Federal Court  Cour fédérale

Date: 20201022

Docket: T-1579-19

Citation: 2020 FC 995

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 22, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

KARIM WAONGO SANDIDI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Karim Waongo Sandwidi, a citizen of Burkina Faso and Spain, seeks judicial review of the decision by the delegate of the Minister of Public Safety and Emergency Preparedness dated September 3, 2019, which related to the forfeiture of nearly 20,000 euros and US$750 seized upon his arrival at Montréal - Pierre Elliott Trudeau Airport on August 1, 2018. The application

for judicial review is brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[2] For the reasons that follow, the application is dismissed since the Minister's decision, through his delegate, meets the standard of reasonableness.

I. Facts

[3] The applicant has been a resident of France since 2015. He works there as a part-time cook in a fast-food establishment.

[4] He was intercepted on August 1, 2018, upon his arrival in Montréal from Paris. After passing through the primary inspection kiosk at Pierre Elliott Trudeau Airport, where he declared that he was not in possession of currency or monetary instruments of a value equal to or greater than Can$10,000, he was approached and questioned by a Canada Border Services Agency (CBSA) officer in the baggage claim area. According to his report, he stated having lived in Spain since 1999 and that he was coming to Canada for seven days. He knew few details about the person he was coming to visit, yet he had known this person for 15 years. He was asked to report to the secondary inspection area for a verification of his declaration.

[5] His baggage was examined there. Almost 20,000 euros in large bills was found in two envelopes in his baggage and wallet. In his wallet, the applicant also had US$750.

[6] The officer at the secondary inspection area wrote an 11-page report in which the meeting with Mr. Sandwidi is described in detail. He stated he was coming to Canada for 16 days to visit a friend here. This was his first visit to Canada. He was travelling alone, using a large black travel bag and a blue carry-on bag.

[7] An inspection of the black bag revealed nothing in particular. It was a whole other story for the carry-on. The customs officer found a first envelope containing numerous 500-euro banknotes. The applicant then informed the customs officer that there was another envelope, which was found; in it were other banknotes in denominations of 500, 200 and 100 euros. In total, the two envelopes contained 19,500 euros according to the customs officer's report. The CBSA officer asked Mr. Sandwidi to hand over his wallet, in which $750 in U.S. currency, in large bills, and 405 euros in denominations of 100, 50, and 5 euros were found.

[8] The applicant was then questioned as to why he did not report that he was in possession of monies in excess of $10,000 and where the funds came from. After some hesitation, the applicant stated that he had misread the question. The customs officer perceived him as being nervous, constantly wringing his hands. He did not deny knowing that there was money in his baggage, money that he himself had put there, and that it exceeded Can$10,000 in value.

[9] As for the source of the funds, the explanations given according to the customs officer's report were also nebulous. His brother and two friends were the alleged owners of the approximately 19,550 euros. But these amounts were allegedly handed to him in Paris on three

occasions by people he stated not knowing; the applicant was no more precise about when this money was handed over, other than it having been in the preceding month.

[10] The use for the amounts that the applicant had in his possession was not clear. Mr. Sandwidi stated that it would possibly be used to buy vehicles, then hesitated before suggesting that it could be for a Toyota. Asked where he would make his purchase, he stated "Gatineau", but he did not know how to get there or which company he would be doing business with. He did not know either how to export vehicles, but his brother, who operates a garage in Burkina Faso, was to arrange it himself even though he did not have an import-export company for vehicles or car parts. In short, the applicant did not know the source of the funds he admitted to having but for which he stated he did not have a bank receipt, and it was far from clear what use he was going to do with them. He had stated that he had come to Canada as a tourist and that it was possible that he could be here to buy cars without knowing where and how to export them. The conversation with the customs officer was not called into question.

[11] But that is not all. He reported to the customs officer that he had an income of 1,600 euros per month in France and about 800 euros in a bank account; he allegedly had no other source of income. Yet an inspection of one of his two cell phones revealed what was described as a great deal of conversations about money exchanges and payments, with Mr. Sandwidi's only explanation being that he was doing favours for others. This inspection revealed trips in previous months to Belgium, Switzerland, Germany, Tunisia and Burkina Faso. The applicant could not easily explain those trips, having an income of just 1,600 euros per month. He fared no better with his explanation of the nature of the trips. Finally, the customs

officer noted the sharing of photos of different passports and national identity documents with other persons. The explanation given was that Mr. Sandwidi was doing his friends favours by renewing their passports during his travels to Burkina Faso.

[12] The second cell phone in the applicant's possession was inspected by another customs officer. There were other messages, in large numbers, referring to sizable money transfers with various individuals. The same difficulties in explaining it all came up: they were favours to friends.

[13] It was no surprise that the officer seized the money [TRANSLATION] "with no terms of release" because he stated having reasonable grounds to suspect that it was the proceeds of crime or terrorist financing. This meant that no conditions for returning it had been offered. The officer's report provided a long list of facts that tend to support said reasonable grounds to suspect. In any event, the applicant did not in any way contest the content of the report or the seizure by the customs officer.

II. Evidence used to justify possession of funds

[14] It is therefore only the Minister's decision that is at issue. The Minister's delegate noted the contravention of subsection 12(1) of the *Proceedings of Crime (Money Laundering) and Terrorism Financing Act* (SC 2000, c 17) [the Act]. Here is the text:

Currency and monetary instruments	**Déclaration**
12 (1) Every person or entity referred to in subsection (3) shall report to an officer, in	**12 (1)** Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à

accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.	l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.

The prescribed amount is obviously Can$10,000.

[15] It should also be noted that the seizure was made legally under subsection 18(1) of the Act since the officer had grounds to believe that the requirement to report being in possession of more than Can$10,000 had been contravened.

[16] This was followed by a request for a review of the forfeiture, under section 25 of the Act, made on October 11, 2018. Pursuant to section 26, a notice setting out the circumstances of the seizure was sent on November 28, 2018. It took several mailings for the notice to eventually be received. The lack of evidence proving the funds' legitimate source was emphasized. The letter of November 28, 2019, expressly stated that in order for the Minister to exercise his discretion and lift the forfeiture, he had to be satisfied that the funds came from a legitimate source, with supporting evidence. The letter explained that there had to be an identifiable link between the currency seized and its legal origin, with such a link including sufficient details to establish the absence of any other explanation. It was therefore only on April 30, 2019, that the applicant's claims were submitted.

[17] The applicant asserted being the head of a company named Trade Center, which allegedly had as its main activity the importation and sale of vehicles. The company supposedly did

business in Europe. In 2015, in search of better markets, the applicant allegedly travelled to the United States to visit a friend there and explore the American used car market. It was a similar type of exploratory trip that allegedly brought him to Montréal on August 1, 2018. The document dated April 30, 2019, notes the [TRANSLATION] “confusing explanations” given at the time of the seizure. Mr. Sandwidi’s counsel on judicial review, who was not the counsel who acted for the applicant on April 30, 2019, made the same concession at the hearing of the application for judicial review. I note that the applicant’s statutory declaration of October 24, 2019, in support of his application for judicial review barely mentions his questioning by CBSA staff on August 1, 2018, and suggests rather that he cooperated, going so far as to declare that he told the officer he had 19,500 euros and US$750, whereas the officer stated instead that it was after locating a first envelope in the applicant’s baggage that Mr. Sandwidi indicated that there was a second envelope containing a large sum of euros.

[18] In an attempt to substantiate his business transactions, Mr. Sandwidi filed, in April 2019, various commercial documents, in a bundle. I went through all of the documents.

[19] Just a month later, on June 5, 2019, a CBSA representative informed Mr. Sandwidi of his findings with respect to the commercial documents filed by him. Thus, it was noted that none of the documents demonstrated business transactions relating to vehicles near the dates of travel to Canada: the vast majority of the documents originated from the years 2006 to 2013. The legitimate source of the currency of August 2018 is nowhere to be found in them. A more recent document was produced by the applicant. It was a history of banking transactions between 2017 and 2018. However, this document did not demonstrate a link between the currency seized and

its legitimate source; in fact, no deposit or withdrawal that could match the travel dates corresponded to the seized amounts. There was nothing in this history that matched the amounts received from the buyers. The applicant was invited to improve his representations.

[20] An attempt to do so was made on July 2. This time, Mr. Sandwidi alleged that Burkina Faso's culture is such that [TRANSLATION] "keeping money in the bank is not automatic and imperative in Burkina Faso and in some African countries" (letter of July 2, 2019, at para 6). The applicant then filed a new series of documents in a bundle, and in a jumble, representing release forms and receipts, as well as a court summons in Burkina Faso. Finally, the applicant produced a jumble of documents in a language that was neither English nor French, the usefulness of which was not explained. I spotted the name of one of the three persons from whom Mr. Sandwidi allegedly received a sum of money in euros, without knowing who had brought him this amount in France (Officer Drolet's report, p. 3 of 11).

III. Decision of Minister's delegate

[21] The decision for which judicial review is sought came on September 3, 2019. After summarizing the various steps, starting with the seizure of August 1, 2018, the delegate expressed dissatisfaction with the explanations given. The applicant failed to comply with the obligation under subsection 12(1) of the Act. Section 3 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [the Regulations], requires that the declaration be made in writing. The seizure was therefore confirmed. As for the delegate exercising her discretion to lift the forfeiture, the applicant having had the opportunity to provide

documentation demonstrating that the seized currency came from legitimate sources, the delegate stated that the legitimate source had not been demonstrated.

[22] Essentially, the documentary evidence presented did not demonstrate anything relevant to the currency seized:

- The delegate accepted that the applicant had done business through Trade Center and that he was contemplating the Canadian automotive market.
- The invoices for May 2019 could not be considered in relation to currency seized nine months earlier. Similarly, the cost of shipping cars in August 2018 did not explain the amount seized in Canada earlier, in August 2018.
- With respect to the currency exchange slips submitted to substantiate a business in Burkina Faso, the representations concerning them were not corroborated by what the applicant had reported to the customs officer. Indeed, the applicant reported to the customs officer on August 1, 2018, that money from three sources was brought to him in France during the month preceding August 2018. The explanation provided during the ministerial review was for copies of slips showing exchanges between the currency of Burkina Faso and euros, exchanges made in Burkina Faso and not in France. Finally, an examination of the slips showed the presence of a single seal (or stamp), and none of the copies bore the applicant's signature.
- The "release forms" showed their dates but did not in any way demonstrate a link between the release forms, exchanged currencies and seized currencies, nor did they reveal anything more about where the currency came from, let alone whether the source was legitimate. In fact, there was no bank document that could attest to the legitimacy of the commercial activities or that could assist in demonstrating that deposits and withdrawals corresponded to the dates of travel; the delegate commented that it was difficult to understand why funds would have to be converted into euros to purchase cars in Canada.

- A judicial application filed against the applicant in Burkina Faso did not specify the dates on which amounts were allegedly handed over to the applicant, or a link between those amounts and the amounts seized in Canada.

[23] The conclusions drawn by the delegate are found in the following two paragraphs, taken from page 5 of the decision:

> [TRANSLATION]
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> Although I agree that you are self-employed and that it is possible that individuals gave you currency; the documentary evidence you have provided does not establish the legitimate source of the seized currency, since there is no documented record and the currency transactions are not traceable, i.e. there is no traceable link between the currency in your possession at the time of the seizure, the currency provided to you by the clients, and the legitimate source of these currency.
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> Based on the foregoing, the evidence provided does not establish the link between the currency in your possession upon entry into Canada and the legitimate source of this currency. As a result, there is still a reasonable doubt as to the legitimate source, and you have failed to satisfy the Minister's delegate that the money seized was legitimately acquired. Therefore, discretion cannot be granted with respect to the forfeiture of the currency, and the currency is held as forfeit.

Assuming that Mr. Sandwidi engaged in some commercial activity while at the same time working as a part-time cook for a fast-food chain, the debate therefore focuses solely on demonstrating the legitimate source of the currency seized at the Montréal airport on August 1, 2018.

IV. Standard of review

[24] The first issue to be dealt with is that of the standard of review applicable to the merits of the decision to be reviewed. The issue is important because the burden placed on an applicant depends on it.

[25] It appears that the parties agree that the standard of reasonableness will apply. It seems to me that there is no doubt about that. Previous case law in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] has already established that the standard is that of reasonableness (*Dag v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 95, at para 4; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 [*Sellathurai*], at para 25). *Vavilov* merely confirms the presumption that reasonableness is usually the applicable standard (*Vavilov*, para 10). No attempt has been made to demonstrate that another standard applies.

[26] This has two consequences for our purposes. First, the reviewing court must show deference to the Minister's decision and not substitute its discretion for that of the decision maker. As was noted in *Vavilov*:

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

> [14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 *U.T.L.J.* 458, at pp. 467-70.
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> [Emphasis added.]

Second, the reviewing court must look for the justification, transparency and intelligibility in the decision in relation to the relevant factual and legal constraints (para 99). The burden is on the applicant to show that the decision is unreasonable, satisfying the reviewing court that there are serious shortcomings (para 100), and that the exercise is not a treasure hunt (para 102). A reasonable decision will be internally coherent; it will be justified in light of the legal and factual constraints.

V. Submissions of parties and analysis

[27] Before launching into a review of the arguments to determine whether the decision is reasonable, I think it would be useful to present the legal framework that governs the analysis since it represents a legal constraint.

[28] The governing legal regime has its peculiarities. It targets money laundering and the financing of terrorist activities by creating strict requirements for declaring financial transactions, besides of course establishing record keeping and client identification requirements for financial service providers, among others (s. 3 of the Act).

[29] The requirement to declare currency is spelled out in section 12. I reproduced subsection 12(1) earlier in these reasons. The maximum amount that can be imported without declaring it is $10,000 (s 2 of the Regulations). These same Regulations require that reporting shall be made in writing and contain certain information (s 3).

[30] Failure to comply with reporting requirements makes undeclared currency subject to forfeiture. The officer must have reasonable grounds to believe there is a contravention of section 12 of the Act. In such a case, “the officer may seize as forfeit the currency or monetary instruments” (s 18(1) of the Act). The seized currency or monetary instruments may be returned unless the officer has reasonable grounds to suspect that they are proceeds of crime or funds for use in the financing of terrorist activities. Therefore, a higher standard—reasonable grounds to believe that the required declaration was not made—must be met to seize the currency, and a lower standard—suspecting that the funds are proceeds of crime or for use in the financing of terrorist activities—is sufficient to prohibit the return of seized currency (s 18(2) of the Act). This was the situation facing Mr. Sandwidi.

[31] The applicant’s only recourse was the Minister’s review under the terms of sections 25 to 30 of the Act. The notice setting out the circumstances of the seizure (s 26) was sent; there was even a second notice in which the Minister indicated that the documentary evidence appeared to be insufficient; therefore, the applicant was able to send a second batch.

[32] The Minister first decides whether the requirement to report was contravened. (s. 27). If it was contravened, the Minister may make one of the decisions open to him under subsection 29(1) of the Act.

If there is a contravention	**Cas de 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,	**29 (1)** S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe:
(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;	**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) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or	**b)** soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);
(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.	**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).

The Minister's decision can be subject to judicial review by the Court.

[33] As seen above, judicial review can succeed only if the applicant satisfies the Court that the decision rendered by the Minister's delegate on September 3, 2019, did not bear the hallmarks of reasonableness.

[34] In his memorandum of fact and law, the applicant essentially sought to suggest that the evidence offered in the review process was sufficient under section 29 of the Act and that the decision of the Minister's delegate was unreasonable. But before further examining this claim, two preliminary issues must be addressed.

A. *Preliminary issues*

[35] The first of these issues is the applicant's attempt to present additional evidence that was not before the administrative decision maker. That evidence is exhibits P-8 and P-9, presented in the statutory declaration of October 24, 2019, more than seven weeks after the September 3 decision. I note that the applicant had already provided his documentary evidence on two occasions, having responded to the notice issued on November 28, 2018, in his document of April 30, 2019, but also to the notice of June 5, 2019, in which the CBSA representative outlined the shortcomings he had noted in the documentation provided thus far. The applicant therefore sent additional documentation on July 2, 2019. It seems that he tried the same trick after the decision was rendered.

[36] At the hearing, counsel for the applicant conceded that he could not justify admitting P-9 in evidence. It is therefore not necessary to address it. As for Exhibit P-8, presented as the declaration of the foreign exchange company and validated vouchers, it consists of a certification, signed in Ouagadougou on October 10, 2019, in respect of documents entitled [TRANSLATION] "Manual exchange authorization" signed between May and July 2018.

[37] As is well known, the reviewing judge considers the legality of the decision rendered by an administrative tribunal; it follows that only the case before that tribunal is relevant. This principle is not new. The respondent referred to *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*], at paragraphs 17 to 20. He was not wrong. Our Court of Appeal has never departed from this principle since then. *Delios v Canada (Attorney General)*, 2015 FCA 117 [*Delios*] and *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 [*Bernard*] made things clearer.

[38] In *Delios*, the Court of Appeal reaffirmed the principle:

> [42] Accordingly, as a general rule, the evidentiary record before the Federal Court on judicial review is restricted to the evidentiary record that was before the administrative decision-maker. In other words, as a general rule, evidence that was not before the administrative decision-maker and that goes to the merits of the matter before the Board is not admissible on judicial review. As a result, most affidavits filed on judicial review only attach the record that was before the administrative decision-maker, without commentary. This is proper. See generally *Connolly v. Canada (Attorney General)*, 2014 FCA 294, 466 N.R. 44 at paragraph 7, citing *Access Copyright*, above at paragraphs 19-20.

There are “narrow, principled” exceptions to the general rule. Thus, the “general background” exception, which the applicant seems to claim, does not allow for the introduction of new evidence:

> [46] But “[c]are must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider”: *Access Copyright*, above at paragraph 20(a).

[39] *Bernard* provided a statement of the principles involved and the recognized exceptions (paras 17 to 27). The role given to the reviewing court is different from that of the administrative tribunal: the authority to decide questions on the merits is not wielded by the reviewing court; the reviewing court reviews the overall legality: “[t]he essential purpose of judicial review is the review of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence at the tribunal or trial court” (*Gitxsan Treaty Society v Hospital Employees’ Union*, [2000] 1 FC 135, at pages 144 and 145, cited in *Access Copyright*, above, para 19). That of course explains why the new evidence cannot be admissible.

[40] The exceptions to the rule set out in *Bernard* help illustrate the general rule. Let me reproduce the statement made in the Court of Appeal:

> [20] The first recognized exception is the background information exception. Sometimes on judicial review parties will file an affidavit that contains summaries and background aimed at assisting the reviewing court in understanding the record before it. For example, where there is a large record consisting of many thousands of documents, it is permissible for a party to file an affidavit identifying, summarizing and highlighting, without argumentation, the documents that are key to the reviewing court’s understanding of the record.
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> [21] In *Delios*, above, I put it this way (at paragraph 45):

> The "general background" exception applies to non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker. In judicial reviews of complex administrative decisions where there is procedural and factual complexity and a record comprised of hundreds or thousands of documents, reviewing courts find it useful to receive an affidavit that briefly reviews in a neutral and uncontroversial way the procedures that took place below and the categories of evidence that the parties placed before the administrator. As long as the affidavit does not engage in spin or advocacy – that is the role of the memorandum of fact and law – it is admissible as an exception to the general rule.

[22] But "[c]are must be taken to ensure that the affidavit does not go further and provide [fresh] evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider": *Access Copyright*, above at paragraph 20; *Delios*, above at paragraph 46.

[23] The background information exception exists because it is entirely consistent with the rationale behind the general rule and administrative law values more generally. The background information exception respects the differing roles of the administrative decision-maker and the reviewing court, the roles of merits-decider and reviewer, respectively, and in so doing respects the separation of powers. The background information placed in the affidavit is not new information going to the merits. Rather, it is just a summary of the evidence relevant to the merits that was before the merits-decider, the administrative decision-maker. In no way is the reviewing court encouraged to invade the administrative decision-maker's role as merits-decider, a role given to it by Parliament. Further, the background information exception assists this Court's task of reviewing the administrative decision (*i.e.*, this Court's task of applying rule of law standards) by identifying, summarizing and highlighting the evidence most relevant to that task.

[24] The second recognized exception is really just a particular species of the first. Sometimes a party will file an affidavit disclosing the complete absence of evidence on a certain subject-matter. In other words, the affidavit tells the reviewing court not what is in the record—which is the first exception—but rather

> what cannot be found in the record: see *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980), 29 O.R. (2d) 513 (C.A.) and *Access Copyright*, above at paragraph 20. This can be useful where the party alleges that an administrative decision is unreasonable because it rests upon a key finding of fact unsupported by any evidence at all. This too is entirely consistent with the rationale behind the general rule and administrative law values more generally, for the reasons discussed in the preceding paragraph.
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> [25] The third recognized exception concerns evidence relevant to an issue of natural justice, procedural fairness, improper purpose or fraud that could not have been placed before the administrative decision-maker and that does not interfere with the role of the administrative decision-maker as merits-decider: see *Keeprite* and *Access Copyright*, both above; see also *Mr. Shredding Waste Management Ltd. v. New Brunswick (Minister of Environment and Local Government)*, 2004 NBCA 69, 274 N.B.R. (2d) 340 (improper purpose); *St. John's Transportation Commission v. Amalgamated Transit Union, Local 1662* (1998), 161 Nfld. & P.E.I.R. 199 (fraud). To illustrate this exception, suppose that after an administrative decision was made and the decision-maker has become *functus* a party discovers that the decision was prompted by a bribe. Also suppose that the party introduces into its notice of application the ground of the failure of natural justice resulting from the bribe. The evidence of the bribe is admissible by way of an affidavit filed with the reviewing court.
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> . . .
>
> [27] The third recognized exception is entirely consistent with the rationale behind the general rule and administrative law values more generally. The evidence in issue could not have been raised before the goods-decision and so in no way does it intervene with the role of the administrative decision-maker as well-decision. It also facilitates this court's ability to review the administrative decision-maker on a permissible ground of review (*i.e.*, this Court's task of applying rule of law standards).
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> [Emphasis added.]

[41] Here, it seems clear to me that the applicant is seeking to fill in what he believes to be gaps in his evidence after having read the decision for which judicial review is being sought. Although he was able to do so when the Minister's representative informed him of the

shortcomings, the applicant is not authorized to seek to improve his evidence once the decision has been made. There are no exceptions in this case that could allow it: his review was heard by the Minister, who rendered his decision.

[42] The applicant argued that there was a breach of procedural fairness, in an attempt to justify the admission of new evidence after the decision was rendered. In doing so, he is apparently trying to claim that *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, should apply. On many occasions, the Court has sought to understand what would constitute a breach. The answer was that the more important an administrative decision is to an individual, the more stringent the procedural protections will be. But this does not give any indication of the nature of the breach in our case. If I understand what the applicant is referring to, in citing *Baker*, he is instead arguing the stringency of procedural protections (para 23), something the Supreme Court calls “procedural protections closer to the trial model”. It is the third factor identified by the Court (para 25) to which the applicant refers, one of the five factors proposed for determining the stringency of procedural protections leading in some cases to protections close to those of a trial. In our case, the applicant was able to improve his file after possible shortcomings were identified by the CBSA representative. The applicant was able to produce additional evidence, giving him the opportunity to build on his case before it was decided. It is hard to understand what he could complain about.

[43] Once before this Court, the applicant was held to the record he had constituted, not once but twice. The reviewing court does not sit on appeal *de novo*. If the applicant was trying to avail himself of the third exception as described in *Bernard*, he cannot succeed since the exception

concerns breaches of procedural fairness “that could not have been placed before the administrative decision-maker” (*Bernard*, para 25). Here, the applicant failed to present evidence that he now believes might have been useful to him. This is not a matter of procedural fairness, and it could have been presented to the decision maker at the appropriate time and place. Nor can the applicant claim the “general background” exception even as he seeks to introduce fresh evidence, contrary to what the Federal Court of Appeal states in *Access Copyright* (para 19) and *Bernard* (para 22). We are not faced here with “general background”, allowing us to understand the history and nature of the matter that was before the Minister’s delegate, but rather fresh evidence.

[44] The second preliminary issue consists of an argument presented at the hearing for the first time. This time, the applicant sought to make an argument with respect to a sentence drawn from the decision of September 3, 2019, where the decision maker noted that the applicant came to Canada to buy cars on arrival with euros rather than being in possession of Canadian dollars. In this case, it is an unimportant finding, given the basis on which the decision was actually rendered, that is, the source of the funds was not established as legitimate. The denominations would matter little. The applicant claims that the question was not asked and that this was a breach of procedural fairness. Not only was the decision maker’s comment merely a finding based on the evidence that the applicant chose to present, but this argument was presented for the first time at the hearing. Most recently, the Federal Court of Appeal, in *Beddows v Canada (Attorney General)*, 2020 FCA 166, endorsed this Court’s decision to refuse to consider an argument because it was presented for the first time at the hearing:

> [15] As concerns the Application Judge’s decision to decline to entertain the New Issues, we find that it was well within his

> discretion to do so since they were raised by the appellant during the hearing before the Federal Court without prior notice. Remedies which a court may grant on judicial review being, in essence, discretionary, it is well established that a reviewing court has the discretion to not consider an issue raised for the first time by a party on judicial review, where doing so would be inappropriate (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 at para. 22, quoting from *Canadian Pacific Ltd. v. Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 S.C.R. 3, 122 D.L.R. (4th) 129 at para. 30). This could be the case where, absent special circumstances, arguments that were not raised in the Memorandum of Fact and Law are presented for the first time on oral argument (*Del Mundo v. Canada (Citizenship and Immigration)*, 2017 FC 754, 282 A.C.W.S. (3d) 149 at paras. 12-13).
>
> [16] Here, the Application Judge found that the appellant had ample time to alert the respondent about the New Issues, but failed to do so. He concluded that it would therefore be inappropriate to consider them in these circumstances. We see no palpable and overriding error in the Application Judge's exercise of his discretion on this point.

Of course, the rule comes from the highest authority, the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, from which I reproduce paragraph 22, cited by the Court of Appeal:

> [22] The ATA sought judicial review of the adjudicator's decision. Without raising the point before the Commissioner or the adjudicator or even in the originating notice for judicial review, the ATA raised the timelines issue for the first time in argument. The ATA was indeed entitled to seek judicial review. However, it did not have a right to require the court to consider this issue. Just as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so: see, e.g., *Canadian Pacific Ltd. v. Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 S.C.R. 3, *per* Lamer C.J., at para. 30. "[T]he relief which a court may grant by way of judicial review is, in essence, discretionary. This [long-standing general] principle flows from the fact that the prerogative writs are extraordinary [and discretionary] remedies."

[Emphasis added.]

[45] Here, it would be unfair to the respondent to allow such an argument, even though, in my opinion, its value would be at best low when we consider what is actually being asked. There are no particular circumstances cited here that could justify considering an argument presented for the first time at the hearing. After all, the issue is the legitimate source of the funds. Counsel for the respondent objected with good reason, in my opinion.

B. *Arguments on merits*

[46] Essentially, the theory for the applicant's case centres on proving that he has been involved in the business of importing used cars into Burkina Faso since 2006; he claims that he has been involved in this business part-time since 2018. Thus, he alleges that the commercial documents he has filed prove the existence of this business.

[47] At the hearing, he placed great emphasis on his claim that the monies seized came from Burkina Faso, complaining that the Case Summary and Recommendations – Currency Seizure (Certified Tribunal Record [CTR], tab 34) did not specify that the amounts received from three persons, and brought to Canada, came from Burkina Faso, in contrast with the report by the customs officer who seized the currency, which stated that the applicant had declared that the monies seized came from Burkina Faso. Given the emphasis placed on this claim, it merits closer scrutiny.

[48] On August 1, 2018, the customs officer produced a report according to which Mr. Sandwidi reported having received from persons that he did not know three deliveries of money in the preceding month from his brother and two friends. These deliveries had allegedly been made to his home in France. The customs officer added that Mr. Sandwidi [TRANSLATION] "states that the money comes from Burkina Faso" (CTR, tab 6, p. 3 of 11). As for the Case Summary and Recommendations – Currency Seizure in tab 34 of the CTR, it does not explicitly state that the money comes from Burkina Faso. In the applicant's view, this is more than a minor oversight.

[49] The complaint is that this Summary to which the Minister's delegate would have had access did not contain this information. Despite the Court's insistence at the hearing on questioning why this would matter, it does appear to simply be related to the theory that the money came from Burkina Faso for the purchase of used cars. The applicant stated that this was reflected in a decision by the Minister's delegate, who emphasized France rather than Burkina Faso.

[50] For the applicant, despite his [TRANSLATION] "disconnected" and "confusing" statements (Applicant's Memorandum of Fact and Law, paras 35, 36, 50, 52, 53) when intercepted with currency exceeding $10,000, the evidence of his commercial activity in Burkina Faso should have been sufficient; he stated having proved to be in the car business.

[51] Finally, the applicant argued that a lawsuit allegedly launched against him in Burkina Faso by the three people who provided him with the monies that were seized suggests the

currency he received is legitimate. As indicated at the hearing, these allegations could only have very minimal probative value since they are only allegations under the seal of a bailiff. Nothing is known of this summons, and counsel for the applicant confirmed that no decision, if any, was rendered. Counsel for the applicant confirmed at the hearing that no affidavit, or statutory declaration, was filed with the Minister's delegate despite the two opportunities provided to the applicant to present his representations.

[52] As for the respondent, his arguments were based on the applicable regime in this case. He considered the case law in this area and insisted that the applicant should have addressed not only the source of the funds, but also their legitimacy. This evidence was not provided, and that is what the Minister's delegate found. The Minister's delegate limited herself to this aspect alone, which was enough for her to come to a conclusion. This was her conclusion, and it was reasonable in light of the factual and legal constraints.

VI. Analysis

[53] In my view, the decision is reasonable. It is nonetheless worth reviewing the relevant case law that was relied upon to reach that conclusion.

[54] In *Bouloud v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 41, the Court of Appeal endorsed its decisions in *Sellathurai v Canada (Public Safety and Emergency Preparedness*), 2008 FCA 255, [2009] 2 FHR 576 [Sellathurai], and *Canada (Public Safety and Emergency Preparedness) v Huang*, 2014 FCA 228, and concluded that ministerial discretion under section 29 of the Act is limited: "The only question which arises under this provision is

whether the evidence submitted regarding the forfeited currency satisfactorily shows that it does not represent the proceeds of crime" (para 3). The Minister's delegate was not satisfied with the evidence submitted. In other words, if the evidence of legitimacy is satisfactory, the funds will obviously not be proceeds of crime or terrorist financing, and discretion will be exercised in the applicant's favour. But if the legitimacy of the monies advanced is not proved to the Minister's satisfaction, he cannot exercise his discretion.

[55] Thus, only knowing the source of the funds may not be sufficient per se. The source of the funds itself would still have to be legitimate. Proving this is the task of the person whose funds have been seized.

[56] It seems useful to me to contextualize the discretion that the Minister may exercise. It is paragraph 36, drawn from *Sellathurai* (above), that is the authority:

> [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.

[57] As noted above, demonstrating the legitimacy of the source of the currency ensures that this currency cannot be considered as proceeds of crime. Here, it could not be clearer that the Minister was looking for evidence allowing him to conclude that the currency had a legitimate source.

[58] The Minister's decision, through his delegate, is that he was not convinced that the currency was not proceeds of crime. As the Court put it in *Sellathurai*, the legitimacy of the source of the currency is key:

> [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.
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> [Emphasis added.]

[59] The Court also indicated the evidence required to satisfy the Minister. In paragraph 51 of *Sellathurai*, it wrote as follows:

> [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.
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> [Emphasis added.]

[60] In our case, the Minister's delegate concluded that she was unable to trace the currency's paper trail; in the words of the delegate, the legitimate source of the currency seized was not established [TRANSLATION] "since there is no documented record and the currency transactions are not traceable, that is, there is no traceable link between the currency in your possession at the time of the seizure, the currency provided to you by clients and the legitimate source of this currency" (Decision of September 3, 2019, p 5).

[61] Madam Justice Layden-Stevenson, then of this Court, noted in *Dupre v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 1177, that the source of the funds is the more significant problem, in a case where the statutory declarations—declarations that were not offered by the three persons who had provided the funds in our case—showed that the money was intended for an investment. Justice Layden-Stevenson clarified that "[t]he declarations do not establish the source of the funds allegedly provided by the individuals." (para 31). This is the problem evoked by the Minister's delegate here. The applicant was unable to prove that the seized currency was from a specific legitimate source that could be traced. This seems to me to be a very reasonable finding. The proof offered largely consists of evidence of a commercial activity, whereas the CBSA representative had indicated how critical it was to establish the legitimacy of the currency's source, not just the source of the currency itself (*Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 911, para 44).

[62] Over the years, the case law of this Court has provided useful guidance on proving the legitimate source of funds. For example, Madam Justice Gleason, then a member of this Court,

recalled the state of the case law in *Tran v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 600:

> [25] In the context of requests for relief from forfeiture under the Act, the case law establishes that a refusal to grant relief from forfeiture is made on a reasonable factual basis if all that an applicant does is show that the funds were drawn from a bank account because this does not prove where the money originally came from (*Kang* at para 40; *Satheesan v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 346 at paras 50-52; *Sidhu v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 911 at para 41; *Dupre v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177 at para 31). As Justice Mosley recently noted in *Kang* at paras 40-41:
>
> > I do not accept the applicant's argument that he is being held to an impossible standard of proof. The evidence submitted by the applicant does not establish the lawful origin of the funds. Although the bank withdrawals of the applicant's uncle and cousin were amounts that could, theoretically, provide for loans to the applicant, there is nothing in the record, apart from their statements, to link those sums of money to that which was ultimately seized at the airport in Calgary. Evidence that cannot establish the lawful origin of the funds cannot be used as proof of such […]
> >
> > The lack of proof, the contradictory stories which cast doubt on the applicant's credibility and the prior enforcement actions for smuggling controlled substances, taken together, make it reasonable that the Minister could not be persuaded that the currency did not come from proceeds of crime. It follows that the Minister's decision to hold the currency as forfeit was reasonable.
> >
> > [Citations omitted.]
>
> [26] The evidence provided by Mr. Tran to the delegate regarding the funds he claims to have received from third parties consisted entirely of photocopies of bank statements or withdrawal slips, purportedly confirming the source of the withdrawal but which provided no detail regarding the originating source of the funds. Based on the foregoing case law, this is insufficient to establish a legitimate source for these funds. It is possible that proceeds of

> crime can be funnelled through and withdrawn from a bank account. Thus, the fact that cash is withdrawn from a bank account and provided to a claimant does not establish that the cash is from a legitimate source. Accordingly, the evidence filed by Mr. Tran does not establish that the funds he claimed he received from others were from legitimate sources.
>
> [Emphasis added.]

This approach is consistent with the purpose of the Act, to "deter money laundering and the financing of terrorist activities" (section 3 of the Act). The very principle of money laundering is to pass the currency into the hands of different intermediaries to avoid tracing and thus launder money. The record keeping and client identification obligations imposed on various intermediaries that provide financial services facilitate tracing. Those seeking to circumvent the regime that requires disclosure when importing currency in excess of $10,000 must establish the legitimacy of the source of the funds if they are to avoid forfeiture.

[63] As Justice Scott, then of this Court, put it, an applicant's burden is to "establish the legitimate source of the amount seized using decisive evidence" (*Sebastiao v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 527 [*Sebastiao*], para 54). I emphasize that the fact that the delegate was not convinced of the legitimacy of the source of the funds is not a conclusion that these funds constitute proceeds of crime (*Sellathurai*, (above), para 50). All that a reviewing court is required to do is to determine whether an applicant has demonstrated that the delegate's decision, according to which there is no traceable link between the currency seized, the currency surrendered by clients, and the legitimate source of this currency, bears the hallmarks of reasonableness, which is that it is justified, transparent and intelligible, the justification being in relation to the legal and factual constraints that bear on it.

[64] In my view, the Minister's delegate has largely satisfied the reasonableness test with respect to the evidence submitted, thanks to an internally coherent decision. The delegate chose to focus her decision exclusively on the legitimacy of the source of the funds. She agreed that the applicant was doing business and that people gave him currency. But what was missing was the demonstrated link between the currency seized, the currency that had allegedly been handed over by customers, and the legitimate source of this currency. The need to track such currency is at the heart of the regime that Parliament put in place to help Canada fulfill its international commitments. It is not enough to try to prove a business relating to used cars to justify the possession of currency greatly exceeding $10,000. Exchange slips and other documentation relating to a used car business do not demonstrate the legitimacy of the monies because this evidence just tends to demonstrate the existence of a business. Yet that is the burden that the applicant had to discharge.

[65] At the hearing, the applicant tried to find inconsistencies between the report of the customs officer who seized the monies and the Case Summary and Recommendations – Currency Seizure. He tried to persuade us that the customs officer's report indicated that Burkina Faso was the place from which the funds came, whereas the Summary did not explicitly say so. This, he argued, meant that the Minister's delegate paid too much attention to France rather than to Burkina Faso. This claim on which the applicant insisted at length at the hearing cannot be accepted for several reasons.

[66] First, the reference to Burkina Faso in the customs officer's report was made in a very specific context. It referred to the explanation given by the applicant at the time of his

interception on August 1, 2018. The money had been brought to him in France by people he did not know. These three deliveries allegedly took place in July, and [TRANSLATION] "the money comes from Burkina Faso". The fact that the Summary does not refer to Burkina Faso is inconsequential; the Summary reproduces the customs officer's report with regard to the persons the monies came from. Both the Summary and the customs officer's report were before the Minister's delegate, and she covered the exchanges of francs (the currency of Burkina Faso) to euros which had allegedly been completed between May and July 2018, in Burkina Faso and not in France, according to the evidence presented by the applicant. Moreover, the delegate noted that this evidence did not match the version given at the time of the applicant's arrival. Clearly, the delegate knew the alleged money came from Burkina Faso and took into account the Burkina Faso angle. She referred to it specifically.

[67] In fact, it is inaccurate to say that the decision focused on France. I read, and reread, the decision without finding that element. On the contrary, the decision lists the various documents submitted by the applicant and, even though those documents stray from the version given by the applicant on August 1, 2018, the delegate made it available to the applicant. Simply put, this evidence of Burkina Faso as the source of funds is not enough to trace the link between the currency and its legitimacy.

[68] Finally, *Vavilov* states that the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (para 100). Rather, it was a treasure hunt, in the hope of finding a mistake, no matter how small, that the applicant locked himself into in arguing

that the Burkina Faso angle had been glossed over in the Summary (*Vavilov*, para 102). This was in vain. The applicant's claim that the exchange of the currency into euros had taken place in Burkina Faso was not overlooked by the delegate. The argument concerning a misunderstanding of the role played by Burkina Faso is rejected.

[69] A final observation must be made in light of the applicant's insistence that his commercial activity was [TRANSLATION] "informal" and that the rules in Burkina Faso on how business is done are not the same as in Canada, which has stricter regulations. First, there was no evidence in this regard, much less on how the rules are different and to what extent. But more importantly, it is Canadian domestic law that prevails. Relaxed rules elsewhere seem to me to be irrelevant to the clear obligations of Canadian law. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* aims, among other things, to "assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity" (paragraph 3(c) of the Act). The measures taken under the Act are far from unique to Canada. Anyone arriving at the Canadian border must comply with Canadian law. Establishing the legitimacy of the source of the funds is not an impossible standard of proof (*Singh Kang v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 798, para 40; *Guillaume v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 143, para 44). Ultimately, blaming the absence of a formal obligation in his home country is a red herring. Just because the requirements are lower in a given country does not mean that one does not have to set up one's affairs to allow for tracing the legitimate source of currency being transported from one country to another, especially for commercial activities related to importation. There is nothing to prevent bookkeeping, or the use of other

means, to establish the legitimate source of currency for a person who chooses not to use the financial system and prefers to travel with amounts in foreign currencies that far exceed established limits. The claim that obligations in Burkina Faso are not as strict as in Canada seems to me to be irrelevant. I can only repeat paragraphs 18 and 19 of *Docherty v Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 89 [*Docherty*] where the Federal Court of Appeal wrote:

> [18] A person who is asked to establish the legitimacy of funds whose presence in his hands is undocumented does not advance his cause by presenting evidence of undocumented funds in the hands of another. Undocumented, in this context, means funds which cannot be accounted for by financial or other records which one would expect an individual, especially one operating a business, to maintain for accounting and income tax purposes. It may be that there is an innocent explanation for the presence of these funds in Mr. Docherty's hands, but he cannot establish that explanation by pointing to the presence of undocumented funds in his daughter's hands.
>
> [19] Individuals are free to arrange their affairs so as to leave the smallest possible financial footprint consistent with their obligations under federal and provincial tax laws. The disadvantage of doing so is that when a question arises as to the source of large amounts of cash found in their possession, they have very few means of establishing the legitimacy of those funds. In the context of the issues sought to be addressed by the Act - money laundering and the financing of terrorism - the government is entitled to ask for a reasonable explanation of the source of currency in excess of the prescribed limit found on persons leaving Canada. In this case, Mr. Docherty's explanations were unverifiable and, as such, amounted to no explanation at all. In my view, the Federal Court was entitled to find that the Minister's Delegate's decision was reasonable
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> [Emphasis added.]

In this case, as in *Docherty*, the applicant seeks support from other undocumented funds to explain his undocumented funds. This does not establish the legitimacy of the source.

VII. Conclusion

[70] Consequently, the application for judicial review must be dismissed. The respondent requested costs, which are estimated to be around $2,600, according to column III of Tariff B (rule 407 of the *Federal Courts Rules*, SOR/98-106). I believe that a lump sum of $2,000, including disbursements and tax, is appropriate in the circumstances.

JUDGMENT in T-1579-19

THIS COURT'S JUDGMENT is as follows:

1. This application for judicial review is dismissed.

2. Costs in the amount of $2,000 including disbursements and tax are awarded to the respondent.

"Yvan Roy"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1579-19
STYLE OF CAUSE:	KARIM WAONGO SANDIDI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 5, 2020
JUDGMENT AND REASONS:	ROY J.
DATED:	OCTOBER 22, 2020

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