Date: 20070713

Docket: T-498-06

Citation: 2007 FC 746

Ottawa, Ontario, July 13, 2007

Present: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

SKANDER TOURKI

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, from a decision of a manager of the Customs Appeals Directorate for the Minister of Public Safety and Emergency Preparedness (the Minister, or the Respondent). In this decision, the Minister authorized that the currency seized, equivalent to C$102,642.33, be forfeited pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act).

The facts

[2] Skander Tourki (the applicant), a native of Tunisia, has been a Canadian Citizen since 1986.

[3] On July 5, 2003, in Montréal, he boarded a flight to Paris. The officer responsible for the security checkpoint had advised customs that the applicant had been found in possession of currency during a search at the entrance of the boarding area. The applicant had stated that he had $25,000 cash with him from the sale of an automobile. Before the flight's departure, Customs Canada instructed the Montréal police to remove the applicant from the plane. A search of the carry-on luggage indicated that he was in the possession of various currencies worth C$102,642.33. All of the currency was seized as forfeit by a customs officer.

[4] In September 2003, the applicant made a request for the Minister's decision on the seizure under section 25 of the Act, supported by the sworn statements of the applicant and his brothers Abdel-Kader Hassouna Tourki and Cherikan Tourki.

[5] Following the request for the Minister's decision, the Minister's representatives sent the applicant a notice pursuant to section 26 of the Act. This notice asked him to file any additional explanations, comments or documents in support of his application.

[6] Following this request, the applicant sent a letter dated December 5, 2003, accompanied by three additional sworn statements explaining that most of the currency came from income earned as a mechanic, from Abdel-Kader Hassouna Tourki, and from Cherikan Tourki's resto-bar; the rest of

the currency was an amount that the applicant had allegedly brought previously from Tunisia. Various bank statements for various accounts (from December 2002 to November 2003) were attached as exhibits. The sworn statements reiterated that the amounts seized had been intended for settling the three Tourki brothers' interest in their father's estate.

[7] An analysis was carried out by one of the Canada Customs and Revenue Agency's adjudicators **(**the adjudicator**)** in order to make a recommendation to the Minister's delegate. This analysis was completed on February 2, 2004.

[8] In a letter dated March 10, 2004, the Minister's delegate, following the adjudicator's recommendation, confirmed the action taken under section 29 of the Act.

[9] The applicant appealed this decision by way of an action before this Court. In the action *de novo* (*Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 50, [2006] F.C.J. No. 52 (QL)), Mr. Justice Sean Harrington determined that the applicant had breached section 12 of the Act by failing to report to customs the exportation of currency of a value greater than $10,000.

[10] Relying on *Dokaj v. Canada (Minister of National Revenue)*, 2005 FC 1437, [2005] F.C.J. No. 1783 (QL), Harrington J. also determined that in the context of an action instituted under section 30 of the Act, the Federal Court did not have jurisdiction to review the Minister's decision to confirm the forfeiture of an amount seized pursuant to section 29 of the Act, as the appropriate

procedure was the application for judicial review. This finding was confirmed by the Federal Court of Appeal in *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FCA 186, [2007] F.C.J. No. 685 (QL), hence this judicial review.

Statutory scheme

[11] The relevant provisions are set out in Appendix A.

[12] The purpose of the Act is to identify dubious financial transactions and the movement of large sums of cash across the border. It does not restrict the amount of money that can be brought into Canada or taken out of Canada, nor does it make such a practice illegal. It creates an obligation to report in cases where a value equal to or greater than the prescribed amount, currently C$10,000, is imported or exported.

[13] If a person breaches this obligation to report, a customs officer can seize the currency as forfeit pursuant to section 18 of the Act. The currency seized may then be returned to its owner on payment of a penalty unless there are reasonable grounds to suspect that it is proceeds of crime in which case it is forfeited to Her Majesty.

[14] The Court of Appeal in *Tourki, supra*, confirmed the Federal Court's interpretation in *Dokaj* and *Tourki*, *supra*, with regard to the interaction of the relevant statutory provisions.

[15] It is sufficient to set out the findings of Madam Justice Carolyn Layden-Stevenson in *Dokaj*, *supra* at paragraphs 35 and 37, which were adopted by the Federal Court of Appeal in *Tourki*, *supra*:

> [35] The decisions of the Minister pursuant to sections 27 and 29 are discrete decisions. One deals with contravention; the other deals with penalty and forfeit. Section 27 stipulates that the Minister shall decide whether subsection 12(1), i.e. the requirement to report, was contravened. The wording is unequivocal and leaves no room for doubt. Section 29 provides that, in circumstances where the Minister determines that there was a failure to report, the Minister is to review the quantum of the sanction imposed by the customs official under subsection 18(2), i.e. full forfeiture or a penalty ranging from $250 to $5,000. The Minister will either confirm the customs official's determination with respect to sanction or reduce it to some lesser penalty.
>
> . . .
>
> [37] There is no ambiguity in the language. The Act authorizes an appeal in relation to a decision of the Minister under section 25. Section 25 relates only to a decision as to whether subsection 12(1) was contravened (the provision that imposes the obligation to report). It necessarily follows that the references to "a decision" and "the decision" in subsection 30(1) refer to the Minister's determination under section 27 of the Act. In my view, it cannot reasonably be construed in any other way. Consequently, the Federal Court's jurisdiction, pursuant to section
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> 30 of the Act, is limited to reviewing the decision under section 27 of the Act. That decision is with respect to whether or not there was a contravention of the Act under subsection 12(1).

[16] In short, an individual who wants to challenge the ministerial decision under section 29 must proceed by way of judicial review in accordance with section 18.1 of the *Federal Courts Act*, hence this proceeding.

[17] The Federal Court of Appeal in *Tourki, supra*, also pointed out that the Minister is not obligated to give reasons for the decision regarding the appropriate administrative penalty:

> If the Minister decides that subsection 12(1) of the Act was contravened, the Minister shall (a) decide that the currency or monetary instruments be returned (paragraph 29(1)(*a*)); (b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted (paragraph 29(1)(*b*)); or (c) confirm that the currency or monetary instruments are forfeited to Her Majesty in Right of Canada (paragraph 29(1)(*c*)). The Act does not require that the Minister give reasons for the decision, nor does it state the basis on which the Minister decides. No doubt, however, the Minister has before him the reasons recorded by the officer who exercised the powers provided for

> in subsection 18(1). The Minister also has the evidence offered by the person from whom currency or monetary instruments were seized under subsection 26(2).

The standard of review

[18] The Supreme Court of Canada recently pointed out in *Atco Gas and Pipelines v. Alberta*, [2006] 1 S.C.R. 140 at paragraph 23, that the exhaustive examination of the elements of the pragmatic analysis elaborated in *Pushpanatan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, is required in all cases to establish the appropriate standard of review.

[19] I note that there are some discrepancies in the case law regarding the appropriate standard of review for a ministerial decision made pursuant to section 29 of the Act. (See for example: *Thérancé v. Canada (Minister of Public Safety)*, 2007 FC 136, [2007] F.C.J. No. 178 (QL); *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 208, [2007] F.C.J. No. 280 (QL); *Dag v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 427, [2007] F.C.J. No. 591 (QL)). Some judges adopt the reasonableness *simpliciter* standard while other judges adopt the higher standard of patent unreasonableness.

(i) Privative clause/right to appeal

[20] The existence of a privative clause indicates that the Court must show deference to the tribunal's decision. In this case, the Act contains a clear privative clause at section 24. This section provides that the forfeiture of cash seized under Part 2 of the Act is final and is not subject to review (*Thérancé*, *supra*, at paragraph 14). While the Act provides for a right to appeal by way of an action in the Federal Court a decision made under section 27, it does not provide any right to appeal a

decision under section 29. Accordingly, greater deference is required in regard to the impugned decision.

(ii) The tribunal's expertise

[21] In *Thérancé*, *supra*, at paragraph 16, Mr. Justice Michel Beaudry explained the acquired expertise of customs authorities in interpreting factual elements as follows:

> Those who have these decision-making powers have mechanisms at their disposal that have become more and more sophisticated for detecting genuine or false documentation used by some individuals in order to establish the acquisition, possession and destination of the ownership of goods. It is therefore necessary to show deference.

[22] Mr. Justice Pierre Blais in *Dag*, *supra*, shared the same opinion. Like them, it appears to me that customs authorities have learned to recognize clues indicating that a person at the border could be involved in an illegal activity; they have also developed an ability to detect the false documentation used by some individuals to establish the possession, the destination or the ownership of goods. These are often subtle factual elements for which the Court does not have specific expertise. Considering the institutional expertise acquired by customs authorities in this area, like Beaudry J. and Blais J., I find that greater deference is necessary.

(iii) The subject of the Act

[23] On this aspect, I agree with my colleague Madam Justice Sandra Simpson in *Sellathurai*, *supra*, at paragraph 58, that with regard to the administration of Part 2 and more specifically the administration of section 29 of the Act, the Minister has a limited role since he does no more than decide whether the forfeiture should be maintained given the particular facts of the matter. It is not a polycentric analysis, which would suggest less deference.

(iv) The nature of the problem

[24] The issue of whether the factual record before the Minister indicated reasonable grounds to suspect that the undeclared cash was criminal proceeds of crime is a mixed question of fact and law. This factor militates in favour of greater deference.

[25] Following the pragmatic and functional analysis, the Court adopts the standard of review of patent unreasonableness.

Was the Minister's finding patently unreasonable?

[26] In *Sellathurai*, *supra*, Simpson J. noted that the Act is silent with regard to the guiding principles for the Minister in deciding issues relating to forfeiture. This indicates that the appropriate test would be that the Minister determine after considering all of the evidence whether there are still "reasonable grounds to suspect" that the currency is proceeds of crime. The evidence necessary to establish "reasonable grounds to suspect" need not be irrebuttable but must quite simply be credible and objective.

[27] With regard to the burden of proof required for an applicant to rebut a suspicion based on reasonable grounds, I adopt the following remarks by my colleague Simpson J. at paragraphs 72-73 of *Sellathurai*, *supra*, (also adopted by Snider J. in *Ondre v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 454, [2007] F.C.J. No. 616 (QL) at paragraph 19):

> With regard to the burden of proof on an applicant who wishes to dispel a suspicion based on reasonable grounds, it is my view that such an applicant must adduce evidence which proves beyond a reasonable doubt that there are no reasonable grounds for suspicion. Only in such circumstances will the evidence be sufficient to displace a reasonable suspicion.
>
> I have reached this conclusion because, if a Minister's Delegate were only satisfied on the balance of probabilities that there were no reasonable grounds for suspicion, it would still be open to him to suspect that forfeited currency was proceeds of crime. The civil standard of proof does not free the mind from all reasonable doubt and, if reasonable doubt exists, suspicion survives.

[28] In short, in order to challenge the Minister's decision to the effect that the seized currency is proceeds of crime, the applicant has the burden of proof and must adduce evidence beyond a reasonable doubt that there are no reasonable grounds to suspect that it is proceeds of crime.

The evidence in this matter

[29] The applicant claimed that the uncontradicted evidence showed that no objective element could justify the existence of reasonable suspicions that the forfeited amount was proceeds of crime. He relied on the *obiter* in *Tourki, supra*, by Harrington J., who made that finding.

[30] First, the Federal Court of Appeal in *Tourki, supra* at paragraph 34, determined that it was not Harrington J.'s place to question the review of the Minister's decision to confirm the forfeiture,

namely “the reasonable ground to suspect that . . .” This review is a distinct issue in regard to section 29 of the Act that is the subject of this judicial review.

[31] Further, Harrington J. in *Tourki, supra,* at paragraph 59 recognized that in formulating this opinion “it was not necessary to consider the burden of proof and the threshold which must be reached . . .” (see for example: *Sellathurai, Ondre, Dag, supra*).

[32] Finally, this finding cannot stand on judicial review since it is based on testimonial and documentary evidence which was not before the Minister when he made his decision. The case law recognizes that only the evidence that was before the decision-maker must be considered in the context of a judicial review unless issues of procedural fairness and jurisdiction are raised (*Ontario Association of Architects v. Assn. of Architectural Technologists of Ontario,* [2003] 1 F.C. 331, 2002 FCA 218 at paragraph 30).

[33] Accordingly, only the documents that were before the Minister and his delegates are admissible in the context of this judicial review. The evidence submitted by the applicant which is not included in the certified tribunal record dated August 29, 2006, will not be considered by this Court.

[34] The Minister’s decision must be examined in light of the documents on which it is based *(Sketchley v. Canada (Attorney General),* 2005 FCA 404, [2005] F.C.J. No. 2056 (QL) at paragraph 37). In this matter, the Minister’s decision is founded primarily on the adjudicator’s

recommendation, which itself is based on the documents submitted by the applicant and the customs officers' narrative reports.

[35] The applicant submitted that the uncontradicted evidence shows that there was no objective element justifying the existence of reasonable suspicions on the part of the customs officers that the currency was proceeds of crime. I do not agree. I dismiss the applicant's argument that we must refer only to the customs officer's decision to confiscate the currency. Like Blais J. in *Dag*, *supra* at paragraph 53, I think that in this case the customs officers' findings were not a determinative factor with respect to the decision at issue. The Court is reviewing the Minister's decision, which relies more specifically on the factors listed in the adjudicator's [TRANSLATION]"summary and reasons":

> [TRANSLATION]
>
> After reviewing the information in the record, there are a number of indications that succeed in establishing reasonable grounds to suspect that the currency is illicit.

- Mr. Tourki failed to declare the total amount of currency in his possession
- He does not have a paying job
- He changed his story about the origin of the money and the planned disposal
- Transporting large sums of money is not a legitimate business practice
- Mr. Tourki alleged that it is impossible to get money out of Tunisia but there are electronic transfer systems in these countries
- Money wrapped in bundles and held together by elastics
- A large number of 100 dollar bills which are lighter (562 x US$100 and 100 x $100)
- He had a credit card statements in the name of two third parties
- No evidence submitted establishing the origin of the cash. The bank account summaries show only the possession of cash and not its origin.

[36] The applicant for his part had sent the affidavits of Skander Tourki, Abdel Kader Hassouna Tourki and Cherikan Tourki as well as documentary evidence to establish the origin and planned

disposal of the sums. It appears that the adjudicator did not find this evidence sufficient to dismiss the existence of reasonable suspicions on the grounds set out in the summary.

[37] Contrary to the applicant's claim, it is not appropriate to analyze each indicator separately, but rather their cumulative effect, as Snider J. pointed out in *Ondre*, *supra*, at paragraph 55:

> Finally, I add that the arguments of the Applicant before me focused on alleged problems with each of the various factors relied on by the Minister's delegate. However, in this case, there was No. individual factor that drove the decision; rather, it was the cumulative effect of the factors that formed the basis of the Ministerial Decision. As stated by the Supreme Court of Canada in *R. v. Jacques*, [1996] 3 S.C.R. 312, at para. 24, 139 D.L.R. (4th) 223, (quoting from *R. v. Marin*, [1994] O.J. No. 1280, at para. 16 (Gen. Div.)):
>
> The "indicators" [facts] are seen to be a constellation, or cluster, leading or tending to a general conclusion. Looked at individually, No. single one is likely sufficient to warrant the grounds for the detention and seizure. The whole is greater than the sum of the individual parts viewed individually. . . .

[38] The Minister's finding under section 29 of the Act is essentially based on the circumstances surrounding the transfer of the money as well as the factual inferences and the explanations given by the applicant regarding the origin of the amounts seized. As such, 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. No invoice or corporate document had been submitted to attest that the revenues came from the operation of businesses belonging to the applicant's two brothers. As for the explanations offered regarding the planned destination of the currency, they are not at all relevant to establishing their origin. In fact, it is obvious that money can be of criminal origin and be used afterwards for real estate purposes abroad.

[39] I am satisfied that the evidence that the Minister considered supported his finding that there were reasonable grounds to suspect that the currency in question was proceeds of crime. In my opinion, the factors listed in the "summary and reasons" were an adequate basis for the Minister's decision.

[40] Applying the standard of patent unreasonableness, the decision cannot be described as "clearly irrational" or "evidently not in accordance with reason" *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941. Accordingly, this application for judicial review is dismissed.

JUDGMENT

[41] This application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

APPENDIX "A"

RELEVANT LEGISLATION

Object

3. The object of this Act is

(*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

(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,

(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

(iii) establishing an agency that is responsible for dealing with reported and other information;

(*b*) to respond to the threat posed by 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

(*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.

Currency and monetary instruments

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.

[...]

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

(*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;

[...]

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.

(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.

(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.

Power to call in aid

19. An officer may call on other persons to assist the officer in exercising any power of search, seizure or retention that the officer is authorized under this Part to exercise, and any person so called on is authorized to exercise the power.

Recording of reasons for decision

19.1 If an officer decides to exercise powers under subsection 18(1), the officer shall record in writing reasons for the decision.

[...]

When forfeiture under s. 14(5)

22. (1) An officer who retains currency or monetary instruments forfeited under subsection 14(5) shall send the currency or monetary instruments to the Minister of Public Works and Government Services.

(2) An officer who seizes currency or monetary instruments or is paid a penalty under subsection 18(2) shall send the currency or monetary instruments or the penalty, as the case may be, to the Minister of Public Works and Government Services.

Time of forfeiture

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.

Review of forfeiture

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 25 to 30.

Request for Minister's decision

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.

Notice of President

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.

(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 desire to furnish.

Decision of the Minister

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.

(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.

(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.

If there is no 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.

If there is a contravention

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, 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.

(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 25 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.

(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.

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

LÉGISLATIONS PERTINENTES

Objet

3. La présente loi a pour objet :

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 :

(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,

(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,

(iii) constituer un organisme chargé de l'examen de renseignements, notamment ceux portés à son attention en application du sous-alinéa (ii);

b) de combattre le crime organisé en 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) 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.

Déclaration

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.

[...]

(3) Le déclarant est, selon le cas :

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 est arrivée au Canada ou a quitté le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

[...]

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.

(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.

(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.

Main-forte

19. L'agent peut requérir main-forte pour se faire assister dans l'exercice des pouvoirs de fouille, de rétention ou de saisie que lui confère la présente partie. Toute personne ainsi requise est autorisée à exercer ces pouvoirs.

Enregistrement des motifs

19.1 L'agent qui décide d'exercer les attributions conférées par le paragraphe 18(1) est tenu de consigner par écrit les motifs à l'appui de sa décision.

[...]

Confiscation aux termes du paragraphe 14(5)

22. (1) En cas de confiscation aux termes du paragraphe 14(5) des espèces ou effets retenus, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

(2) En cas de saisie d'espèces ou d'effets ou de paiement d'une pénalité réglementaire aux termes du paragraphe 18(2), l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

Moment de la confiscation

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.

Conditions de révision

24. La confiscation d'espèces ou d'effets saisis 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 25 à 30.

Demande de révision

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.

Signification du président

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.

(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.

Décision du ministre

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).

(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.

(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.

Cas sans contravention

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.

Cas de contravention

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

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

c) soit confirme 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).

(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 présenté une demande en vertu de l'article 25 peut, dans les quatre-vingt-dix jours suivant la communication de la décision, en appeler par voie d'action devant la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

(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.

(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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-498-06

STYLE OF CAUSE:

SKANDER TOURKI

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: June 20, 2007

REASONS FOR JUDGMENT: TREMBLAY-LAMER J.

DATE OF REASONS: July 13, 2007

APPEARANCES:

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Marc Ribeiro	FOR THE RESPONDENT

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