

**Date: 20081006**

**Docket: A-63-08**

**Citation: 2008 FCA 300**

**CORAM: LINDEN J.A.  
EVANS J.A.  
TRUDEL J.A.**

**BETWEEN:**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Appellant**

**and**

**AHMAD QASEM**

**Respondent**

Heard at Toronto, Ontario, on October 6, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on October 6, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**BETWEEN:**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Appellant**

**and**

**AHMAD QASEM**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on October 6, 2008)

**TRUDEL J.A.**

[1] This is an appeal from a decision of O'Reilly J. of the Federal Court, 2008 FC 31, (the Applications Judge) dated January 10, 2008, that set aside the decision made by the appellant (Minister or Minister's delegate) pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act) to maintain the forfeiture of the respondent's funds.

[2] The Applications Judge allowed the application for judicial review on the ground that the Minister had imposed too high a burden on the respondent by requiring him to prove that his explanation of the source of funds was the only one possible and referred the matter back to another delegate for reconsideration.

[3] The appellant alleges that the Applications Judge committed reviewable errors by applying the incorrect legal test when concluding as he did on the burden of proof and by failing to give deference to the Minister's decision.

[4] Neither the Applications Judge, nor the parties, when preparing their respective memoranda of facts and law, had the benefit of our Court's decision in *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 255 released on September 9, 2008, a case where the facts are materially indistinguishable from those in the present appeal. We believe that this recent judgment answers the main issue at bar as well as this Court's decision in *Hui Yang v. Canada (Minister of Public Safety)*, 2008 FCA 281, decided afterwards.

[5] In this case, as he had done in *Sellathurai*, the Minister made his decision after inviting the respondent to adduce evidence that the "money was legitimately obtained" (Appeal Book, Tab 8, p. 113).

[6] Once Mr. Qasem was unable to satisfy the Minister's request, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture. Considering the facts of the present

case and the decisions of our Court in *Sellathurai* and *Hui Yang*, we find that it was reasonable for the Minister to decide as he did.

[7] The appeal should be allowed with costs in this Court, the decision of the Federal Court set aside and the application for judicial review dismissed.

"Johanne Trudel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-63-08

**APPEAL FROM A JUDGMENT RENDERED BY THE HONOURABLE MR. JUSTICE O'REILLY OF THE FEDERAL COURT DATED JANUARY 10, 2008, DOCKET NO. T-685-06**

**STYLE OF CAUSE:** *MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v.  
AHMAD QASEM*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 6, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** (LINDEN, EVANS, TRUDEL J.J.A.)

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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Ahmad N. Baksh FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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