

Federal Court



Cour fédérale

Date: 20180227

Docket: T-425-16

Citation: 2018 FC 219

Ottawa, Ontario, February 27, 2018

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ABDULKADIR FARAH JAMA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] of a decision made by a delegate of the Minister of Public Safety and Emergency Preparedness (the “Delegate”) to hold as forfeit the Applicant’s seized currency of 11,484.27 CDN, pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, s 17 [*PCMLTFA*].

II. Background

[2] The Applicant was born in Somalia and is a Canadian citizen. He owns an importing and exporting business, which requires him to frequently travel to Kenya and China, and he claims that he often carries cash with him on those trips for the purpose of conducting business.

[3] On November 20, 2014, the Applicant was at Toronto's Pearson International Airport (the "Airport") returning from a business trip in Kenya. Upon arrival, the Applicant declared that he did not have currency in his possession equivalent to or greater than 10,000.00 CDN; however, he was referred to secondary inspection. During the secondary inspection, a Canadian Border Services Agency ("CBSA") officer (the "Officer") asked the Applicant if he had any currency. The Applicant replied that he did and then provided the Officer with all of the currency in his possession.

[4] The Officer found that the Applicant was in possession of 780.00 EUR, 8,780.00 USD and 2,200.00 RMB, which equated to 11,484.27 CDN. As such, the Applicant was obligated to declare this currency but did not. He claimed that he mistakenly believed he was carrying less than 10,000.00 CDN.

[5] The Officer questioned the Applicant about the origins of the currency. The Applicant explained that his cousin in Kenya had supplied most of the money, for the purpose of him purchasing goods in China on his cousin's behalf, but he had no records or communications to prove this. As well, the Applicant stated that he was an importer of Chinese goods and earned

approximately 2000.00 CAD per month. He typically wired money to China but did not explain why he was carrying currency on this occasion.

[6] The Officer seized the currency as proceeds of crime, based on the following indicators:

- the Applicant had just come from a high risk country;
- there was no documentary evidence on the source of the currency;
- the source of the currency was not a financial institution;
- there was an unclear purpose and/or no documentation for the use of currency;
- the amount of the currency was inconsistent with his income;
- the source of his revenue was unclear: he stated one occupation but also had a recently issued taxi driver license;
- he repeatedly avoided answering questions directly;
- he continued to profess innocence rather than answer questions; and
- there were conflicting statements about prior border crossings with currency.

[7] On January 4, 2015, the Applicant sent a letter to the CBSA requesting that the seized currency be returned to him. The Applicant explained that he had inadvertently failed to declare the currency because he had not done proper foreign exchange calculations. As well, his cousin had supplied him with the majority of the seized currency for the purpose of him purchasing goods on his cousin's behalf. Furthermore, he conducts an importing and exporting business and regularly carries cash on him, which allows for flexibility in making purchases as well as avoiding fees involved with bank transfers or credit cards.

[8] The Applicant submitted documents in support of his request including a certificate of incorporation for "Jama Import Export Ltd." as well as various invoices and receipts for goods purchased in China, certificates of origin, packing lists, bills of lading and travel itineraries. Some of these documents bear the name of the Applicant or his corporation. As well, the Applicant's passport shows regular travel to China and Kenya. Finally, three banking receipts

were provided: the first is dated February 17, 2012, and is for a cheque deposit of 16,000 USD; the second is dated August 4, 2012, and is for a cash deposit of 7,000 USD; the third is dated March 11, 2014, and is for a cash withdrawal of 2,800 USD.

[9] In addition to those documents, the Applicant provided two affidavits. The first, sworn by the Applicant's cousin in Nairobi, Kenya, on November 21, 2014, states that the cousin advanced 8,800 USD to the Applicant for business purposes. The Applicant was to travel to China to purchase various goods on his behalf using that currency. The second, sworn by the Applicant on May 17, 2016, admits that he returned to Toronto from Kenya while carrying the currency in question. He had failed to convert those currencies into Canadian dollars and voluntarily provided the currency to the Officer when asked to do so. The currency was for the purpose of purchasing goods for his cousin, who owns a general store in Kenya where cash is the primary form of payment.

[10] In a letter to the Applicant dated December 11, 2015, the CBSA explained the reasons for the seizure and stated that if no further documentation was received to support the legitimate origin of the seized currency, it would be held as forfeit. The following examples of such documentation were provided: evidence of the origin of the currency (e.g., pay stubs, T4s, records of employment or credit withdrawal records); bank statements demonstrating the deposit of employment income or credit withdrawals into his account and the withdrawal of funds totalling the seized currency; transfer of funds between the Applicant and other individuals who contributed to the funds seized; and a timeline of what the Applicant did with the seized currency from the time it was lawfully obtained until it was seized.

[11] On February 12, 2016, the Delegate rejected the Applicant's request to have the currency returned to him. Pursuant to section 27 of the *PCMLTFA*, the Delegate found that there had been a contravention of subsection 12(1) of the *PCMLTFA*. The Applicant had 11,484.27 CDN in his possession and failed to declare it. His lack of intent or knowledge of the reporting requirements, and the amount by which the currency in his possession exceeded 10,000 CDN, were not relevant. Moreover, the Officer had provided sufficient reasons for having seized the currency as proceeds of crime.

[12] Pursuant to section 29 of the *PCMLTFA*, the Delegate found that the seized currency shall be held as forfeit. The affidavit and business records provided by the Applicant did not establish the legitimate origins of the currency, and no other documentation had been provided to account for the currency. As a result, the CBSA could not definitively ascertain the origins of any of the seized currency and continued to have suspicions regarding the legitimate origin of those funds.

[13] On March 14, 2016, the Applicant applied for judicial review of the Delegate's decision, pursuant to subsection 18.1 of the *Federal Courts Act*.

A. *Preliminary Issues*

(1) The scope of this judicial review

[14] Only the Delegate's decision to not grant relief from forfeiture, pursuant to section 29 of the *PCMLTFA*, is properly under review (*Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186 at para 18).

[15] If the Applicant seeks to appeal the Delegate's decision under section 27 of the *PCMLTFA*, he must bring an action in the Federal Court under section 30 of the *PCMLTFA* (*Dobrovlny v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 526 at paras 17-19).

[16] The Applicant has raised several issues related to the initial seizure of the currency. First, he submits that a reasonable person would conclude that the CBSA officers at the Airport, who subjected him to a secondary screening and then seized the currency, were biased. Second, he submits that the currency should not have been seized as proceeds of crime or used to finance terrorist activity, pursuant to subsection 18(2) of the *PCMLTFA*. Third, he submits that the CBSA officer, who sent the Applicant to secondary screening, provided inadequate reasons for doing so.

[17] These issues are not within the scope of this judicial review. As outlined above, only the Delegate's decision to not grant relief from forfeiture, pursuant to section 29 of the *PCMLTFA*, is properly under review. As the Federal Court of Appeal stated in *Sellathurai v Canada*

(*Minister of Public Safety and Emergency Preparedness*), 2008 FCA 255 [*Sellathurai*] at paragraph 36:

It seems to me to follow from this that the effect of the customs officer's conclusion that he or she had reasonable grounds to suspect that the seized currency was proceeds of crime is spent once the breach of section 12 is confirmed by the Minister. The forfeiture is complete and the currency is property of the Crown. The only question remaining for determination under section 29 is whether the Minister will exercise his discretion to grant relief from forfeiture, either by returning the funds themselves or by returning the statutory penalty paid to secure the release of the funds.

[Emphasis added]

[18] As this Court stated in *Majeed v Canada (Minister of Public Safety)*, 2007 FC 1082

[*Majeed*] at paragraph 36:

[...] [T]he decision under review is not that of customs officers under section 18 of the Act. Rather, the decision that forms the subject matter of this application for judicial review is the decision of the Minister's delegate under section 29 of the Act. Thus any question as to the competence of customs officers is of limited relevance to the issues on this application.

(2) The Applicant's *Charter* arguments

[19] The Respondent submits that the Applicant should be precluded from raising arguments based on the *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c 11 [Charter]* because his notice of application makes no mention of the *Charter* and those arguments were raised for the first time in his memorandum of fact and law.

[20] I agree with the Respondent. Rule 301(e) of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*], provides that a notice of application shall set out “a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on”. An applicant for judicial review must set out in their notice of application the grounds on which they rely, and cannot present new grounds in their memorandum of fact and law (*Tl’azt’en Nation v Sam*, 2013 FC 226 at para 6).

[21] While the Court does have discretion in this matter, considerations relevant to the exercise of that discretion might include:

- whether all of the facts and matters relevant to the new issue or issues were known (or available with reasonable diligence) at the time the application for leave was filed and/or perfected;
- whether there is any suggestion of prejudice to the opposing party if the new issues are considered;
- whether the record discloses all of the facts relevant to the new issues;
- whether the new issues are related to those in respect of which leave was granted;
- the apparent strength of the new issue or issues; and
- whether allowing new issues to be raised would unduly delay the hearing of the application.

Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 22 at paragraph 12

[22] There is no reason why the Applicant could not have raised this issue on a timely basis. In fact, the Applicant has still not filed a notice of constitutional question.

[23] Furthermore, the Applicant’s *Charter* arguments have little in common with the issues upon which the Court granted leave. While the basis of the application for judicial review is the

fairness and reasonableness of the Delegate's decision to retain the seized currency, the Applicant's *Charter* issue is much broader and framed in vague and imprecise terms:

At issue is whether the cumulative effects of law and policies implemented by the Minister of Public Safety and Emergency Preparedness and the Minister of Finance in relation to [the *PCMLTFA*] that allow for improper and discriminatory acts, violates the Applicant's s. 15(1) rights guaranteed by the [*Charter*].

[24] The Respondent has advanced no evidence on this issue because it had no notice that such a question would be raised.

[25] The statement of this Court in *Majeed* at paragraph 25 is apt here:

Not only does this course of events seriously prejudice the respondent, it would also mean that the Court would be called upon to determine a constitutional issue largely in an evidentiary vacuum. As the Supreme Court of Canada has repeatedly observed, *Charter* issues should be decided on the basis of a proper evidentiary record: see, for example, *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130 at ¶ 80, and *MacKay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357 at ¶ 8 and following.

[26] The Applicant should have filed a motion to amend the notice of application pursuant to Rule 75(1) of the *Federal Court Rules* as well as a notice of constitutional question. Accordingly, his *Charter* arguments will not be considered.

III. Issue

[27] Was the Delegate's decision not to grant relief from forfeiture reasonable?

IV. Standard of Review

[28] The standard of review of a decision under section 29 of the *PCMLTFA* is reasonableness (*Dag v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 95 at para 4).

V. Analysis

[29] The relevant statutory provisions in play are attached as Appendix A.

A. *Was the Delegate's decision not to grant relief from forfeiture reasonable?*

[30] The Applicant submits that he provided ample evidence to show that his currency was not from an illegitimate source. Furthermore, the Delegate's reasons inadequately address the evidence that was submitted by the Applicant to demonstrate the origins and movement of the currency.

[31] The onus is on the Applicant to establish that there are no reasonable grounds for the suspicion that the currency is from proceeds of crime or used to finance terrorism. Other than his cousin's affidavit, which is insufficient to show that the currency is from a legitimate source, the Applicant has not provided any documentation to show the legitimate origin of the currency.

[32] In my opinion, the Delegate reasonably found that the evidence provided by the Applicant was not sufficient to establish the origins and movement of the seized currency.

[33] The Federal Court of Appeal has described the standard of proof that the Applicant must meet in order to satisfy the Delegate that the seized funds are not proceeds of crime (*Sellathurai* at paras 49-51):

[49] Where the Minister repeatedly asks for proof that the seized currency has a legitimate source, as he did in this case, it is a fair conclusion that he made his decision on the basis of the applicant's evidence on that issue. The underlying logic is unassailable. If the currency can be shown to have a legitimate source, then it cannot be proceeds of crime.

[50] If, on the other hand, the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. The distinction is important because it goes directly to the nature of the decision which the Minister is asked to make under section 29 which, as noted earlier in these reasons, is an application for relief from forfeiture. The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.

[51] This leads to the question which was argued at length before us. What standard of proof must the applicant meet in order to satisfy the Minister that the seized funds are not proceeds of crime? In my view, this question is resolved by the issue of standard of review. The Minister's decision under section 29 is reviewable on a standard of reasonableness. It follows that if the Minister's conclusion as to the legitimacy of the source of the funds is reasonable, having regard to the evidence in the record before him, then his decision is not reviewable. Similarly, if the Minister's conclusion is unreasonable, then the decision is reviewable and the Court should intervene. It is neither necessary nor useful to attempt to define in advance the nature and kind of proof which the applicant must put before the Minister.

[34] Here, as was the case in *Sellathurai*, the determinative factor in maintaining the forfeiture was the absence of sufficient evidence to show that the funds were from a legitimate source. The

Delegate stated:

[T]he evidence provided does not establish the legitimate origins of the currency. Specifically, with respect to your representative's statement that your cousin gave you \$8,000.00 USD of the seized currency, you were asked to submit documentation to establish your cousin's lawful origin of the currency, a paper trail from the time your cousin obtained the currency lawfully and a link to show the movement of the money between your cousin and you. However, no documentation was submitted to account for the United States Currency or the Euros or Yuan Renminbi. The signed affidavit provided by your representative does not demonstrate the lawful origin of the currency and does not provide a paper trail to link that portion of currency to the seized currency.

As the documentation supplied does not identify the legitimate origins of the aforementioned amounts of currency, the suspicion regarding the legitimate origin of these particular funds remains as the Agency was not able to definitively ascertain their origin. In view of the foregoing, discretion cannot be granted with respect to the forfeiture of the currency and, as such, it will remain forfeited.

[35] Those reasons contain the elements of transparency, intelligibility and justifiability in the decision-making process and the outcome is within the range of reasonable possible outcomes based on the facts and the law. The Delegate specifically requested documentation showing the legitimate origins and movement of the seized currency. The Applicant provided no such documentation. The documents provided by the Applicant only support his contention that he runs an import and export business and conducts business in China.

[36] Furthermore, affidavits stating that funds are from a legitimate source are not sufficient to establish the legitimate origins of funds (*Sellathurai*; *Kang v Canada (Minister of Public Safety*

and Emergency Preparedness), 2011 FC 798; *Sebastiao v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 527 at para 52).

[37] Finally, while the Applicant raised the issue of reasonable apprehension of bias by the CBSA officer who originally pulled the Applicant aside for secondary examination, there is no evidence to support such a finding of fact.

[38] The Delegate's decision to not grant relief from forfeiture was reasonable.

[39] The parties agreed at the hearing that costs to the successful party should be fixed in a lump sum of \$1500.00. The Applicant requested that if costs were awarded against him, he be given an extended period of time to pay such costs. I shall give the Applicant six (6) months to pay costs in full from the date of this judgment.

JUDGMENT in T-425-16

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. Costs to the Respondent fixed in the amount of \$1500.00, payable in full within six (6) months from the date of this judgment.

"Michael D. Manson"

Judge

APPENDIX “A”

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

Reporting

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.

Limitation

(2) A person or entity is not required to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that those conditions have been met.

Who must report

(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;

(b) in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;

(c) in the case of currency or monetary instruments exported from Canada by courier

Déclaration

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.

Exception

(2) Une personne ou une entité n'est pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Déclarant

(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 arrive au Canada ou quitte le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

b) s'agissant d'espèces ou d'effets importés par messenger ou par courrier, l'exportateur étranger ou, sur notification aux termes du paragraphe 14(2), l'importateur;

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

d) le responsable du moyen de transport arrivé au Canada ou qui a quitté le pays et à

or as mail, by the exporter of the currency or monetary instruments;

(d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

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

Duty to answer and comply

(4) Every person arriving in or departing from Canada shall

(a) answer truthfully any questions asked by the officer in the performance of the officer's duties and functions under this Part; and

(b) if the person is arriving in or departing from Canada with any currency or monetary instruments in respect of which a report is made, on request of an officer, present the currency or monetary instruments that they are carrying or transporting, unload any conveyance or part of a conveyance or baggage and open or unpack any package or container that the officer wishes to examine.

Sending reports to Centre

(5) The Canada Border Services Agency shall send the reports they receive under subsection (1) to the Centre. It shall also create an electronic version of the information contained in each report, in the format specified by the Centre, and send it to the Centre by the electronic means specified by the Centre.

bord duquel se trouvent des espèces ou effets autres que ceux visés à l'alinéa a) ou importés ou exportés par courrier;

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

Obligation de répondre et de se conformer

(4) Toute personne qui entre au Canada ou quitte le pays doit :

a) répondre véridiquement aux questions que lui pose un agent dans l'exercice des attributions que lui confère la présente partie;

b) si elle entre au Canada ou quitte le pays avec des espèces ou effets une fois la déclaration faite, à la demande de l'agent, lui présenter les espèces ou effets qu'elle transporte, décharger les moyens de transport et en ouvrir les parties et ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

Transmission au Centre

(5) L'Agence des services frontaliers du Canada fait parvenir au Centre les déclarations recueillies en application du paragraphe (1) et établit, dans la forme prévue par le Centre, une version électronique des renseignements contenus dans chaque déclaration qu'elle transmet au Centre par les moyens électroniques prévus par celui-ci.

Seizures

Return of seized currency or monetary instruments

18 (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.

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.

Deferral of decision

(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.

Notice of decision

(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 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

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18 (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.

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).

Report de la décision

(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.

Avis de la décision

(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 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 :

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.

Limit on amount paid

(2) The total amount paid under paragraph (1)(a) shall, if the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

Appeal to Federal Court

30 (1) A person who makes a request under section 25 for a decision of the Minister 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.

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).

Limitation du montant versé

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme versée en vertu de l'alinéa (1)a) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

Cour fédérale

30 (1) La personne qui a demandé, en vertu de l'article 25, que soit rendue une décision peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

Ordinary action

(2) The Federal Courts Act and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

Delivery after final order

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

Limit on amount paid

(4) If the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, the total amount that can be paid under subsection (3) shall not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

Action ordinaire

(2) La Loi sur les Cours fédérales et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

Restitution au requérant

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en a été informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

Limitation du montant versé

(4) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-425-16

STYLE OF CAUSE: ABDULKADIR FARAH JAMA v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 22, 2018

JUDGMENT AND REASONS: MANSON J.

DATED: FEBRUARY 27, 2018

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