

**Date: 20080207**

**Docket: T-2274-06**

**Citation: 2008 FC 158**

**Ottawa, Ontario, February 7, 2008**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**HUI YANG**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] On April 12, 2006, the Applicant, Ms. Hui Yang, went to Vancouver International Airport and prepared to board a flight to Beijing and, ultimately, Shanghai, China. During questioning at the airport, officers with Canada Border Services Agency (Customs) discovered that Ms. Yang had failed to report that she was carrying the equivalent of over CAN\$20,000 in her luggage, contrary to the obligations of s.12(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act). One of the Customs officers (Officer Coopman) concluded that there was a reasonable suspicion that the currency in Ms. Yang's possession was the proceeds of crime and seized the money as forfeited to Her Majesty in right of Canada. Ms. Yang

subsequently requested that the Minister of Public Safety (the Minister) review that decision, and a review was undertaken by Mr. D. Proceviat, Manager, Adjudications Division (the Minister's Delegate). Upon completion of the review, the Minister's Delegate confirmed that the currency should remain forfeited. Ms. Yang now seeks judicial review of the decision of the Minister's Delegate.

## **ISSUES**

[2] The issues raised by this application are as follows:

1. By addressing only the question of whether there was a reasonable suspicion that the currency was the proceeds of crime and failing to consider the personal and other circumstances of Ms. Yang, did the Minister's Delegate fail to act in accordance with his duties, as set out in s. 29 of the Act?
2. Did the Minister's Delegate impose an impossible burden of proof on Ms. Yang?
3. Was there a failure to provide procedural fairness to Ms. Yang:
  - (a) by failing to disclose certain submissions by Officer Coopman; or
  - (b) due to the fact that another official, rather than the Minister's Delegate, actually made the decision to confirm that the currency should be forfeited.

## BACKGROUND

[3] The legislative scheme underlying this matter is contained in the Act. Of particular relevance are the provisions related to “Reporting of Currency and Monetary Instruments” contained in Part 2 of the Act. These provisions have been interpreted and extensively discussed in Federal Court of Appeal and Federal Court jurisprudence and need not be repeated here (see: *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186 aff’g 2006 FC 50; *Dokaj v. Canada (Minister of National Revenue)*, 2005 FC 1437; *Thérancé c. Canada (Ministre de la Sécurité publique)*, 2007 CF 136; *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 208; *Dag v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 427; *Yusufov v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 453; *Ondre v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 454; *Hamam v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 691; *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 746; *Majeed v. Canada (Minister of Public Safety)*, 2007 FC 1082; *Lyew v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1117). The relevant sections of the Act are attached to these reasons as Appendix “A”.

[4] In brief, the facts of this application for judicial review have engaged the Act as follows:

- Ms. Yang failed to report that she was taking more than CAN\$10,000 out of the country, contrary to s. 12(1) of the Act;

- Officer Coopman seized the currency as forfeit because he found that there were reasonable grounds to suspect that the currency was the proceeds of crime (s. 18(2)) after which he provided a Notice of Seizure to Ms. Yang (s. 18(3)(a));
- Ms. Yang requested that the Minister review Officer Coopman's decision (s. 25);  
and
- after submissions were made, a Case Synopsis was prepared by an adjudicator, Ms. Archipow (the Adjudicator), which was then forwarded and considered by the Minister's Delegate who ultimately confirmed that the seized currency should be forfeited (s. 29).

## **ANALYSIS**

[5] To begin, I note that there are certain facts in this case that are not in dispute. First, Ms. Yang acknowledges that she was in breach of s. 12(1) of the Act; that is, she acknowledges that she failed to report the seized currency to a Customs officer. Secondly, it is not in dispute that the Minister's Delegate holds the delegated authority of the Minister to render a s. 29 decision.

### *Standard of Review*

[6] I turn to the standard of review applicable to the issues in this application. The issues of the duty of the Minister's Delegate under s. 29 of the Act and of the burden of proof are questions of

law to which I will apply the correctness standard of review. Similarly, with respect to the questions of procedural fairness raised by the Applicant, no deference is due; the Minister's delegate has either complied with the duty of fairness appropriate for the particular circumstances in the case at bar or he has breached it.

*Issue #1: Did the Minister's Delegate fail to act in accordance with his duties, as set out in s. 29 of the Act?*

[7] The thrust of Ms. Yang's oral submissions is that s. 29 of the Act requires the Minister's Delegate to conduct a broad inquiry and not merely determine whether there were sufficient grounds for Officer Coopman to make the initial seizure. Ms. Yang points to the words of s. 29 which provide the Minister's Delegate with three options. Specifically, once the Minister's Delegate decides that there was a breach of s. 12(1) (which is the situation here), he may:

- return the seized currency with or without a penalty;
- return some or all of any penalty paid; or
- confirm that the seized currency is forfeited to Her Majesty in right of Canada.

[8] In Ms. Yang's view, the Minister's Delegate must examine all relevant factors in order to make an informed and balanced decision as to which of the options set out in s. 29 should be followed. In this case, Ms. Yang submits that the Minister's Delegate was under an obligation to consider, under s. 29(a), whether the seized currency should be returned to her on the basis of

humanitarian and compassionate considerations. In other words, Ms. Yang argues that the Minister's Delegate must take into account not simply whether there are grounds to suspect that the currency is the proceeds of crime, but all other considerations put forward by her.

[9] I do not agree. I first note that s. 29 does not require the Minister's Delegate to undertake a balancing exercise. This statutory provision does not provide a list of factors that must be taken into account; rather, it sets out that the Minister may decide in one of three ways depending upon the situation before him or her. Ms. Yang would read into s. 29 obligations that do not exist.

[10] Further, recent jurisprudence of this Court has described the role of the Minister's Delegate under s. 29. Most relevant, are the comments of Justice Simpson in *Sellathurai* at para. 58, where she stated as follows:

The Respondent says that in enforcing Part 2 of the Act, the Minister's Delegate is engaged in a balancing of the interests of the Applicant with those of the Canadian public. However, I do not accept this characterization. In my view, the balancing of private and public interests was done by Parliament when it established the legislative scheme. A Minister's Delegate has a much narrower role under s. 29. He is simply determining whether, on the facts in a particular applicant's case, a forfeiture should be confirmed. [Emphasis added.]

[11] I agree with the comments of Justice Simpson. A Minister's Delegate does not err by focusing his attention on whether an applicant has provided sufficient evidence to dispel an officer's finding that there are reasonable grounds to suspect that the seized currency is the proceeds of crime. A Minister's Delegate meets his or her obligations under s. 29 of the Act when he or she asks himself the question of whether the reasonable grounds relied on by an officer still exist after all the evidence is reviewed. In the context of this application, Ms. Yang's personal difficulties do not

address the question of the source of the seized currency. The Minister's Delegate did not err by not giving weight to these submissions.

[12] Ms. Yang also asserts that seizure of her currency does nothing to forward the objectives of the Act. In essence, Ms. Yang argues that, under s. 29, the Minister's Delegate must take into account whether the objectives of the Act are achieved by this specific forfeiture. I do not agree.

[13] As described in the Act, the central component imposed by Parliament is that anyone exporting or importing currency or monetary instruments in excess of a certain amount must report to Customs officials. Parliament saw fit to include serious penalties -- that is, forfeiture in certain cases -- to ensure compliance with this obligation. According to a plain reading of the Act, nothing more need be established. It is unnecessary for a Minister's Delegate to determine whether the purposes of the Act are served by the forfeiture of the funds because the legislative scheme of the Act already ensures that they are. In the case at bar, after considering the evidence before him and concluding there were reasonable grounds to suspect the seized currency was the proceeds of crime, the Minister's Delegate chose to maintain the seizure. In doing so, I am satisfied that he correctly interpreted and fulfilled his mandate under s. 29 of the Act.

*Issue #2: Did the Minister's Delegate impose an impossibly high burden of proof on Ms. Yang?*

[14] Ms. Yang submits that the Minister's Delegate imposed an impossibly high burden of proof on her. In her view, a review of the decision demonstrates that there is no evidence that could have been produced that could have satisfied the Minister's Delegate.

[15] At this point, it may be useful to summarize the evidence that was before Officer Coopman when he made his finding of reasonable suspicion.

[16] When first confronted by Officer Coopman and advised of the reporting requirements under the Act, Ms. Yang replied that she did not need to complete a currency report. Suspicious of Ms. Yang's behaviour, Officer Coopman asked Ms. Yang to produce all currency in her possession. Declining to do so, she stated that she had \$5,000 (later \$9,000), in her luggage. Ultimately, a search of her luggage revealed the equivalent of CAN\$21,843.35 in Canadian, American, Hong Kong and Chinese currency. Officer Coopman listed 15 reasons or grounds for concluding that there were reasonable grounds to suspect that the money was the proceeds of crime. The grounds included:

1. the fact the currency was concealed in separate locations in Ms. Yang's luggage;
  2. the currency was not wrapped or packaged to banking standards;
  3. Ms. Yang was uncooperative when asked to produce the currency for examination;
  4. Ms. Yang was extremely nervous and agitated;
  5. Ms. Yang was unable to clearly explain the origins of the currency and made numerous vague and contradictory statements regarding its source and ownership;
- and



6. Ms. Yang was unable to clearly explain her purpose for exporting the currency.

[17] It is important to note that Ms. Yang put herself in the situation where her currency was seized. The reporting requirement was explained to Ms. Yang and ignored. When confronted with the hidden currency, it was Ms. Yang who provided the contradictory and suspicious explanations for the origin of the currency.

[18] After the seizure, both on her own and through counsel, Ms. Yang made extensive submissions to the Minister's Delegate. While Ms. Yang took some exception to certain portions of the evidence of Officer Coopman, most of her objections or disagreements were minor in nature. Indeed, the overwhelming thrust of her submissions related to her personal circumstances and the hardship she would suffer if the seizure were maintained. On the critical question of the origin of the seized currency, Ms. Yang provided very little beyond a statement from her father that he had given a sizable amount of money to Ms. Yang.

[19] Does this put an impossible burden on Ms. Yang? Given the evidence that was before Officer Coopman, I acknowledge that Ms. Yang was required to meet a heavy burden. However, the fact that her burden was heavy does not necessarily mean that it was impossible to meet. Since I am not in the position of the Minister's Delegate, it would not be appropriate for me to speculate as to what evidence would have satisfied him. However, as noted, Ms. Yang provided nothing beyond a statement from her father that the money was a gift. In addition to being completely inconsistent with her statements to Officer Coopman, Ms. Yang's father's statement as to the source of funds was

not backed up by any financial information. Further, evidence that her sick mother in China required the seized currency provides no evidence whatsoever as to the source of the funds.

[20] As has been established consistently by the jurisprudence of this Court, there is an evidentiary burden on an applicant in this situation (see for example, *Dupre v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177; *Ondre*, above; *Hamam*, above; *Yusufov*, above; *Qasem v. Canada (Minister of National Revenue)*, 2008 FC 31). In *Dupre*, at paras. 37-38, Justice Layden-Stevenson described the process and burden on an applicant as follows:

Reasonable grounds to suspect is a lesser but included standard of reasonable and probable grounds to believe: *R. v. Monney*, [1999] 1 S.C.R. 652. In my view, in the circumstances, there was ample reason to suspect that the currency in Ms. Dupre's possession is proceeds of crime. Ms. Dupre created that suspicion by her conduct at the time of the seizure.

The onus then shifted to Ms. Dupre to dispel the suspicion. To accomplish that end, she had to persuade the ministerial delegate as to the lawful source of the funds. The imposition of this requirement is logical given that Ms. Dupre is best-placed to explain the origin of the currency that was in her possession. She simply failed to meet that onus.

[21] In my view, this case provides a very useful summary of the burden on Ms. Yang. On the facts before me, it is abundantly clear that Ms. Yang failed to dispel the suspicion that she herself had raised. In short, she failed to provide sufficiently cogent evidence to put the legitimate source of the funds beyond reasonable doubt.

[22] In oral submissions, there was some discussion of the recent decision of Justice O'Reilly in *Qasem*, above. In that decision, Justice O'Reilly allowed the application for judicial review on the basis that the Minister's Delegate made an error of law by imposing a burden and standard of proof

on Mr. Qasem that was too high. In the record before Justice O'Reilly, a key passage from the analysis provided that "the claimant has not provided in sufficient detail and with enough credible, reliable and independent evidence to establish that *no other reasonable explanation is possible*" [Emphasis in original].

[23] In the case before me, the only mention of the burden on Ms. Yang by the Minister's Delegate was:

You have explained the source of the currency as being derived, in part from your own savings, and in part from gifts of money given to you by your father. You have provided a statement from your father attesting to this. However, this statement fails to meet the burden of proof, in that it does not confirm the legitimacy of the source of the currency.

...you have failed to provide any legitimate documentary evidence or information to demonstrate that the funds were legitimately obtained. Reasonable suspicion still stands and, consequently, the funds are forfeited.

[24] The only mention in the Case Synopsis prepared by the Adjudicator was:

The claimant has explained the source of the currency as being derived, in part from her own savings, and in part from gifts of money given to her by her father. The claimant has provided a statement from her father attesting to this. However, this statement fails to meet the burden of proof, in that it does not confirm the legitimacy of the source of the currency. It is important to note that the onus is on the claimant to provide evidence of the legitimacy of the funds...

...Based on the information in this file, it is my opinion that the officer has met the requirements of reasonable suspicion.

[25] At first glance, the language used with respect to Ms. Yang's father's statements ("this statement fails to meet the burden of proof, in that it does not confirm the legitimacy of the source of the currency") suggests that she was required to prove with 100% certainty the source of the funds. However, on closer inspection, it is evident that the Minister's Delegate was merely referring

to that one piece of evidence in the circumstances of the case. The Minister's Delegate was, in effect, saying "this piece of evidence is not enough to dispel reasonable suspicion given that you earlier mentioned the name of 'Tong' as the source of the currency and given that you provided no financial records". With respect to the remainder of the language used by the Minister's Delegate and the Adjudicator, I note that it merely mirrors the Act – there is no mention of the criminal standard that caused concern for Justice O'Reilly.

[26] In sum, when reading the decision and the Adjudicator's Case Synopsis, I am satisfied that the Minister's Delegate did not impose a too high or incorrect burden on Ms. Yang. Ms. Yang simply failed to dispel the reasonable suspicion as to the source of the seized currency in the view of the Minister's Delegate.

*Issue #3(a): Did the Minister's Delegate ere by failing to disclose certain documents of Officer Coopman to Ms. Yang.*

[27] Ms. Yang submits that the Minister's Delegate did not disclose two notes authored by Officer Coopman and sent to the Adjudicator while she was in the process of preparing the Case Synopsis. Ms. Yang submits that the Minister's Delegate had a duty to disclose this material in order to allow her an opportunity to address evidence prejudicial to her position and bring forward evidence in response (*Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3 at para. 40; *May v. Ferndale Institution*, [2005] 3 S.C.R. 809 at para. 92).

[28] There is no question that Ms. Yang must be accorded procedural fairness. However, the duty of fairness does not necessarily extend to providing every document to a party. The duty was described by Justice Dawson in *Hersi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2136, at para. 20 (T.D.) (QL):

The ability to meaningfully participate in the decision-making process requires clear notice of the case to be met, a full and fair opportunity to present evidence and submissions relevant to that case, and full and fair consideration of that case by an impartial decision-maker

[29] In considering whether the duty of fairness was breached in this case, I observe first that Ms. Yang was given the opportunity to file all the evidence and arguments she wished in order to support her claim (*Dag*, above at para. 52; *Kishavarz v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1309-at para. 22 (T.D.) (QL)). Indeed, as the Respondent correctly notes, Ms. Yang has not made any submissions as to how the disclosure of the missing information would have assisted her. Second, a review of the two memorandums demonstrates that the only information that was not disclosed to Ms. Yang was the conclusions of Officer Coopman; no new evidence was referenced. These conclusions relied on factual records which were known to Ms. Yang (*Dag*, above at para. 52). Accordingly, I do not find the missing information would have been of any benefit to her and therefore its non-disclosure, in this case, did not result in a breach of procedural fairness.

[30] It should be noted, however, that the Respondent treads on dangerous ground when processes are put in place that allow submissions to be made without disclosure. I would recommend that, in the future, the Respondent put systems in place that would either remove the

ability of a Customs officer to provide further comment or provide disclosure of such comments to an applicant.

*Issue#3(b): Did another official, rather than the Minister's Delegate, actually make the decision?*

[31] Ms. Yang submits that Minister's Delegate did not conduct an independent review of the evidence or her submissions as he was required to do (*Canada (Attorney General) v. Canada (Anti-dumping Tribunal)*, [1972] F.C.J. No. 90 (T.D.) (QL), rev'd [1973] F.C. 745 (C.A.), aff'd [1976] 2 S.C.R. 739). In Ms. Yang's view, the Minister's Delegate merely rubber-stamped the Case Synopsis which had previously been prepared for him by the Adjudicator.

[32] I do not agree. It is well-settled that a decision maker is entitled to consult with other public servants before rendering a decision provided the decision maker renders the decision personally (*CAE Metal Abrasive Division of Cdn Bronze Co. v. Canada*, [1985] 1 F.C. 481 (C.A.); *Sovereign Life Insurance Co. v. Canada (Minister of Finance)*, [1998] 1 F.C. 299 at paras. 52-56; *Burke v. Canada (Employment and Immigration Commission)*, [1994] F.C.J. No. 890 at paras. 12-18 (T.D.) (QL)).

[33] In this case, the Minister's Delegate was entitled to rely on the Adjudicator to prepare a Case Synopsis provided the Minister's Delegate retained his full decision-making authority and did

not feel bound by the Adjudicator's recommendation. Turning to the facts before the Court, I observe that:

1. The Minister's Delegate stated in his decision that he was considering all the evidence before him – not just the Case Synopsis.
2. The independence of the Minister's Delegate's review is confirmed by the significant differences between the reasons provided in his decision and the Adjudicator's Case Synopsis. In particular, the Minister's Delegate relied on some facts and reasoning that were not contained in the Case Synopsis.
3. The Case Synopsis provided no analysis with respect to s. 27 of the Act in contrast to the decision of the Minister's Delegate.

[34] In sum, I am satisfied that the Minister's Delegate did not merely "rubber-stamp" the Case Synopsis. The Minister's Delegate exercised his discretion and decision-making authority. While the Minister's Delegate did ultimately agree with the Adjudicator's recommendation, this alone does not mean the Minister's Delegate ceded his authority to render the decision.

## CONCLUSION

[35] Although Ms. Yang characterizes the issues in the case at bar as ones of law or procedural fairness, during oral arguments, submissions were made which amounted to an attack on the merits of the decision. In other words, Ms. Yang asserts that the Minister's Delegate ignored or failed to properly weigh the evidence that was before him. I do not agree.

[36] To the extent that Ms. Yang's arguments put into question the merits of the decision (rather than its lawfulness or procedural fairness), the Minister's Delegate's decision is reviewable on a much higher standard. Whether that standard be reasonableness (see for example, *Sellathurai*, above; *Dag*, above) or patent unreasonableness (see for example, *Thérancé*, above; *Yusufov*, above; *Ondre*, above), I am satisfied that the decision, when read as a whole, meets the standard of review.

[37] Before Officer Coopman was a body of evidence that led Officer Coopman to conclude that there were reasonable grounds to suspect that the seized currency was the proceeds of crime. Fifteen concerns were expressed by Officer Coopman relating to everything from the demeanour of Ms. Yang to inconsistencies and changes in her explanations. On the basis of his findings, Officer Coopman seized the currency.

[38] In her response and explanations, Ms. Yang provided substantial information related to her personal and financial circumstances. However, she provided very little in direct response to the question of the source of the seized currency. A review of the record before the Minister's Delegate shows that the only evidence provided that directly addressed the source of the currency was, in



essence, a bare assertion that the seized currency had been given to her by her father. This explanation by Ms. Yang is not only at odds with the conclusion of Officer Coopman, it is directly inconsistent with her explanation to Officer Coopman that the money had been given to her by a man named Mr. Tong. Further, as noted by the Minister's Delegate, the father's affidavit was unsupported or uncorroborated. In these circumstances, it was not unreasonable for the Minister's Delegate to prefer the evidence of Officer Coopman and for the Minister's Delegate to conclude that there were reasonable grounds to suspect that the seized currency was the proceeds of crime.

[39] For the foregoing reasons, I am not persuaded that the decision of the Minister's Delegate should be overturned. In brief, I am satisfied that:

1. The Minister's Delegate correctly exercised his discretion as permitted under s. 29 of the Act;
2. The Minister's Delegate did not impose an incorrect or impossibly high burden of proof on Ms. Yang;
3. The failure to disclose the opinions of Officer Coopman to Ms. Yang was not, on the facts of this case, a breach of procedural fairness; and
4. The decision of the Minister's Delegate is reasonable in that it stands up to a somewhat probing examination.

[40] On the question of costs, Ms. Yang submits that no costs should be awarded against her. I see no reason not to award costs to the Respondent as the successful party and will do so.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed with costs to the Respondent.

\_\_\_\_\_  
"Judith A. Snider"  
Judge

## Appendix “A”

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

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

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.

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

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

whom they were seized written notice of the seizure and of the right to review and appeal set out in sections 25 and 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.

#### 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.

saisie et du droit de révision et d'appel établi aux articles 25 et 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.

#### 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.

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.

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)*.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2274-06

**STYLE OF CAUSE:** Hui Yang v. Minister of Public Safety

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** January 17, 2008

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

**DATED:** February 7, 2008

**APPEARANCES:**

Glen W Bell FOR THE APPLICANT

Jan Brongers FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

BELL Lawyers FOR THE APPLICANT  
Vancouver, British Columbia

John H. Sims, QC FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Vancouver, British Columbia