

Federal Court



Cour fédérale

Date: 20130521

Docket: T-1229-12

Citation: 2013 FC 527

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 21, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

ROCCO SEBASTIAO

Applicant

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision of the delegate of the Minister of Public Safety and Emergency Preparedness (the Minister's delegate), dated May 17, 2012, 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, this application for judicial review is dismissed.

II. Facts

[3] Rocco Sebastiao (the applicant) left Canada on August 22, 2010, for the Democratic Republic of the Congo.

[4] On October 15, 2010, the applicant arrived at Pierre Elliot Trudeau Airport from the Democratic Republic of the Congo.

[5] The applicant gave his customs declaration card to the customs officer in the primary inspection line. He had replied “No” to the question of whether he was bringing in more than CAN\$10,000.

[6] The customs officer asked the applicant the same question, and again he answered negatively. The officer then asked him how much money he was bringing in. The applicant replied, [TRANSLATION] “\$9,000, more or less”. The customs officer wrote “\$9,000.00” on the customs declaration card and circled “CAN\$10,000”.

[11] The applicant initially responded that he had told the primary inspection officer that he was carrying US\$3,000 in addition to US\$9,000. The applicant then changed his story and stated that he had not mentioned the amount of US\$3,000 to the primary officer because that amount did not belong to him and he did not know the procedure. The officer reminded the applicant that he had travelled abroad 17 times over the course of the 6 preceding years, including 6 trips in 2009 and 4 in 2010.

[12] The secondary inspection officer then asked the applicant about the source of the money. The applicant stated that it consisted of his employment earnings and that the money in the sealed envelope was for his wife so that she could purchase a car for a friend in the Congo, or computers if no car could be found.

[13] The applicant stated that he had reported CAN\$18,000 in earnings for the 2009 taxation year. A social assistance recipient, he explained that his trips were covered by the association for which he works, the *Festival international des musiques traditionnelles* [international folk music festival] of Canada. His trips to China were financed by a friend for whom he works on a volunteer basis. The applicant works as a stylist and couturier and creates clothing for this friend, who, in exchange, provides him with clothing for himself and his wife and children.

[14] The customs officer decided to seize as forfeit the CAN\$12,945 in the applicant's possession under subsection 18(1) of the Act on the grounds that it had not been declared in accordance with section 12 of the Act.

[15] The officer decided not to grant the applicant a customs release under subsection 18(2) of the Act because he suspected that the cash might be proceeds of crime. The applicant protested, arguing that he had received the money in April 2010 in the Congo for selling his rights in music CDs for US\$7,000. He then returned to Canada with this amount, which he planned to reinvest during his next trip to the Congo. Since he did not find a business opportunity, he returned to Canada with the money a second time.

[16] The grounds for the forfeiture and refusal of a release can be found at pages 2 and 3 of the customs officer's narrative report:

[TRANSLATION]

- The money was hidden in a Kenya Airways air sickness bag.
- The passenger was travelling with two valid copies of his driver's licence.
- The passenger was unable to establish the source of the money.
- The passenger regularly travels abroad, which is incompatible with his reported earnings.
- The passenger was travelling with two passports, one of which was not expired but cancelled. The second passport had been issued a few days before his departure.
- The passenger was travelling with passport photos. He stated that they were photos of his ex-wife, but the name on one of the photos did not match the name provided by the passenger.
- The passenger was travelling with the health insurance card of his daughter, who had remained in Canada, despite the fact that he had left Canada on August 22, 2010.
- The passenger was carrying a chequebook in his luggage that belonged to another person; he stated that this person had forgotten the chequebook at his home during a trip in June 2010. When he

was questioned about why he was travelling with the chequebook, the passenger had no explanation.

- The passenger was travelling on one-way tickets.
- The passenger has crossed international borders with a large amount of money on more than one previous occasion.
- The passenger . . . declared an amount of US\$9,000 to avoid having to explain the source of the money.
- According to the information received from CBSA intelligence officer Mark Solomon, the passenger was intercepted in 2002 at Queenston Bridge carrying fake identification cards. In 2008 he allegedly purchased an airplane ticket with a fake credit card.
- The passenger tried to invite to Canada a group of musicians who were denied tourist visas by the Embassy in Nairobi on October 13, 2010. However, I asked the passenger why he had travelled to Kenya. He stated that he had gone to Kenya to try to arrange for care for his sister (Respondent's Record, Vol 1, pp 20-21).

[17] On October 29, 2010, the applicant requested ministerial review under section 25 of the Act. In this request for a decision, he acknowledged that he had not declared all of the currency that had been seized. He reiterated that the amount of US\$3,000 in the sealed envelope did not belong to him, adding that it had been given to him by a man in the Congo and that it was meant to go to a Montréal resident named Makaya. The applicant then explained that he needed the money and asked that it be returned to him. Several documents were attached to his request.

[18] On November 5, 2010, the CBSA acknowledged receipt of the request for ministerial review.

[19] The applicant made the following statements:

[TRANSLATION]

- In 2003, he opened a music production company in Ontario called Roma Productions, whose purpose is to produce African music in Canada. The business [TRANSLATION] “is not performing well”.
- The applicant moved to Quebec in 2004. From 2005 to 2008, the business continued to suffer. The applicant therefore allegedly asked a lawyer friend in Montréal to lend him \$6,000 to purchase a licence for the rights to three African music albums. On August 15, 2008, in the Congo, he bought such a licence from an African artist named Defao Matumona for \$15,000, of which US\$6,000 was paid [TRANSLATION] “before the contract of purchase was signed”, and of which US\$9,000 was to be paid by December 15, 2010.
- In April 2010 in the Congo, the applicant allegedly sold three licences for these albums to a producer in Kinshasa for US\$7,000. This producer, Baoby Mansiantima Fidele, acquired the distribution rights for these albums in the territories of the Democratic Republic of the Congo, Angola and Congo Brazzaville.
- The purpose of the sale of this licence for US\$7,000, which took place in April 2010, was to enable the applicant to pay off the US\$9,000 debt he had contracted in August 2008 with Defao Matumona, which he had to pay no later than December 15, 2010.
- The applicant allegedly returned to Canada in April 2010 with the US\$7,000, which he kept at home while waiting for a suitable business opportunity.
- In August 2010, the applicant learned that his sister, who lived in Africa, was seriously ill; he returned to Africa with US\$9,000 to pay off the balance of the debt he had contracted in August 2008 to purchase the licences from artist Defao Matumona.
- Because the artist in question had not remained in the Democratic Republic of the Congo for very long, the applicant returned to Canada with the US\$9,000 in \$100 bills, which were seized by a customs officer. The

applicant was to meet the supposed artist in the United States to return the US\$9,000 to him in late 2010.

- Before the applicant left the Congo for Canada, a man named Papy Makasi allegedly gave him US\$3,000 in \$100 bills for a Montréal resident named Makaya Nzau, so that the latter might purchase a car in Canada for Makasi, a resident of the Democratic Republic of the Congo. The applicant did not explain how or with what money the car purchased in Canada was to be shipped to the Congo.
- The applicant is seeking leniency from the adjudicator overseeing his request for ministerial review, noting that there are no Congolese banks that do business with Canadian banks, and that even the artist to whom he owed the US\$9,000, who works in East Africa and the United States, does not have a bank account (see Respondent's Record, Vol 2, pp 393-394).

[20] In the exhibits filed in support of his submissions of November 12, 2010, the applicant specified that he earns his income from the sale of African music CDs and DVDs to Canadian merchants and the resale of clothing purchased in China.

[21] On November 16, 2010, the adjudicator acknowledged receipt of the applicant's request for review filed on October 29, 2010. The adjudicator sent the applicant the notice describing the circumstances of the seizure. The adjudicator began by stating that her initial reading of the file indicated that the seizure was justified by the failure to declare an amount greater than CAN\$10,000, contrary to subsection 12(1) of the Act.

[22] The adjudicator stated that she was unable to identify with certainty the legal provenance of the seized funds. She also noted that the applicant had provided extensive documentation in support of his application, but no evidence establishing a legitimate source for the funds. The

adjudicator specifically asked the applicant to file documents or evidence clearly demonstrating the legitimate source of the seized funds. The adjudicator also sent the applicant copies of the narrative reports written by the customs officers at the time of the seizure.

[23] On December 14, 2010, the adjudicator acknowledged receipt of the applicant's written submissions of November 12, 2010. The adjudicator again asked the applicant for evidence of the legitimate source of the seized funds.

[24] On January 12 and 25, 2011, the applicant provided the adjudicator with additional written submissions in support of his application.

[25] On February 17, 2011, the adjudicator again explained to the applicant the need to demonstrate the legitimate source of the seized funds. For example, the adjudicator was seeking evidence of transactions showing how Makasi, the alleged owner of the US\$3,000 seized from the applicant, had obtained that amount. The adjudicator was seeking transactional evidence of the legitimacy of the seized funds.

[26] On March 18, 2011, the applicant provided the adjudicator with additional submissions and documents.

[27] From April 28, 2011, to January 13, 2012, the adjudicator and the applicant exchanged correspondence about the file: the adjudicator continued to seek evidence from the applicant demonstrating the legitimate source of the seized funds.

[28] On April 12, 2012, Adjudicator Cayer prepared her “Case Synopsis and Reasons for Decision”, which sets out the evidence gathered during the adjudication process. This document contains a recommendation addressed to the Minister’s delegate responsible for the decisions referred to in sections 27 and 29 of the Act. It was given to the Minister’s delegate, Jean-Marc Dupuis, for a decision.

[29] On May 17, 2012, Dupuis rendered his decisions under sections 27 and 29 of the Act: he decided that there had been a violation of the Act with respect to the seized funds and that the forfeiture should be confirmed.

[30] On June 22, 2012, the applicant filed an application for judicial review against the decisions rendered by the Minister on May 17, 2012. The Notice of Application was supported by an affidavit served on the respondent in compliance with Rule 306 of the *Federal Courts Rules*, SOR/98-106, on July 23, 2012.

[31] The applicant did not file an action under section 30 of the Act to challenge the Minister’s decision rendered under section 27 of the Act.

III. Legislation

[32] The statutory provisions applicable in this case are reproduced in the Annex to this judgment.

IV. Issue and Standard of Review

A. Issue

- *Was the decision by the Minister's delegate to confirm the forfeiture of the seized currency reasonable?*

B. Standard of review

[33] The standard of review applicable to a Minister's decision under section 29 of the Act is reasonableness (see *Sellathurai v Minister of Public Safety and Emergency Preparedness (Attorney General of Canada)*, 2008 FCA 255 at para 25).

V. Parties' positions

A. Applicant's position

[34] The applicant submits that the decision to confirm the forfeiture is unreasonable.

[35] The applicant claims to have established the legitimacy of the source of the funds in question. His version of the facts has not changed and is well supported by the documentary evidence.

[36] The applicant notes that the amounts in question are significant for him and that his sustained efforts to recover the money are inconsistent with the theory that he is an international criminal.

[37] The applicant insists that he did not attempt to hide the \$3,000 that he was carrying when he filled out his written customs declaration form. The applicant believed that he was required to declare only the money that belonged to him. Because the \$3,000 did not belong to him, he did not declare it.

B. Respondent's position

[38] The respondent submits first that the applicant admits in his Memorandum of Fact and Law that he failed to declare that he was carrying more than CAN\$10,000 when he arrived at Pierre Elliott Trudeau Airport on October 15, 2010. He notes that the applicant nevertheless claims to have established a legitimate source for the seized funds during the adjudication process before the Minister.

[39] The respondent submits that the evidence provided by the applicant to the CBSA adjudicators in no way establishes a legitimate source for the seized funds. The applicant has not filed a single independent, credible piece of evidence in support of his claims (e.g., copies of cheques, documents recording the exchange into American dollars of foreign currency in the amounts seized, evidence of bank deposits over the course of several years).

[40] The respondent submits that the bank statements produced by the applicant do not establish the source of the money at issue. He points out that the Court has already held that bank documents do not establish the origin of currency, only its possession (see *Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 746 at para 38; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 208 at para 44). Similarly, the certificates of good conduct of Mansiatima and Makasi filed by the applicant do not establish a legitimate source for the seized funds.

[41] In addition to the applicant's inability to demonstrate a legitimate source for the funds at issue, the respondent raises several other factual elements that justify the suspicion of the Minister's delegate that they were proceeds of crime, such as the following: (1) the different stories the applicant provided to explain the ownership and provenance of the funds; (2) the fact that the applicant travels abroad frequently despite receiving social assistance and without any evidence of income that would enable him to pay for his airplane tickets; and (3) the lack of explanation during the adjudication process for his relationship with the Congolese taxi driver who allegedly voluntarily provided him with \$3,000 in small bills to give to a Montréal resident about whom we also have no information.

[42] The respondent closed his submissions by citing this Court's finding in *Sidhu v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 911 at para 44:

Based on the evidence that was before her, the Minister's delegate confirmed the forfeiture. It cannot be said that her conclusion was unreasonable; her finding that the evidence failed to establish that the currency originated from a legitimate source was definitely one

of the number of possible, reasonable conclusions that was open to her.

VI. Analysis

[43] For a proper understanding of the applicant's burden of proof, it would be useful at this stage to summarize the key principles of the legislation applicable to this case. In *Guillaume v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 143 [*Guillaume*], Justice Boivin wrote the following:

[34] . . . 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 (*Guillaume*, above, at paras 34 to 37).

[44] The Court must therefore determine whether the decision of the Minister's delegate, pursuant to section 29 of the Act, to confirm the forfeiture of the currency seized by the customs officer was reasonable. More specifically, the Court must determine whether "the Minister's [delegate's] conclusion as to the legitimacy of the source of the [seized] funds is reasonable, having regard to the evidence in the record before him" (*Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at para 51).

[45] After seizing the money (US\$12,700 and CAN\$200) as forfeit under subsection 18(1) of the Act, the customs officer then decided, in accordance with subsection 18(2) of the Act, not to return the money to the applicant because he suspected that it constituted proceeds of crime.

[46] The applicant failed to convince the Minister's delegate that the funds at issue were not proceeds of crime. In other words, he did not establish a legitimate source for the funds. The Minister's delegate decided not to exercise his discretion under section 29 of the Act to cancel the forfeiture.

[47] As mentioned above, the customs officer provided the following grounds for the forfeiture and his refusal to grant a release on October 15, 2010:

[TRANSLATION]

1. The money was hidden in a Kenya Airways air sickness bag.
2. The passenger was travelling with two valid copies of his driver's licence.
3. The passenger was unable to establish the source of the money.
4. The passenger regularly travels abroad, which is incompatible with his reported earnings.
5. The passenger was travelling with two passports, one of which was not expired but cancelled, and the second of which had been issued a few days before his departure.
6. The passenger was travelling with passport photos. When questioned he answered that they were photos of his ex-wife, but the name on one of the photos did not match the name provided by the passenger.

7. The passenger was travelling with the health insurance card of his daughter, who had remained in Canada, despite the fact that he had left Canada on August 22, 2010.

8. The passenger was carrying a chequebook in his luggage that belonged to another person; he stated that this person had forgotten the chequebook at his home during a trip in June 2010. When he was questioned about why he was travelling with the chequebook, the passenger had no explanation.

9. The passenger was travelling on one-way tickets.

10. The passenger has crossed international borders with a large amount of money on more than one previous occasion.

11. The passenger declared an amount of US\$9,000 to avoid having to explain the source of the money.

12. According to the information received from the CBSA intelligence officer, the passenger was intercepted in 2002 at Queenston Bridge carrying fake identification cards. In 2008 he allegedly purchased an airplane ticket with a fake credit card.

13. The passenger had tried to invite to Canada a group of musicians who had been denied tourist visas by the Embassy in Nairobi on October 13, 2010—however, when asked why he had travelled to Kenya, he answered that he had gone to take care of his sister (Respondent's Record, Vol 1, pp 14-15).

[48] In order to persuade the Minister's delegate that the seized funds were from a legitimate source, the applicant filed several documents, including a contract of sale entered into by the applicant and Baoby Mansiantima Fidele on April 6, 2010, in which Fidele undertook to pay US\$7,000 in exchange for a licence to sell three music albums in the Congo and Angola; a copy of a currency conversion record from August 2010 in the amount of CAN\$4,999.38 for US\$4,750; bank statements for TD Bank account number 4256 6316697 showing all transactions from April 15 to August 31, 2010; a death record for Kenga Sebastiao; and the affidavits of Papy Makasi (taxi driver) and Baoby Mansiantima Fidele.

[49] Having considered all of the evidence, the Minister's delegate held that the applicant had failed to demonstrate that the seized currency came from a legitimate source. The delegate also noted that the copy of the receipt recording the conversion of CAN\$4,999.38 into US\$4,750 in no way establishes the legitimate source or provenance of the seized funds.

[50] The delegate also noted that the bank statements show balances of less than \$10 for the months of June, July and August 2010. The applicant failed to explain why he did not deposit the amounts received abroad (i.e., the US\$7,000 obtained in April 2010) in his bank account to earn interest. The delegate then noted that [TRANSLATION] "those attempting to launder proceeds of crime try to avoid detection, often by leaving no trace of their activities" (Respondent's Record, Vol 1, p 16).

[51] Having considered all the evidence, the Court is of the view that the delegate's decision is reasonable. The applicant's failure to establish a legitimate source for the seized funds (e.g., copies of cheques), in conjunction with other facts in this case, leads us inexorably to the finding that the decision of the Minister's delegate falls within the range of possible outcomes.

[52] This Court has already held that affidavits stating that the funds are from a legitimate source are not enough (see *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 208 at para 44; *Hamam v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 691 at para 30).

[53] The amount of effort made by the applicant to recover the amount seized in no way establishes the legitimate provenance of these funds. The fact that the applicant is challenging this decision in court shows that he wishes to have the seizure overturned, not that the funds seized are from a legitimate source, although the Court does not question the applicant's good faith.

[54] Although certain grounds cited by the customs officer for upholding the seizure of funds appear rather tenuous, in this case, the burden to establish the legitimate source of the amount seized using decisive evidence rests with the applicant. After an attentive examination of the evidence filed by the applicant, the Court finds that he did not discharge his burden of proof. None of the evidence filed allows the Court to find that the funds in question are from a legitimate source, despite numerous exchanges with the respondent. The Court is of the opinion that it would have been possible for the applicant to file a copy of the cheque from Adam Atlas, counsel, drawn on the Bank of Nova Scotia, that the applicant alleges to have cashed. By doing so, he would have established the legitimate source of at least \$7,000, in cash. He failed to do this. In the circumstances, the Court has no other choice but to find that the Minister's decision to confirm the seizure of the currency falls within the range of possible outcomes and therefore to dismiss this application for judicial review.

JUDGMENT

THE COURT dismisses this application for judicial review without costs.

“André F.J. Scott”

Judge

Certified true translation
Francie Gow, BCL, LLB

ANNEX

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

PART 2

PARTIE 2

REPORTING OF CURRENCY AND MONETARY INSTRUMENTS

DÉCLARATION DES ESPÈCES ET EFFETS

REPORTING

Déclaration

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 those conditions have been met.

(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 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

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

or, in prescribed circumstances, by the person in charge of the conveyance;

(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;

(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;

(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

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

Duty to answer and comply with the 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

moyen de transport;

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

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

Obligation du déclarant

(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

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.

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.

Sending reports to Centre

Transmission au Centre

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

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

...

[...]

Seizures

Saisie

Seizure and forfeiture

Saisie et confiscation

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.

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.

Return of seized currency or monetary instruments

Mainlevée

(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.

(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.

Notice of seizure

Avis de la saisie

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

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

(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;

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) 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

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) 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.

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.

Service of notice

Signification de l'avis

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

(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

Révision 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.

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

(2) Le demandeur dispose de trente jours à

under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

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 a contravention

Cas de 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,

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

(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

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

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.

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.

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.

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.

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.

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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1229-12

STYLE OF CAUSE: ROCCO SEBASTIAO
v
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 8, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** SCOTT J.

DATED: May 21, 2013

APPEARANCES:

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