

Federal Court



Cour fédérale

Date: 20130208

Docket: T-577-11

Citation: 2013 FC 143

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 8, 2013

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

GEORGE GUILLAUME

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a Minister's decision by the Director, Appeals Division (the Minister's delegate), dated March 3, 2011, confirming the forfeiture of currency seized by the Canada Border Services Agency (the CBSA) under section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the Act].

[2] For the following reasons, the application for judicial review will be dismissed.

Factual background

[3] George Guillaume (the applicant) is originally from Grenada and has been a Canadian citizen since 1990. The applicant and his spouse have several family members who still live in Grenada, and the applicant has a residence and a bank account there. The applicant lives in Montréal, where he owns a grocery store and two (2) income properties. The applicant alleges that since 2003–2004, he, his spouse and his cousin by marriage have been looking to buy a bus in Grenada for transporting merchandise for his grocery store.

[4] On April 26, 2009, while the applicant was preparing to leave Montréal on a flight to Grenada with a stop in Miami, he was intercepted by the American border authorities because he had failed to report that he was carrying more than \$10,000 in currency with him. After the American authorities refused to let him enter United States territory, he was intercepted and questioned by the Canada Border Services Agency (CBSA), and an officer found approximately \$20,225 in Canadian funds in the applicant's possession, as well as \$270 in American funds and \$130 in East Caribbean funds. The CBSA seized the currency.

[5] On April 28, 2009, the applicant sent the CBSA his notice of opposition under section 25 of the Act. On June 10, 2009, a CBSA adjudicator sent the applicant notice of the circumstances of the seizure, under section 26 of the Act. In this notice, the adjudicator explained to the applicant that the onus was on him to prove that the currency seized from him came from legal

sources. The letter also mentioned that the explanations and documents provided to date appeared to be insufficient to dispel the seizing officer's reasonable grounds to suspect that the funds were the proceeds of crime.

[6] On August 17, 2009, counsel for the applicant sent the CBSA a letter stating that an investigation opened by the Montréal police department (SPVM) had been closed without any charges having been brought against the applicant (Application Record, Tab 10). Furthermore, the assets seized by the SPVM on March 24, 2009, had been returned to him pursuant to an order dated July 3, 2009.

[7] The CBSA sent the applicant a letter dated October 19, 2009, in which the adjudicator stated that evidence of the return of property seized by the SPVM was not relevant to the seizure carried out by the CBSA and that the applicant still had not discharged his burden of eliminating any suspicion that the monies seized by the CBSA were the proceeds of crime.

[8] The CBSA then sent the applicant a letter dated December 8, 2009, setting out the grounds for the seizure, namely: (i) the applicant appeared nervous; (ii) his answers concerning his income were vague; (iii) he stated that he did not know any lawyers, even though he had several lawyers' telephone numbers in his possession; (iv) he related facts and contradicted himself; (v) he was travelling with currency, even though he had a bank account in Grenada; (vi) he had been implicated in a seizure in 2004; (vii) he could not remember in what year his father died; (viii) he claimed that he had not reported the currency because he thought it totalled less than \$10,000 after conversion but later admitted that he had not reported the money because

he thought it was illegal to import an amount equal to or greater than \$10,000 into the United States; and (ix) he could not give any details regarding the seller of the vehicle he claimed to want to buy in Grenada (Application Record, Tab 12).

[9] On November 3, 2010, the applicant sent the CBSA a letter and an affidavit supported by proof of bank withdrawals, specifically, two (2) withdrawals of \$5,000 each from the bank account of the applicant's business in July and November 2007 and three (3) withdrawals by the applicant's spouse from a Canada Savings Bonds account in February 2007 and June and November 2008, for a total of \$10,000. The applicant states that the currency seized at the airport came from these withdrawals, which were then kept in his personal safe at home.

[10] In a letter dated November 19, 2010, the CBSA adjudicator told the applicant that, given the time that had elapsed between the withdrawals and the seizure, she could not establish beyond any doubt a direct link between these withdrawals and the currency seized. According to the adjudicator, given the time that had elapsed between the withdrawals and the seizure, the amounts withdrawn from the bank account of the applicant's business and from his spouse's Canada Savings Bonds account could have been used for other purposes, such as financing the numerous other trips abroad that the applicant had taken in 2008 (Respondent's Record, Tribunal Documents, Exhibit 23).

[11] In an affidavit dated December 2, 2010, the applicant adds that he, his spouse and his cousin by marriage had been planning to buy a bus since 2003–2004 and had been saving up for it since that time. According to the applicant's affidavit, the money had been withdrawn from the

bank account and from the Canada Savings Bond account and had been kept in his personal safe so that they would not spend it. The adjudicator acknowledged receipt of this additional affidavit by letter dated January 11, 2011, but told the applicant that this did not constitute new evidence and that her position remained the same. The adjudicator completed her recommendation to the Minister's delegate on February 21, 2011.

[12] In that recommendation, the adjudicator reiterated the nine (9) grounds for seizure that the CBSA had identified. She rejected four (4) of them, namely (i) the applicant showed signs of nervousness; (ii) the answers concerning his income were vague; (iii) the applicant had been implicated in a seizure in 2004; and (iv) the applicant was unable to say when his father had died. In the adjudicator's opinion, these grounds were either ruled out at the interview or were deemed irrelevant to the offence or acceptable in the circumstances. The remaining grounds for seizure were therefore the following:

- a. The applicant said he did not know any lawyers, but he had several lawyers' business cards in his possession;
- b. The applicant admitted that the RCMP had searched his business and that his currency exchange counter had closed as a result;
- c. The applicant was travelling with money even though he had a bank account in Grenada with a balance of GD\$84,677.19;
- d. The applicant stated that he did not report the seized money because he thought he had less than US\$10,000 in his possession;
- e. The applicant could not give any details regarding the purchase of the minibus in question.

[13] On the basis of the evidence submitted by the applicant, the adjudicator therefore recommended that the seizure be confirmed.

Impugned decision

[14] The decision of the Minister's delegate that is the subject of this application for judicial review is dated March 3, 2011. The Minister's delegate decided, under section 27 of the Act, that subsection 12(1) of the Act had been contravened. Subsection 12(1) of the Act requires that every person report to an officer the exportation of currency of a value greater than \$10,000 (when read together with sections 2 and 3 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [the Regulations], which set the prescribed amount at \$10,000).

[15] Under section 29 of the Act, the Minister's delegate also confirmed the forfeiture of the currency seized pursuant to section 18 of the Act. The Minister's delegate stated that the applicant had failed to present sufficiently detailed credible and independent evidence proving that the seized currency came from legal sources. The Minister's delegate submits that that the withdrawals documented by the applicant, namely, \$10,000 from his spouse's Canada Savings Bonds account and \$10,000 from the bank account of his business, could not be directly linked to the amount seized because they had been made in 2007 and 2008, while the CBSA seized the currency in April 2009. The Minister's delegate found that these withdrawals could have been made for reasons other than the trip to Grenada and the alleged purchase of a bus.

[16] The Minister's delegate also expressed doubt concerning the applicant's explanation regarding the purpose of his visit to Grenada, namely, to buy a bus for his cousin by marriage with so much cash, when he the applicant already had a bank account in Grenada.

[17] The Minister's delegate concluded that the applicant's explanations were not enough to dispel the suspicion that the monies were the proceeds of crime. The Minister's delegate therefore confirmed the forfeiture of the currency.

Issues

[18] The issues in this case are as follows:

- a. Was the decision of the Minister's delegate to confirm the forfeiture of the currency reasonable on the basis of all the evidence?
- b. Was the burden of proof on the applicant impossible to meet?

[19] It is important to note that this application for judicial review deals solely with the decision of the Minister's delegate confirming the forfeiture of the currency under section 29 of the Act.

Statutory provisions

[20] The relevant statutory provisions in this application for judicial review are reproduced in an appendix to this judgment.

Standard of review

[21] The standard of review applicable to a decision made under section 29 of the Act is reasonableness (*Dag v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 95 at para 4, [2008] FCJ no 424 (QL); *Yang v Canada (Minister of Public Safety and*

Emergency Preparedness), 2008 FCA 281 at paras 9, 12-13, [2008] FCJ no 1321 (QL) [*Yang*]; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)* (FCA), 2008 FCA 255, [2009] 2 FCR 576 [*Sellathurai*]). The Court must therefore defer to the Minister's delegate's discretion to confirm the forfeiture of the currency and should intervene only if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

Arguments

[22] The applicant raised several arguments.

[23] He submits that the Minister's delegate relied on erroneous findings of fact and irrelevant evidence or ignored other evidence in assessing the applicant's credibility and justifying the decision. The applicant further submits that, contrary to paragraph 18.1(4)(d) of the *Federal Courts Act*, the Minister's delegate disregarded the material before him.

[24] The applicant submits that the Minister's delegate erred in relying on the fact that he stated that he did not know any lawyers despite having lawyers' telephone numbers in his address book. He states that he had met only one of the three lawyers in person, regarding a civil suit involving an insurance claim. The applicant argues that in incorrectly referring to [TRANSLATION] "several lawyers' business cards" when he only had numbers written in his address book, the adjudicator distorted the facts, thereby undermining the applicant's credibility in the eyes of the Minister's delegate.

[25] The applicant also states that the adjudicator erred in relying on the fact that the applicant thought he had less than \$10,000 in his possession whereas the evidence shows that he immediately admitted that he knew that he was in possession of more than \$10,000 (as appears from the narrative report, Application Record, Tab 5; Tribunal Documents, Exhibit 3, page 3). The applicant argues that this is indicative of his candidness.

[26] The applicant also argues that the adjudicator attached undue importance to the purpose of his carrying money to Grenada, namely, buying a minibus.

[27] The applicant also claims that the Minister's delegate erred in not considering the order to return the items seized in a search carried out on March 24, 2009. The applicant states that this piece of evidence is relevant because the fact that he was the subject of a search in the past had been considered in the grounds for the seizure.

[28] The applicant refers to *Lai v Canada (Minister of Employment and Immigration)*, [1992] FCJ no 906 (CA) (QL), as cited in *Ratheeskumar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1232 at para 5, [2002] FCJ no 1697 (QL), to state that an adverse finding on credibility made on the basis of misconstrued or ignored relevant evidence is unreasonable. According to the applicant, credibility is a particularly important issue in his case. He argues that his sworn statement is the only proof that the funds withdrawn from his business's bank account and his spouse's Canada Savings Bonds account in 2007 and 2008 were put in his safe at home and used for the trip to Grenada in April 2009. Consequently, according to the

applicant, the assessment of his credibility is crucial in this case. The applicant argues that this assessment is not reasonable because a relevant piece of evidence was not considered, namely, the return of the property seized by the SPVM, and because undue importance was attached to irrelevant criteria.

[29] The applicant also submits that the burden of proof imposed on him by the CBSA, that is, proving [TRANSLATION] “beyond any doubt” that the seized currency came from legitimate sources, was so high that it was impossible to meet. The applicant submits that the Act does not refer to such a demanding test. The applicant alleges that this is the test the adjudicator used, as indicated in some excerpts from their correspondence. Since this is the wrong test, the applicant argues that the decision of the Minister’s delegate, which is based on the adjudicator’s reasons, cannot be reasonable.

[30] As for the respondent, he alleges that the discretionary decision of the Minister’s delegate to confirm the forfeiture was reasonable. According to the respondent, the evidence that the applicant presented to the adjudicator does not in any way demonstrate where the seized currency came from, let alone whether its sources are legitimate. The respondent relies on *Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 746 at para 38, [2007] FCJ no 995 (QL) [*Tourki*], to state that the bank documents do not establish the source of the currency and merely show that it was in the applicant’s possession at a given time.

[31] The respondent also notes that according to *Yang*, above, the applicable test is whether the applicant can persuade the Minister’s delegate to exercise his discretion to grant relief from

forfeiture by satisfying him that the seized funds are not proceeds of crime (citing *Sellathurai*, above at para 50).

[32] Regarding the issue of the burden of proof, the respondent acknowledges that the adjudicator used words indicating a more onerous burden but insists that the decision of the Minister's delegate is independent of the adjudicator's recommendation and that the Minister's delegate correctly restated the applicable test by stating the following in his decision letter.

[33] According to the respondent, it was reasonable for the Minister's delegate to conclude that there were reasonable grounds to suspect that the currency found in the applicant's possession are the proceeds of crime, given his vague and contradictory account regarding the source of the currency, as well as the illogical nature of the decision to carry such a large amount of cash when the applicant already had a bank account in Grenada. The respondent argues that the applicant did not present evidence that could have satisfied the Minister's delegate of the funds' legitimate origins. In light of the unproved allegations of savings built up over the years, the vague and undocumented profits and the statements indicating that the withdrawals dated back to 2007 and 2008, whereas the seizure took place in 2009, the respondent submits that it was not unreasonable to confirm the forfeiture.

Analysis

[34] At this stage, it is helpful to bear in mind the legislative framework applicable to the facts of this case. The Act establishes a scheme requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, as stated in

subparagraph 3(a)(ii) of the Act. Part 2 of the Act therefore provides for a currency reporting regime under which importers and exporters of currency must make a written report to a customs officer whenever they import or export currency of a value equal to or greater than the prescribed amount, namely, \$10,000 (subsections 12(1) and (3) of the Act; sections 2 and 3 of the Regulations). The importation or exportation of currency of a value equal to or greater than \$10,000 is not in itself illegal; the Act simply requires that it be reported.

[35] If a report is not made, the currency will be seized pursuant to subsection 18(1) of the Act. Under subsection 18(2), the customs officer must then decide whether there are reasonable grounds to suspect that the currency is proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*, RSC 1985, c C-46. If such grounds exist, the currency cannot be returned. If there are no such suspicions, then the officer must return the currency once a monetary penalty has been paid.

[36] According to sections 23 and 24 of the Act, a forfeiture is effective immediately from the time of the contravention of subsection 12(1), is final and is not subject to review except to the extent and in the manner provided by sections 24.1 and 25 of the Act. Under section 25, a person may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened. According to subsection 26(1) of the Act, the CBSA must serve written notice of the circumstances of the seizure on the person concerned, who has thirty (30) days to furnish any evidence in the matter that they desire to furnish (subsection 26(2) of the Act). The Minister then has ninety (90) days to decide whether subsection 12(1) was contravened, that is, whether no report was made (section 27 of the Act). If the Minister decides

that subsection 12(1) was not contravened, the seized currency is returned (section 28 of the Act). If the Minister decides that subsection 12(1) was contravened, section 29 of the Act applies, and the Minister may return the currency, on payment of a penalty or without penalty; remit any penalty or portion of any penalty; or confirm that the currency is forfeit.

[37] Under section 30 of the Act, a person who has challenged a seizure by requesting a decision under section 27 as to whether there was a failure to make a report may appeal the decision by way of an action in the Federal Court. This action is limited to determining the validity of the decision made pursuant to subsection 27(1), namely, whether there was indeed a contravention of subsection 12(1), the requirement to make a report. The present case is not such an action; it is, rather, an application for judicial review under section 18.1 of the *Federal Courts Act* of the discretionary decision of the Minister to confirm the forfeiture pursuant to section 29 of the Act. Judicial review is the only remedy available to an individual who wishes to challenge a ministerial decision made pursuant to section 29.

[38] The issue to be considered in cases of decisions of the Minister confirming a forfeiture of currency under section 29 of the Act was clearly identified by the Federal Court of Appeal in *Sellathurai*, above at paras 36, 49 and 50:

[36] It seems to me to follow from this that the effect of the customs officer's conclusion that he or she had reasonable grounds to suspect that the seized currency was proceeds of crime is spent once the breach of section 12 is confirmed by the Minister. The forfeiture is complete and the currency is property of the Crown. The only question remaining for determination under section 29 is whether the Minister will exercise his discretion to grant relief from forfeiture, either by returning the funds themselves or by returning the statutory penalty paid to secure the release of the funds.

...

[49] Where the Minister repeatedly asks for proof that the seized currency has a legitimate source, as he did in this case, it is a fair conclusion that he made his decision on the basis of the applicant's evidence on that issue. The underlying logic is unassailable. If the currency can be shown to have a legitimate source, then it cannot be proceeds of crime.

[50] If, on the other hand, the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. The distinction is important because it goes directly to the nature of the decision which the Minister is asked to make under section 29 which, as noted earlier in these reasons, is an application for relief from forfeiture. The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source. . . .

(Emphasis added.)

[39] It is therefore clear that the burden is on the applicant to prove to the Minister's delegate that the currency is not from illegal sources and not on the Minister's delegate to prove that there are reasonable grounds to suspect that the currency is in fact proceeds of crime (see also *Sidhu v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 911 at para 39, [2010] FCJ no 1114 (QL)). It is also important to note that the Minister's decision under section 29 is not a reassessment of the CBSA officer's decision to make the seizure (*Sellathurai*, above, and *Mamnuni v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 736 at para 43, [2011] FCJ no 1108 (QL) [*Mamnuni*]). Once the Minister's delegate confirms

that section 12 of the Act has been contravened, the officer's finding regarding reasonable grounds to suspect that the currency is proceeds of crime is moot, and the forfeiture is fully effected. The Court must therefore determine whether it was reasonable for the Minister's delegate to not be satisfied that the funds came from legitimate sources.

[40] In the present case, the applicant was unable to satisfy the Minister's delegate that the seized funds were not proceeds of crime. He submitted documentary evidence showing withdrawals totalling \$20,000 in 2007 and 2008 but no evidence demonstrating the legitimate origins of these funds, despite the repeated requests of the adjudicators who dealt with his request before making a recommendation to the Minister's delegate.

[41] The applicant's evidence was insufficient to satisfy the Minister's delegate that the money did indeed come from legitimate sources. In *Tourki*, above, the Court stated at paragraph 38 that "the various bank documents provided by the affiants did not in any way establish the origin of the currency. They only establish possession at a certain time".

Furthermore, in *Kang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 798 at para 40, [2011] FCJ no 1006 (QL), the Court stated as follows:

[40] I do not accept the applicant's argument that he is being held to an impossible standard of proof. The evidence submitted by the applicant does not establish the lawful origin of the funds. Although the bank withdrawals of the applicant's uncle and cousin were amounts that could, theoretically, provide for loans to the applicant, there is nothing in the record, apart from their statements, to link those sums of money to that which was ultimately seized at the airport in Calgary. . . .

[42] In the present case, the withdrawals were made more than a year before the currency was seized. The Minister's delegate therefore concluded that this evidence is insufficient to connect said withdrawals to the currency seized at the airport. This is a reasonable conclusion. In *Majeed v Canada (Minister of Public Safety)*, 2007 FC 1082 at para 64, [2007] FCJ no 1394 (QL), the Court stated the following regarding a seizure that had taken place in 2005:

[64] Finally, Mr. Majeed claims that some of the funds came from his personal savings. Mr. Majeed evidently had a bank account in this country, but was unable to produce banking records reflecting his account as a source of the funds. The banking records that he did produce were for the period between 2000 and 2001, and thus the concern of the Minister's delegate with respect to the probative value of this documentation was entirely reasonable.

[43] Evidence of a bank withdrawal was also deemed to be insufficient in the following cases: *Ukaj v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 1047 at paras 12-14, [2012] FCJ no 1144 (QL), and *Chaplin v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 130 at paras 11 and 25, [2012] FCJ no 162 (QL).

[44] The Court notes the distinction made in *Sellathurai*, above at para 50, where it is clearly stated that the Minister's delegate does not have the burden of proving that there are reasonable grounds to suspect that the seized funds are proceeds of crime. Although it was inaccurate to say that the bus was to be bought for the applicant's cousin, or that the applicant was in possession of [TRANSLATION] "lawyers' business cards" when he had actually had telephone numbers noted in his address book, it is nonetheless true that the applicant was travelling with cash when he had a bank account in Grenada, that he was unable to give any details concerning the purchase of the bus and, above all, that he failed to report this money to the border authorities. This omission

imposed on him the burden of satisfying the Minister's delegate that the currency came from legal sources, which he did not succeed in doing. Given the evidence that was subsequently submitted, it was open to the Minister's delegate to conclude that he was not satisfied as to the legitimacy of the currency's origins. As stated above, and in light of the time between the withdrawals and seizure of the currency in April 2009, it was reasonable to conclude that the documentary evidence provided was not necessarily connected with the currency seized by the CBSA. In view of the limited evidence on record, the Court is of the opinion that it was not unreasonable for the Minister's delegate to confirm the forfeiture. The confirmation of the seizure fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*).

[45] As regards the burden of proof, although it has been established that the adjudicator's choice of words in certain items of correspondence was unfortunate, for example, [TRANSLATION] "provide relevant documentation dispelling any doubt that the sum in question comes from proceeds of crime" (Respondent's Record, Vol 1, Tabs 13, 16 and 23), the Minister's delegate correctly restated the test in his decision letter: "You had to demonstrate in sufficient details and with enough credible, reliable and independent evidence that the seized funds came from a legitimate source to the extent that no other reasonable explanation was possible" (Application Record, Tab 2, p 2).

[46] Furthermore, it is important to bear in mind that in *Sellathurai*, above, the Federal Court of Appeal stated the following concerning the burden of proof, at paragraphs 51 and 52:

[51] This leads to the question which was argued at length before us. What standard of proof must the applicant meet in order to

satisfy the Minister that the seized funds are not proceeds of crime? In my view, this question is resolved by the issue of standard of review. The Minister's decision under section 29 is reviewable on a standard of reasonableness. It follows that if the Minister's conclusion as to the legitimacy of the source of the funds is reasonable, having regard to the evidence in the record before him, then his decision is not reviewable. Similarly, if the Minister's conclusion is unreasonable, then the decision is reviewable and the Court should intervene. It is neither necessary nor useful to attempt to define in advance the nature and kind of proof which the applicant must put before the Minister.

[52] On the facts of this case, Mr. Sellathurai put before the Minister evidence which was essentially unverifiable. It was not unreasonable for the Minister to decline to accept this evidence at face value. . . . As a result, I see no basis for intervening and I would dismiss the appeal.

[Citations omitted]

[47] In the present case, the documents supplied by the applicant were not unverifiable, but they were insufficient to link the seized currency to a legitimate source, the withdrawals having been made more than a year before the seizure. The Court finds that, considering all of the evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, [2011] 1 SCR 160; *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65, [2012] SCJ no 65), it is reasonable that the Minister's delegate was not satisfied that the currency seized at the airport came from legitimate sources, given the insufficiency of the evidence submitted by the applicant. The intervention of this Court is unwarranted (*Dunsmuir*).

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed with costs.

“Richard Boivin”

Judge

Certified true translation
Michael Palles

Appendix

The following provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* are relevant to this application for judicial review:

OBJECT OF ACT	OBJET DE LA LOI
<p>Object</p> <p>3. The object of this Act is</p> <p>(a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including</p> <p>(i) establishing record keeping and client identification requirements for financial services providers and other persons or entities that engage in businesses, professions or activities that are susceptible to being used for money laundering or the financing of terrorist activities,</p> <p>(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and</p> <p>(iii) establishing an agency that is responsible for dealing with reported and other information;</p> <p>(b) to respond to the threat posed by</p>	<p>Objet</p> <p>3. La présente loi a pour objet :</p> <p>a) de mettre en œuvre des mesures visant à détecter et décourager le recyclage des produits de la criminalité et le financement des activités terroristes et à faciliter les enquêtes et les poursuites relatives aux infractions de recyclage des produits de la criminalité et aux infractions de financement des activités terroristes, notamment :</p> <p>(i) imposer des obligations de tenue de documents et d'identification des clients aux fournisseurs de services financiers et autres personnes ou entités qui se livrent à l'exploitation d'une entreprise ou à l'exercice d'une profession ou d'activités susceptibles d'être utilisées pour le recyclage des produits de la criminalité ou pour le financement des activités terroristes,</p> <p>(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,</p> <p>(iii) constituer un organisme chargé de l'examen de renseignements, notamment ceux portés à son attention en application du sous-alinéa (ii);</p> <p>b) de combattre le crime organisé en</p>

organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

fournissant aux responsables de l'application de la loi les renseignements leur permettant de priver les criminels du produit de leurs activités illicites, tout en assurant la mise en place des garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

(c) to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity.

c) d'aider le Canada à remplir ses engagements internationaux dans la lutte contre le crime transnational, particulièrement le recyclage des produits de la criminalité, et la lutte contre les activités terroristes.

...

[...]

PART 2

PARTIE 2

REPORTING OF CURRENCY AND MONETARY INSTRUMENTS

DÉCLARATION DES ESPÈCES ET EFFETS

REPORTING

DECLARATION

Currency and monetary instruments

Déclaration

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.

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.

Limitation

Exception

(2) A person or entity is not required to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that

(2) Une personne ou une entité n'est pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de

those conditions have been met.

l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Who must report

Déclarant

(3) Currency or monetary instruments shall be reported under subsection (1)

(3) Le déclarant est, selon le cas :

(a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;

a) la personne ayant en sa possession effective ou parmi ses bagages les espèces ou effets se trouvant à bord du moyen de transport par lequel elle arrive au Canada ou quitte le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

(b) in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;

b) s'agissant d'espèces ou d'effets importés par messenger ou par courrier, l'exportateur étranger ou, sur notification aux termes du paragraphe 14(2), l'importateur;

(c) in the case of currency or monetary instruments exported from Canada by courier or as mail, by the exporter of the currency or monetary instruments;

c) l'exportateur des espèces ou effets exportés par messenger ou par courrier;

(d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

d) le responsable du moyen de transport arrivé au Canada ou qui a quitté le pays et à bord duquel se trouvent des espèces ou effets autres que ceux visés à l'alinéa a) ou importés ou exportés par courrier;

(e) in any other case, by the person on whose behalf the currency or monetary instruments are imported or exported.

e) dans les autres cas, la personne pour le compte de laquelle les espèces ou effets sont importés ou exportés.

Duty to answer and comply with the

Obligation du déclarant

request of an officer

(4) If a report is made in respect of currency or monetary instruments, the person arriving in or departing from Canada with the currency or monetary instruments shall

(a) answer truthfully any questions that the officer asks with respect to the information required to be contained in the report; and

(b) on request of an officer, present the currency or monetary instruments that they are carrying or transporting, unload any conveyance or part of a conveyance or baggage and open or unpack any package or container that the officer wishes to examine.

Sending reports to Centre

(5) Officers shall send the reports they receive under subsection (1) to the Centre.

...

SEIZURES

Seizure and forfeiture

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

(4) Une fois la déclaration faite, la personne qui entre au Canada ou quitte le pays avec les espèces ou effets doit :

a) répondre véridiquement aux questions que lui pose l'agent à l'égard des renseignements à déclarer en application du paragraphe (1);

b) à la demande de l'agent, lui présenter les espèces ou effets qu'elle transporte, décharger les moyens de transport et en ouvrir les parties et ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

Transmission au Centre

(5) L'agent fait parvenir au Centre les déclarations recueillies en application du paragraphe (1).

[...]

SAISIE

Saisie et confiscation

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

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.

Notice of seizure

(3) An officer who seizes currency or monetary instruments under subsection (1) shall

(a) if they were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and of the right to review and appeal set out in sections 25 and 30;

(b) if they were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and of the right to review and appeal set out in sections 25 and 30; and

(c) take the measures that are reasonable in the circumstances to give notice of the seizure to any person whom the officer believes on reasonable grounds is entitled to make an application under section 32 in respect of the currency or monetary instruments.

Service of notice

(4) The service of a notice under paragraph (3)(b) is sufficient if it is sent by registered mail addressed to the exporter.

...

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.

Avis de la saisie

(3) L'agent qui procède à la saisie-confiscation prévue au paragraphe (1) :

a) donne au saisi, dans le cas où les espèces ou effets sont importés ou exportés autrement que par courrier, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 25 et 30;

b) donne à l'exportateur, dans le cas où les espèces ou effets sont importés ou exportés par courrier et son adresse est connue, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 25 et 30;

c) prend les mesures convenables, eu égard aux circonstances, pour aviser de la saisie toute personne dont il croit, pour des motifs raisonnables, qu'elle est recevable à présenter, à l'égard des espèces ou effets saisis, la requête visée à l'article 32.

Signification de l'avis

(4) Il suffit, pour que l'avis visé à l'alinéa (3) b) soit considéré comme signifié, qu'il soit envoyé en recommandé à l'exportateur.

[...]

FORFEITURE

CONFISCATION

Time of forfeiture

Moment de la confiscation

23. Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada from the time of the contravention of subsection 12(1) in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

23. Sous réserve du paragraphe 18(2) et des articles 25 à 31, les espèces ou effets saisis en application du paragraphe 18(1) sont confisqués au profit de Sa Majesté du chef du Canada à compter de la contravention au paragraphe 12(1) qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

REVIEW AND APPEAL

REVISION ET APPEL

Review of forfeiture

Conditions de révision

24. The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by sections 24.1 and 25.

24. La saisie-confiscation d'espèces ou d'effets effectuée en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 24.1 et 25.

Corrective measures

Mesures de redressement

24.1 (1) The Minister, or any officer delegated by the President for the purposes of this section, may, within 30 days after a seizure made under subsection 18(1) or an assessment of a penalty referred to in subsection 18(2),

24.1 (1) Le ministre ou l'agent que le président délègue pour l'application du présent article peut, dans les trente jours suivant la saisie effectuée en vertu du paragraphe 18(1) ou l'établissement de la pénalité réglementaire visée au paragraphe 18(2) :

(a) cancel the seizure, or cancel or refund the penalty, if the Minister is satisfied that there was no contravention; or

a) si le ministre est convaincu qu'aucune infraction n'a été commise, annuler la saisie, ou annuler ou rembourser la pénalité;

(b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the

b) s'il y a eu infraction mais que le ministre est d'avis qu'une erreur a été commise concernant la somme établie

Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced.

ou versée et que celle-ci doit être réduite, réduire la pénalité ou rembourser le trop-perçu.

Interest

Intérêt

(2) If an amount is refunded to a person or entity under paragraph (1)(a), the person or entity shall be given interest on that amount at the prescribed rate for the period beginning on the day after the day on which the amount was paid by that person or entity and ending on the day on which it was refunded.

(2) La somme qui est remboursée à une personne ou entité en vertu de l'alinéa (1)a) est majorée des intérêts au taux réglementaire, calculés à compter du lendemain du jour du paiement de la somme par celle-ci jusqu'à celui de son remboursement.

Request for Minister's decision

Demande de révision

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 in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

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 de décider s'il y a eu contravention au paragraphe 12(1) en donnant un avis écrit à l'agent qui les a saisis ou à un agent du bureau de douane le plus proche du lieu de la saisie.

Notice of President

Signification du président

26. (1) If a decision of the Minister is requested under section 25, the President shall without delay serve on the person who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

26. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 25 un avis exposant les circonstances de la saisie à l'origine de la demande.

Evidence

Moyens de preuve

(2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they

(2) Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

desire to furnish.

Decision of the Minister

Décision du ministre

27. (1) Within 90 days after the expiry of the period referred to in subsection 26(2), the Minister shall decide whether subsection 12(1) was contravened.

27. (1) Dans les quatre-vingt-dix jours qui suivent l'expiration du délai mentionné au paragraphe 26(2), le ministre décide s'il y a eu contravention au paragraphe 12(1).

Deferral of decision

Report de la décision

(2) If charges are laid with respect to a money laundering offence or a terrorist activity financing offence in respect of the currency or monetary instruments seized, the Minister may defer making a decision but shall make it in any case no later than 30 days after the conclusion of all court proceedings in respect of those charges.

(2) Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité ou pour infraction de financement des activités terroristes ont été intentées relativement aux espèces ou effets saisis, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

Notice of decision

Avis de la décision

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

(3) Le ministre signifie sans délai par écrit à la personne qui a fait la demande un avis de la décision, motifs à l'appui.

If there is no contravention

Cas sans contravention

28. If the Minister decides that subsection 12(1) was not contravened, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the penalty that was paid, or the currency or monetary instruments or an amount of money equal to their value at the time of the seizure, as the case may be.

28. Si le ministre décide qu'il n'y a pas eu de contravention au paragraphe 12(1), le ministre des Travaux publics et des Services gouvernementaux, dès qu'il est informé de la décision du ministre, restitue la valeur de la pénalité réglementaire, les espèces ou effets ou la valeur de ceux-ci au moment de la saisie, selon le cas.

If there is a contravention

Cas de contravention

29. (1) If the Minister decides that

29. (1) S'il décide qu'il y a eu

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 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

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 afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

Appeal to Federal Court

30. (1) A person who requests a decision of the Minister under section 27 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

Ordinary action

(2) The Federal Courts Act and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

Delivery after final order

(3) The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

Limit on amount paid

(4) If the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, the total amount that can be paid under subsection (3) shall 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.

Cour fédérale

30. (1) La personne qui a demandé que soit rendue une décision en vertu de l'article 27 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

Action ordinaire

(2) La Loi sur les Cours fédérales et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

Restitution au requérant

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en a été informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

Limitation du montant versé

(4) 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 qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

The following provisions of the *Cross-border Currency and Monetary Instruments Reporting*

Regulations are relevant to the present case:

REPORTING OF IMPORTATIONS AND EXPORTATIONS

MINIMUM VALUE OF CURRENCY OR MONETARY INSTRUMENTS

2. (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is \$10,000.

(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on

(a) the official conversion rate of the Bank of Canada as published in the Bank of Canada's Daily Memorandum of Exchange Rates that is in effect at the time of importation or exportation; or

(b) if no official conversion rate is set out in that publication for that currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

GENERAL MANNER OF REPORTING

3. Subject to subsections 4(3) and (3.1) and section 8, a report with respect to the importation or exportation of currency or monetary instruments shall

(a) be made in writing;

(b) contain the information referred to

(i) in Schedule 1, in the case of a report

DÉCLARATION DES IMPORTATIONS ET EXPORTATIONS

VALEUR MINIMALE DES ESPÈCES OU EFFETS

2. (1) Pour l'application du paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 \$.

(2) La valeur de 10 000 \$ est exprimée en dollars canadiens ou en son équivalent en devises selon :

a) le taux de conversion officiel de la Banque du Canada publié dans son Bulletin quotidien des taux de change en vigueur à la date de l'importation ou de l'exportation;

b) dans le cas où la devise ne figure pas dans ce bulletin, le taux de conversion que le déclarant utiliserait dans le cours normal de ses activités à cette date.

FORME DE LA DÉCLARATION

3. Sous réserve des paragraphes 4(3) et (3.1) et de l'article 8, la déclaration de l'importation ou de l'exportation d'espèces ou d'effets doit :

a) être faite par écrit;

b) comporter les renseignements prévus à :

(i) à l'annexe 1, dans le cas d'une

made by the person described in paragraph 12(3)(a) of the Act, if that person is not transporting on behalf of an entity or other person,

(ii) in Schedule 2, in the case of a report made by the person described in paragraph 12(3)(a) of the Act, if that person is transporting on behalf of an entity or other person,

(iii) in Schedule 2, in the case of a report made by the person or entity described in paragraph 12(3)(b), (c) or (e) of the Act, and

(iv) in Schedule 3, in the case of a report made by the person described in paragraph 12(3)(d) of the Act;

(c) contain a declaration that the statements made in the report are true, accurate and complete; and

(d) be signed and dated by the person or entity described in paragraph 12(3)(a), (b), (c), (d) or (e) of the Act, as applicable.

déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour son propre compte,

(ii) à l'annexe 2, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour le compte d'une entité ou d'une autre personne,

(iii) à l'annexe 2, dans le cas d'une déclaration faite par la personne ou l'entité visée aux alinéas 12(3)b), c) ou e) de la Loi,

(iv) à l'annexe 3, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)d) de la Loi;

c) porter une mention selon laquelle les renseignements fournis sont véridiques, exacts et complets;

d) être signée et datée par la personne ou l'entité visée aux alinéas 12(3)a), b), c), d) ou e) de la Loi, selon le cas.

SOLICITORS OF RECORD

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