Date: 20080206

Docket: T-589-07

Citation: 2008 FC 157

Ottawa,Ontario, February 6, 2008

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

VAN PHUONG DANG

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Van Phuong Dang seeks judicial review of a decision rendered by the respondent's delegate pursuant to subsection 29(c)(i)[1] of the *Proceeds of Crime and Money Laundering and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act), confirming the forfeiture of monies seized from him by an officer of the Canada Border Services Agency (CBSA).

[1] All relevant provisions of the Act are attached as Annex A.

I. Background

[2] On the morning of February 1, 2006, Mr. Van Phuong Dang was at the Vancouver International Airport preparing to embark on a flight bound for Taipei, en route to Vietnam. He was travelling with his wife, a Vietnamese national, who had been in Canada for some time on a visitor's visa. Prior to passing through the metal detector, the couple was approached by a CBSA officer who explained "the currency legislation" to them, particularly the requirement to report the export of currency having a value in excess of CAD$10,000.[2] Mr. Dang and his wife allegedly stated to the officer that they did not need to make such a report; Mr. Dang affirmed that although he was carrying some currency on his person in a money belt, he had counted it prior to checking in and was certain that it was not over the $10,000 limit. Upon examination, however, the officer found that Mr. Dang was in fact carrying CAD$7,200; US$3,600; and travellers' cheques worth US$3,500. Mr. Dang claimed that he had not realized that he was over the limit and provided the officer with a piece of paper showing his handwritten annotations of the amounts in his possession. However, this paper, which notes “5CN; 3, 7 US; 2000 CN; 3,5 Travel” appeared to record a total in excess of $10,000.

[3] The CBSA officer proceeded to question Mr. Dang on the provenance of the funds, his source of revenue, his expenses and his banking habits. According to the officer, the applicant made contradictory statements, stating variously that the money came from an account with the Toronto Dominion Bank and that this was his only bank account, and then admitting to having at least four

[2] According to the seizing officer’s email dated May 8, 2006, after the applicant had indicated that he did know about the "currency regulations", the officer would have provided the following explanations: "If any one person has in their possession the equivalent of $10,000 CAD or more in cash and cheques, they must report the currency to Canada Customs before they leave the country. Do any of you have to make a report today?"

or five bank accounts at various institutions, after he was confronted with the various credit cards and bank cards in his wallet. During questioning, Mr. Dang allegedly changed his story numerous times, and in the end stated that he just took the cash from "Mid Main Laundry", his business. However, he could not produce any documentation relating to the source of either the currency or the money used to purchase the travellers' cheques. He stated that he did not have a regular salary and was not paid by cheque; he simply took cash from the register of the laundry as needed because "it's a cash business". He added that he kept no written records of currency transactions relating to the laundry. According to Mr. Dang, the net earnings of his business were approximately $20,000 a year. He claimed to be the sole supporter of his family. The lease for the laundry shop was said to be about $650/month ($7,800/year), whereas his personal rent was $800/month ($9,600/year). After questioning Mr. Dang about his business and his expenses, the officer noted that he appeared generally unknowledgeable about regular business practices. Mr. Dang also revealed that in fact, he had closed the laundry business in question (no reason given) and had transferred the balance of his corporate account, CAD$8,000, into a personal account.

[4] Based on several so-called "indicators" listed in her report, which include the classification of Vietnam as "a source country for drugs and a country known for money laundering", the officer determined that there were reasonable grounds to suspect that the funds constituted proceeds of crime and she accordingly effected "a Level 4 seizure", i.e., a seizure of sums as forfeit in accordance with s. 18(2) of the Act. Several days later, on February 15, 2006, the officer prepared her narrative report as required by s.19 of the Act.

[5] As Mr. Dang relates in his affidavit, although he knew that he had 90 days to contest the seizure and the forfeiture, he wanted to act promptly. Thus, on February 8, 2006, he requested through counsel a ministerial review of the seizure and the forfeiture pursuant to s. 25 of the Act. In said request, Mr. Dang proffered a brief explanation as to the source of the monies seized, which were allegedly all his with the exception of $700 ($500 + $200) entrusted to him by two friends for delivery to relatives in Vietnam. The business cards of both of these individuals with their phone numbers were included, and Mr. Dang suggested that the reviewing officer contact them directly should he wish to verify the information.

[6] Mr. Dang submitted various other documents along with his request for review. With respect to the balance of the funds, the applicant attached a photocopy of two cheque stubs for $1984.50 and $1338 dated in December of 2005, neither of which identifies a bank or account number; the stubs merely indicate "Cash", with the handwritten mention "Traveller's Cheque" noted on the photocopy. Also attached was another piece of paper dated December 30 (the year could be either 2003 or 2005) bearing the handwritten notation "US Rate 1.309 1984.50." According to the applicant’s letter, the two cheques had been cashed by him and the money used to purchase the seized travellers' cheques (no specific location is mentioned).

[7] Mr. Dang provided three other cheque stubs for amounts totalling CAD$8,000, dated April 19-05, Aug. 21-05 and Dec. 20-05. These purportedly relate to the Canadian currency found in his possession. No explanation as to where this money originally came from is given. With respect to the US currency he was carrying, Mr. Dang stated that it was drawn from savings he kept at home

in cash for safekeeping. Finally, Mr. Dang provided four pages of bank statements from the CIBC dating from October 27, 2000 to August 20, 2001. The statements do not identify the account holder to which they relate, and Mr. Dang's letter contained no explanation as to what this evidence purports to establish.

[8] On March 8, 2007, the file was assigned to a CBSA adjudicator, Mr. Milne. By letter dated March 27, 2006, Mr. Milne issued what is referred to as a "Formal Notice of Reasons for Action" wherein he set out the basis of the seizure and invited Mr. Dang to submit evidence relevant to the ministerial review. It is worth noting that in his letter, the adjudicator discloses many factual allegations which the applicant subsequently challenged during this proceeding, for example:

i) That Mr. Dang had insisted, when asked, that he did not have currency worth more than CAD$10,000;

ii) That to explain his failure to declare the sums in his possession he had produced his own list which in fact showed more than $10,000;

iii) That he had made contradictory statements. First, he originally said that he had only one bank account at the Toronto Dominion Bank. He claimed that the money represented profits from his laundry which earns approximately $20,000 a year; as it was a cash business, he just took money from the till as needed. He said he had no written records of transactions from his business, and then stated that he had at least four or five bank accounts at different institutions;

iv) That although the money ostensibly originated from his business, Mr. Dang later stated he closed the business for no apparent reason.

[9] Mr. Milne also comments specifically on the documentation provided with the February 8 letter. He writes:" I have noted several slips that have been submitted on your behalf. I note that several date back to the summer which was well before the infraction. Kindly provide documentation establishing both the origin and bank transactions to which you make reference."

[10] In a fax dated April 26, 2006, Mr. Dang (through his counsel) replied to Mr. Milne's letter by resubmitting the documentation which was included with his February 8 letter, noting that although Mr. Milne said that he received the earlier letter, the subsequent request for additional information and documentation as to the source of the funds caused him to doubt that the documentation might have become separated or lost.

[11] With respect to the allegations as to what transpired and what was stated during his questioning by the CBSA officer, Mr. Dang does not offer any specific comment. He does not deny any statement referred to in the “Reasons for Action”, asking instead for a copy of any signed statements or any contemporaneously made notes taken by the officer. His counsel then raises the fact that his language skills are not well developed and that "in some ways, he was technically right for he did have only CAD$7,200 the rest being in US currency", implying that this could simply be an honest misunderstanding, given that Mr. Dang was otherwise cooperative with the authorities and had no criminal record.

[12] After receiving this information, the adjudicator investigated the possibility of a misunderstanding arising from the alleged lack of adequate language skills. He sought further details from the CBSA officer[3]. On May 9, 2006, he wrote back to Mr. Dang with the information he had obtained in that respect. In a nutshell, the CBSA officer was of the opinion that Mr. Dang's comprehension of English was quite sufficient, while she recalled his wife having more difficulty. For the officer, there was little doubt that Mr. Dang knew what he was required to declare, considering that he had gone so far as to mention that he had heard about the law from a friend, and that he had accordingly counted his money to ensure he was under the limit. It was also pointed out that had there been any issue with language, copies of the legislation were available in Vietnamese and multi-language interpreters were on staff.

[13] In his May 24, 2006 reply to Mr. Milne, Mr. Dang does not give his own version of what transpired during his questioning that might have contrasted with the CBSA officer's account. Nor does he provide sworn evidence of his difficulty in understanding English in general, or in understanding what he was required to declare under the legislation.

[14] Rather, he takes the position that it is unfair of the adjudicator to present him with new information each time he corresponds with him, as he cannot in such circumstances be expected to properly and fully respond. Again, he repeated his request for signed statements or contemporaneous notes taken by the CBSA officer.[4] He also sought a copy of any written record of

[3] It is in that context that the email dated May 8, 2006 and referred to in note 2 was received from the officer.

[4] No explanation was given at any time as to why Mr. Dang did not inform his counsel that he had not signed a statement at the airport.

the questioning and seizure relied upon by the adjudicator in his comments. The letter concludes by stating that regardless of exactly what was said by Mr. Dang, "it is clear that the gist of his conversation was that he was co-operative and showed them the money he was keeping in an obvious place, a waist safe. His lack of any criminal record and the fact that he has been a successful small businessman for a number of years coupled with the fact that he has some documentation to support his explanation … must lead you to the conclusion that these monies are not the proceeds of crime nor from any drug enterprise."

[15] Mr. Milne responded on May 30, 2006, stating that he was not at liberty to give a copy of the officer's narrative at this stage, but that it could be obtained by way of a request under the *Access to Information and Privacy Act*. He asked the applicant to advise him immediately upon submission of such a request[5].

[16] On August 15, 2006, adjudicator Milne completed his case synopsis recommending that the seizure and forfeiture be confirmed. The whole file, including among other things the CBSA officer's report, all correspondence with the applicant, as well as e-mails exchanged with the CBSA officer, was forwarded to Mr. Proceviat, the Minister's delegate (Manager of the Adjudications Division of the CBSA Recourse Directorate), for final decision.

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[5] It appears that Mr. Dang did not make such a request until August 2007. On January 21, 2008, Mr. Dang filed a motion seeking permission to file a supplementary application record including an affidavit referring to some of the information received from CBSA further to his request under the *Privacy Act*. The Court heard this motion the morning of the hearing of the application and dismissed it.

[17] After reviewing the file, the delegate issued his decision on December 22, 2006. As is typically the case, the decision letter is brief. Mr. Proceviat notes in the first paragraph, under the title "Reasons": (i) that it is unusual for individuals to carry cash in the amount seized; (ii) that the applicant's business earned only approximately $20,000 a year; (iii) that he had stated he kept no written account of his business transactions and expenses; and (iv) that the money was ostensibly drawn from the business' cash, yet the business had ceased operation. The paragraph concludes with the remark that "[t]he explanation regarding the origin of the currency lacks a readily traceable history."

[18] Furthermore, the delegate notes in another paragraph that in light of the amount of cash actually found, the manner of its transportation, and the circumstances surrounding the case, "reasonable suspicion that the funds are proceeds of crime exists."

[19] In the affidavit included in his application record, Mr. Dang says that he was not aware at the time of seizure of the $10,000 limit, and that the first paragraph in the reasons of the decision does not accurately set out the statements he made to the customs official. He also asserts that he was given no opportunity to respond to these comments despite his counsel's request for a copy of any statement allegedly made by him. Otherwise, Mr. Dang does not give any further information with respect to his former business or the exact amount it earned gross or net. We still do not know when and for how long this business operated or when it closed, and whether he took his "savings" out of the gross revenues as opposed to the net amount referred to in the officer's report and in the decision. We do not know what his language skills are and apart from the bare statement in respect

of the $10,000 limit (see above), precisely which information conveyed by the officer in her report and emails was inaccurate or false. Nor do we know in what respect the information referred to in the first part of the decision letter (see paragraph 17 above) is inaccurate. There is no sworn evidence confirming the source of the funds, or detailing how or where the travellers' cheques were acquired.

[20] The applicant did not seek a copy of the file before the decision-maker pursuant to Rule 307. Nor did he seek to file an additional affidavit upon receipt of Mr. Proceviat's affidavit and the file before him, indicating what if any "new" information contained in the narrative report or the e-mails before Mr. Proceviat, and not reflected in Mr. Milne's correspondence, was inaccurate or false.

[21] The absence of such evidence with respect to those issues is noted here because, in his written and oral arguments, the applicant attacks the sufficiency and reliability of the information relied upon by the decision-maker and also raises an issue of procedural fairness.

[22] With respect to procedural fairness, the applicant essentially says:

> … [T]he Minister's delegate had ample time to request additional specific information from the Applicant if what had been provided was insufficient. The Applicant submits that placing the onus on him to supply sufficient documentation, yet not requiring the Minister's delegate to indicate to the Applicant whether that burden has been met or not or what additional information is required, puts the Applicant in an impossible position of not being informed, until it is too late to provide additional information as to whether the Applicant has met the burden of proof.

[23] He then challenges the decision on its merits, saying that it is unreasonable. In his memorandum he raises many arguments in that respect. At the hearing, his counsel focused on those which he agreed were the only ones the Court need focus on.[6] One could sum them up as follows:

(i) The poor quality of the evidence before him (for example, there were no transcripts of the interview or contemporaneous notes; the narrative report was dated several days after the event; the e-mail sent in May, almost three months after the event, is unclear as to whether the officer refers to explanations generally given or actually remembers what she said to Mr. Dang; there are differences between the e-mail and the narrative report) did not allow the delegate to conclude that Mr. Dang deliberately made a false statement with respect to the money he was carrying. Nor did it enable him to conclude that Mr. Dang had made inconsistent statements, especially considering that the style and difference in the questions put to him might account for the differences in his answers, especially having regard for his poor language skills.

(ii) The manner in which Mr. Dang transported his money was not suspicious, given that his money belt was not hidden and that he readily presented it to the CBSA officer when specifically asked to do so.

(iii) There was nothing inconsistent in the explanation given, as Mr. Dang provided an historical explanation as to the source of his cash, and never intended to represent that the business was operational at the time he made the statement.

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[6] For example, the issue of bias was not raised in the oral argument and the Court, having reviewed the written memorandum in detail, is satisfied that this argument as well as the others not discussed at the hearing would not have justified an intervention of the Court and need not be discussed any further here.

(iv) There is nothing suspicious about the fact that he had more than one bank account. Although such behaviour is consistent with money laundering, it is also consistent with the law abiding activities of many Canadians.

(v) The amount of money carried is not sufficient to justify any negative conclusion, given that it was only $5000 over the legal limit. It is arbitrary to use this as a ground of suspicion.

(vi) It is understood the evidence was that $20,000 was the net revenue as opposed to the gross revenue of the business, and there was no evidence before the delegate as to how long it took Mr. Dang to accumulate his $15,000 based on such net earnings. The delegate has no special expertise in business practices, and furthermore, nothing indicates that he has any special expertise in respect of what constitutes reasonable grounds to suspect that money constitutes proceeds of crime.

(vii) Finally, Vietnam is no more a country reputed for drug and money laundering than any other country in the world.

[24] There is no need to proceed to a pragmatic and functional analysis on a question of procedural fairness, as it was pointed out by the Federal Court of Appeal in *Sketchley v. Canada*, 2005 F.C.J. No. 2056, at paragraph 53. Normally, the Court will intervene if there has been a breach of the delegate's duty of fairness.

[25] With respect to the merits of the decision as a whole, the parties do not agree on the applicable standard of review. For the applicant, the Court should intervene if the decision is

unreasonable, whereas the respondent urges the Court to adopt the standard of patent unreasonableness.

[26] In my recent decision in *Nguyen c. le Ministre de la Sécurité publique de la protection civile*, 2007 CF 1286, I discussed the contradictory case law on this issue, and settled on the standard of reasonableness *simpliciter* on the basis of a pragmatic and functional analysis.

[27] I believe this is the standard that should be applied in the present case. That said, the question is not determinative here, as in light of the reasons that follow, the Court has concluded that the decision is not unreasonable, let alone patently unreasonable.

[28] The legislative scheme provided for in the Act (see Annex A) has been the subject of numerous comments in many recent decisions (see *Nguyen* at para. 20). It is unnecessary to add to the summary recently included in the Federal Court of Appeal decision in *Tourki v. Canada (Minister of Public safety and Emergency Preparedness*, [2007] F.C.J. No. 685 at paras. 23 to 31[7], but it is useful to recall, as it was affirmed by the Federal Court of Appeal, that the reporting requirement is the cornerstone of the statutory regime for monitoring cross-border movements of currency and monetary instruments.

[29] It is also useful to remember that the forfeiture of currency seized is a civil *in rem* mechanism that focuses on the seized currency and not on the person who failed to declare (the

applicant). Pursuant to subsection 29(1)(c), the Minister's delegate may in his discretion confirm the forfeiture if he has reasonable grounds to suspect that the currency or the money seized constitutes proceeds of crime. His role is to take a fresh look at this issue and consider all of the evidence before him. This is not limited to the reasons set out in the CBSA officer's narrative report but includes whatever evidence and comments the applicant has seen fit to provide. As for the evidentiary threshold implied in the phrase "reasonable grounds to suspect," it was described in the Supreme Court of Canada decision in *R v. Monney*, [1999] 1 S.C.R. 652 at para. 49, as being less stringent, though included in, the standard based on the existence of "reasonable and probable grounds to believe." Moreover, as it was also noted by the Supreme Court of Canada in *R. v. Jacques*, [1996] 3 S.C.R. 312 at para. 25 and in *Monney*, above, at para. 50, factors considered by the delegate to support his conclusion must not be evaluated in isolation. It is the cumulative effect of the various indicia considered by the decision-maker that must be considered.

[30] With this in mind, it is also useful to recall the explanation of the reasonableness standard of judicial review as it was set out by the Supreme Court of Canada in *New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 55:

> A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by

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[7] It is trite law that in the context of this application for judicial review, the applicant cannot contest the legality of the seizure itself, only the decision of the Minister to forfeit the moneys seized.

> a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).

[31] Having carefully reviewed the e-mail from the CBSA officer, the narrative report and the correspondence exchanged between Mr. Milne and the applicant's solicitor, and considering particularly the absence of any denial or specific comments in respect of inaccuracies in the facts disclosed to Mr. Dang, the Court is satisfied that the Minister could reasonably infer that the CBSA officer's recollection of the event, and her narrative report, fairly represented what went on during the questioning and seizure. Accordingly, the Court disagrees with the applicant's contention that there was no basis upon which the Minister's delegate could conclude that he contradicted himself during his questioning. With regard to the applicant's argument that there is nothing readily suspicious in the transportation of a sum only somewhat in excess of $10 000 CDA, at no time did the applicant provide any explanation to the Court as to why he would not or could not simply wire the sums in question to Vietnam. Furthermore, in the absence of any explanation offered by the applicant, it was not arbitrary for the Minister's delegate to view with suspicion his use of multiple bank accounts, given his apparently modest revenue. Needless to say, it is not for the Court to substitute its appreciation of the evidence to that of the delegate.

[32] Even without holding the applicant to the burden of proof discussed in *Sellathurai v. Canada (MPSEP)*, [2007] F.C.J. No. 2008 at para. 79, it is clear that by abstaining to point out and provide more cogent evidence or, at least, information in respect of his business (e.g., how long it operated, how long it took him to put aside the money, what if anything he had misunderstood during the interview, why given his rather limited means he had many bank accounts and had failed

to disclose this when first asked about it) Mr. Dang was taking the risk that the delegate might make a finding against his interest. (*Qasem v. Canada (Minister of National Revenue)*, [2008] F.C.J. No. 33, at paragraph 18)

[33] With respect to the applicant's comments that the delegate had no grounds to conclude that the source of his funds lacked traceable history, given the lack of details provided by the applicant and the cryptic, totally unsatisfactory nature of the documentation he did provide, the Court has no hesitation in concluding that the Minister's delegate's conclusion in this regard was open to him.

[34] As noted in *Sellathurai*, above, customs officers as well as adjudicators and Minister's delegates receive particular training in order to help them detect suspicious indicia. Having reviewed the affidavit of Mr. Proceviat, the Court is satisfied that he also possessed experience and training adequate to make the determination he made.

[35] After a probing examination and despite the many flaws raised by the applicant, the Court is satisfied that Minister's conclusion that there were reasonable grounds to suspect that the seized money was the proceeds of crime is supported by "tenable explanations."

[36] With respect to the applicant's allegation of a breach of procedural fairness, the adjudicator very clearly indicated in his "Notice of Reasons for Action" that the documentation and information provided by the applicant was insufficient. Given that nothing more was subsequently provided, there was certainly no need for the adjudicator to make any additional requests. Whether or not the

delegate had any positive obligation to seek additional information, in this case he did so. Thus there was no breach.

[37] The Court does not accept that the applicant was in an impossible position. On the contrary, it was his failure to seize the many opportunities afforded him that is responsible for his plight. As noted, even after being provided with the factual information relating to the interview which was before the decision-maker, the applicant failed to provide cogent evidence of what more he could have said, or what other documentation he could have provided, which might have altered the outcome of the ministerial review.

[38] Although the Court has sympathy for the applicant, it must hold that the decision contains no reviewable error. The application is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application is dismissed.

"Johanne Gauthier"
Judge

Annex A

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17

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.

* * *

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 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.

* * *

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

* * *

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.

2000, c. 17, s. 24; 2006, c. 12, s. 14.

Corrective measures

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),

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

(*b*) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced.

* * *

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.

* * *

If there is a contravention

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

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

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

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

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

* * *

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.

* * *

Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, L.R. 2000, ch. 17

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.

* * *

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 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.

* * *

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.

* * *

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.

2000, ch. 17, art. 24; 2006, ch. 12, art. 14.

Mesures de redressement

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

b) s'il y a eu infraction mais que le ministre est d'avis qu'une erreur a été commise concernant la somme établie ou versée et que celle-ci doit être réduite, réduire la pénalité ou rembourser le trop-perçu.

* * *

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.

* * *

Cas de contravention

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

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

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

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

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

* * *

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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-589-07
STYLE OF CAUSE:	VAN PHUONG DANG v. MPSEP
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	January 29, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	GAUTHIER J.
DATED:	February 6, 2008

APPEARANCES:

Mr. Lewis Spencer	FOR THE APPLICANT
Ms. Jan Brongers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT