to do. In other circumstances, I would have had little difficulty in finding that the seizure and forfeiture of the vehicle or the forfeiture of its assessed value was warranted.

[46] But Mr. Prue was entitled pursuant to s. 131(1) of the *Customs Act*, to receive reasons for the Minister's decision on his appeal of the forfeiture within a time period that is "reasonably possible having regard to the circumstances". That did not happen due to an error on the part of the Minister's officials in misplacing the plaintiff's request for a decision. This caused a three and a half-year delay in providing the plaintiff with reasons for the notice of ascertained forfeiture.

[47] There are no circumstances in this case which justify a delay of three and a half years in making a decision and providing reasons to Mr. Prue. I find that there was a failure to comply with s. 131(1), that Mr. Prue was prejudiced by that failure and was denied natural justice. Consequently, I find in his favour.

[48] In the particular circumstances of this case, I will not award costs to Mr. Prue despite his success in the outcome. As I have found above, the ascertained forfeiture was reasonable. But for the error on the part of the Minister to consider his request to review the forfeiture in a timely manner, Mr. Prue would have been liable for that amount.

JUDGMENT

THIS COURT'S JUDGMENT IS THAT:

1. the plaintiff's appeal is granted;
2. the decision by the Minister of Public Safety and Emergency Preparedness to uphold a notice of ascertained forfeiture requiring payment of a penalty in the amount of $18, 178.61 plus accrued interest is quashed; and
3. the parties shall bear their own costs.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-823-08
STYLE OF CAUSE:	DEREK PRUE and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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