Federal Court  Cour fédérale

Date: 20130604

Docket: T-164-12

Citation: 2013 FC 600

Toronto, Ontario, June 4, 2013

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

TRUNG TRAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Mr. Trung Tran, claims he decided to travel to Vietnam to visit family and friends in January 2011. He had well over $10,000.00 in cash with him as he was about to board his international flight at the Vancouver airport, but failed to declare this fact as required by virtue of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the Act]. He was stopped by Canada Border Services Agency [CBSA] officers and, because he gave several conflicting explanations for how he came to be in possession of so much cash, the CBSA officers

seized and retained the money as forfeit to Her Majesty in Right of Canada under section 18 of the Act.

[2] Mr. Tran applied to the respondent Minister, under section 25 of the Act, seeking relief from the forfeiture. In a decision dated December 20, 2011, the Minister's delegate, the Manager of the Appeals Division, Recourse Directorate of CBSA, denied Mr. Tran's application. She found the explanation Mr. Tran provided in support of his application for relief did "not bear any resemblance" to the explanations he had given to the CBSA officers at the Vancouver airport. She also held that Mr. Tran "failed to provide sufficient evidence to establish the legitimate origin of all the currency under seizure and the documentary evidence [he...] provided cannot be directly linked to [the] currency" (decision at p 3). She therefore concluded that it was not appropriate to exercise the discretion she possessed to provide relief from forfeiture.

[3] In the present application for judicial review, Mr. Tran seeks to set aside the delegate's decision. In his written memorandum, Mr. Tran pursued three arguments: first, that the Act is unconstitutional, presumably for allegedly being impermissibly vague (although it is difficult to precisely discern the basis for this argument from the submission, which is quite brief); second, that the Minister's decision regarding a breach of the reporting requirements in section 12 of the Act was unreasonable; and, finally, that the refusal to grant relief from forfeiture was also unreasonable.

[4] At the hearing, counsel only pursued the final argument, which he was well-advised to do as neither of the other two arguments was properly before me.

[5] As concerns the constitutional challenge, the applicant failed to serve a Notice of Constitutional Question on the federal and provincial Attorneys General as is required by section 57 of the *Federal Courts Act*, RSC 1985, c F-7 [FCA]. The case law governing constitutional notices provides that where an applicant seeks to argue that a piece of legislation is unconstitutional, such notice is mandatory and cannot be waived by the Court, unless there is consent of the Attorneys General or *de facto* notice (*Misquadis Eaton v Brant County Board of Education*, [1997] 1 SCR 241 at 267; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2004 FCA 66 at para 76, rev'd on other grounds 2005 SCC 69). Thus, the constitutional question could not have been argued. However, even if it had been, the argument would not likely have been successful as the Federal Court of Appeal has upheld the validity of the Act on constitutional grounds (*Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186 [*Tourki*]).

[6] The challenge to the Minister's finding of a breach of the reporting requirements in section 12 of the Act was likewise not properly before me. In this regard, it is well-established that individuals who wish to challenge a Ministerial determination of a breach of the reporting requirements in section 12 of the Act must proceed by way of statutory appeal, under section 30 of the Act, and not by way of judicial review. Thus, an application such as the present is limited to considering the reasonableness of the refusal to grant relief from forfeiture (see *Tourki* at para 18; *Kang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 798 at paras 25-30 [*Kang*]; *Dokaj v Canada (Minister of National Revenue)*, 2005 FC 1437 at paras 33-51). In any event, this argument also had little chance of success because Mr. Tran admitted in a letter to the respondent (dated March 8, 2011) that he had failed to report being in possession of over $10,000 cash when he was en route to Vietnam, and admitted the same to a CBSA officer at the Vancouver

airport on the day of the incident, thereby admitting to a breach of the reporting requirements in section 12 of the Act.

[7] In terms of the argument that was pursued at the hearing, Mr. Tran argues the delegate's determination to not grant relief from forfeiture was unreasonable for three reasons. First, he asserts there was no proof that he had engaged in money laundering or was funneling funds to terrorists. Second, he argues that he provided a reasonable and legitimate explanation for why he was carrying so much cash. Third, he asserts that he definitively established that the monies he took from his line of credit – and possibly from his mother-in law – were from legitimate sources. He argues that it is unreasonable to refuse relief from forfeiture (or not to impose a lesser penalty) when some of the funds are shown to come from legitimate sources. He argues that what he terms an "all or nothing" approach to the exercise of discretion under the Act is unreasonable.

[8] For the reasons more fully detailed below, I have determined that none of these arguments has merit and that the delegate's decision will therefore be upheld. To appreciate why this is so, it is useful to review the relevant statutory provisions and the background to Mr. Tran's claim.

Statutory provisions

[9] The Act is designed to curtail money laundering and terrorist activity financial offences, through imposition of a number of measures, including the imposition of reporting requirements. This is spelled out in section 3 of the Act, which provides in relevant part:

The object of this Act is	La présente loi a pour objet :
(a) to implement specific measures to detect and deter	a) de mettre en oeuvre des mesures visant à détecter et

money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including	découragerle recyclage des produits de la criminalité et le financement des activités terroristes et à faciliter les enquêtes et les poursuites relatives aux infractions de recyclage des produits de la criminalité et aux infractions de financement des activités terroristes, notamment :
[…]	[…]
(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and	(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,

[10] One of the types of transactions that must be reported is the importation or exportation of currency or monetary instruments equal to or greater than the value of $10,000.00 Canadian. This is made clear by section 12 of the Act and section 2 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412. The relevant portions of these provisions state:

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17

12. (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.	12. (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.
Limitation (2) A person or entity is not required to make a report under	*Exception* (2) Une personne ou une entité n'est pas tenue de faire une déclaration en vertu du

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;

[…]

Duty to answer and comply with the request of an officer
(4) If a report is made in respect of currency or monetary instruments, the person arriving in or departing from Canada with the currency or monetary instruments shall

(a) answer truthfully any questions that the officer asks with respect to the information required to be contained in the report; and

(b) on request of an officer, present the currency or monetary instruments that they

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;

[…]

Obligation du déclarant
(4) Une fois la déclaration faite, la personne qui entre au Canada ou quitte le pays avec les espèces ou effets doit :

a) répondre véridiquement aux questions que lui pose l'agent à l'égard des renseignements à déclarer en application du paragraphe (1);

b) 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

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.	examiner.

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412

2. (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is $10,000.	2. (1) Pour l'application du paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 $.

[11] An individual possessing funds or negotiable instruments in excess of the $10,000.00 ceiling and who is entering or leaving Canada must report the funds to the CBSA, typically on a form provided upon leaving or entering the country. Under subsection 18(1) of the Act, CBSA officers at a port of entry to or egress from Canada possess authority to seize as forfeit currency or monetary instruments where the officer "believes on reasonable grounds that subsection 12(1) [of the Act] has been contravened". Subsection 18(2) states that the currency or monetary instruments so seized as forfeit may be retained if "the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of [the relevant section] of the *Criminal Code* or funds for use in the financing of terrorist activities".

[12] The review process applicable once funds are seized and retained is set out in sections 24 to 30 of the Act. The portions of those provisions relevant to the present application for judicial review, provide as follows:

Review of forfeiture

24. The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by sections 24.1 and 25.

Corrective measures

24.1 (1) The Minister, or any officer delegated by the President for the purposes of this section, may, within 30 days after a seizure made under subsection 18(1) or an assessment of a penalty referred to in subsection 18(2),

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

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

Interest

(2) If an amount is refunded to a person or entity under paragraph (1)(a), the person or entity shall be given interest on that amount at the prescribed rate for the period beginning on the day after the day on which the amount was paid by that

Conditions de révision

24. La saisie-confiscation d'espèces ou d'effets effectuée en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 24.1 et 25.

Mesures de redressement

24.1 (1) Le ministre ou l'agent que le président délègue pour l'application du présent article peut, dans les trente jours suivant la saisie effectuée en vertu du paragraphe 18(1) ou établissement de la pénalité réglementaire visée au paragraphe 18(2) :

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

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

Intérêt

(2) La somme qui est remboursée à une personne ou entité en vertu de l'aliné(1)a) est majorée des intérêts au taux réglementaire, calculés à compter du lendemain du jour

person or entity and ending on the day on which it was refunded.

Request for Minister's decision

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

[…]

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.

[…]

If there is a contravention

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

du paiement de la somme par celle-ci jusqu'à celui de son remboursement.

Demande de révision

25. La personne entre les mains de qui ont été saisis des espèces ou effets en vertu de l'article 18 ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander au ministre de décider s'il y a eu contravention au paragraphe 12(1) en donnant un avis écrit à l'agent qui les a saisis ou à un agent du bureau de douane le plus proche du lieu de la saisie.

[…]

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).

[…]

Cas de contravention

29. (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :
a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur

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;	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).
[…]	[…]

[13] In this case, the Minister, through his delegate, was called upon to make a discretionary decision under subsection 29(1) of the Act. The options open to the delegate were to return the money, impose some form of penalty or retain the money seized as being forfeited to Her Majesty in Right of Canada. The delegate chose the final option.

Background

[14] With this statutory framework in mind, it is now possible to turn to what transpired in Mr. Tran's case. As noted, he gave several different explanations to the CBSA officers who questioned him at the Vancouver airport. An officer searched Mr. Tran and found he was in possession of $6,700.00 in Canadian currency and $10,946.00 in U.S. currency. When questioned regarding how he came to be in possession of so much cash and why he had not declared it, Mr. Tran offered the following explanations:

- He did not know why he failed to report the money and he was in a rush;
- The money was all his and from his savings;
- When confronted with his lack of income, he changed his explanation and stated that someone else had given him some of the money;
- When queried who, he indicated that some of the money came from his sister-in-law and could not provide any explanation as to why he had said the money was his;
- When asked how much money his sister-in-law had given him, he stated $2000.00;
- When next asked if anyone else had given him money, he replied "no";
- He was then removed to a room for further questioning and left alone for a few minutes. When two CBSA officers returned, Mr. Tran advised that he was taking money to Vietnam to give to people there;
- Upon further questioning, he stated that the money was not from his line of credit or bank account, but rather from his savings;
- When asked where he kept the money, he indicated he kept it hidden above a ceiling panel in the unfinished basement of his house and that the money was from tips he earned as a waiter in the family's restaurant and from savings made "here and there";

- When the CBSA officers pointed out that most of the cash was in $100.00 denominations (and that it therefore could not have come from tips), Mr. Tran changed his version of events and stated that he was carrying money for his mother-in-law, sister-in-law and a few friends. He claimed he had $1400.00 from his sister-in-law, $3000.00 from a friend (whose name he knew only to be "Long"), and $2000.00 from his mother-in-law. He explained that $9000.00 U.S. and $1000.00 Canadian dollars were taken from the ceiling in his basement; and
- The CBSA officers then pointed out that the sums he had given were not equal to the amount of cash that Mr. Tran had with him. The only additional explanation Mr. Tran offered was that he was carrying an additional $500.00 to purchase jewellery for a friend.

[15] One of the CBSA officers who conducted the interview indicated in his report that Mr. Tran became increasingly nervous as the questioning progressed. The officers also learned that Mr. Tran had purchased his airline ticket to Vietnam a few days earlier, using cash. Given Mr. Tran's inability to provide a coherent explanation for where the cash came from and the shifting versions offered by him, the officers seized the funds and held them as forfeit, determining there were reasonable grounds to suspect the funds were proceeds of crime or for use in the financing of terrorist activities.

[16] In the context of his application for relief from forfeiture, Mr. Tran gave yet another explanation of where the funds came from. He claimed the source of the $6,700.00 in Canadian currency he had with him was as follows:

- $2000.00 from his mother-in-law, drawn from her bank account from her old age security and pension cheques;

- $3000.00 from his friend, Long Nguyen, of which $2800.00 was from Long's bank account and $200.00 was in cash;
- $500.00 from another friend, Vinh Le, who withdrew the sum from his bank account;
- $460.00 from a co-worker, who wanted him to buy her a souvenir;
- 300.00 from his brother-in-law;
- $200.00 from another friend, Dai Nguyen: and
- The remaining $240.00 was his.

[17] As for the U.S. currency, he claimed it came from the following sources:

- $1600.00 from his sister-in-law;
- $1800.00 from his wife's aunt, who sent a bank draft;
- $2760.00 that he asked his son to purchase for him due to the preferential employee rate the son was able to obtain as a bank employee ;
- $4000.00 that he withdrew from his TD home equity line and put it into his chequing account to purchase U.S. funds; and
- $840.00 of his own cash.

[18] In his submissions to the Minister's delegate, Mr. Tran claimed that most of the cash was intended as gifts for family and friends in Vietnam as part of the New Year celebrations. He elaborated that he took the funds in cash so those giving the gifts could avoid exchange fees charged by the banks or currency exchanges. He provided photocopies of various banking records with his submissions. However, as is more fully discussed below, these records do not establish the source of

the funds and in some instances do not even correspond to Mr. Tran's claims regarding the source of the funds.

The standard applicable to the review of the delegate's decision

[19] The standard applicable to the review of the delegate's decision is that of reasonableness (*Kang* at para 24). The reasonableness standard is a deferential one and requires that a reviewing court not substitute its views for those of the administrative decision-maker if the reasons offered are transparent, intelligible and justified and the result reached "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 11-13).

[20] The case law establishes that in exercising discretion under section 29 of the Act, the Minister or ministerial delegate must determine whether he or she is satisfied that the funds are not from proceeds of crime or for use in financing terrorist activities. Typically, to be satisfied that this is not the case, the claimant must prove to the delegate or the Minster that the funds came only from legitimate sources. If the claimant so establishes, the forfeiture should be set aside. Conversely, if the claimant does not so establish, the forfeiture may be maintained (see e.g. *Kang* at para 34; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at para 49 [*Sellathurai*]). The task for the Court on judicial review then involves determining whether the findings made regarding the source of the funds are reasonable.

Is the delegate's decision unreasonable?

[21] Here, as already noted, Mr. Tran makes three arguments in support of his claim that the delegate's decision is unreasonable. He first argues that there was no proof that he had engaged in money laundering or was funneling funds to terrorists, and thus that the determination to maintain the forfeiture of the seized funds was unreasonable. In the second place, he argues he provided a reasonable and legitimate explanation for why he was carrying so much cash and that the delegate unreasonably ignored this explanation. Finally, he argues that he definitively established that the monies he took from his line of credit and received from his mother-in-law were from legitimate sources and that including these sums in the amount forfeited is unreasonable. He argues in this regard that the so-called "all or nothing" approach to the interpretation of the Act overshoots that mark as it cannot be the intention of the legislation to allow for the forfeiture of Canadians' currency from legitimate sources merely because these funds happen to be co-mingled with funds that a claimant cannot establish also originate from a legitimate source.

Must a decision be set aside if there is no proof that the funds were destined for terrorists activities or involve money-laundering?

[22] Mr. Tran's first argument can be summarily dismissed as it is contradicts well-settled case law from this Court and the Federal Court of Appeal, which establishes that the Minister or his or her delegate need not be satisfied that the funds are from an illegitimate source to properly refuse relief from forfeiture. Rather, all that is necessary is that the Minster or the delegate not be satisfied that they are from a legitimate source. As Justice Pelletier, writing for the majority of the Federal Court of Appeal noted in *Sellathurai* at para 50:

> […] 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.

[23] Thus, Mr. Tran's first argument is without merit.

Is the decision to refuse relief from forfeiture unreasonable in light of the explanation provided by Mr. Tran?

[24] Insofar as concerns Mr. Tran's second argument, evaluation of the reasonableness of a decision to grant relief from forfeiture turns on whether there was a reasonable basis for the delegate to conclude she was not satisfied that Mr. Tran had established a legitimate source for the seized funds. This inquiry is a factual one. Paragraph 18.1(4)(d) of the FCA prescribes the yardstick by which the reasonableness standard is to be applied in matters of fact; to paraphrase the FCA, factual determinations of a tribunal may be set aside only if they are made in a manner that is perverse, capricious or without regard for the material before the tribunal and if the decision is based on them (*Canada (Citizenship and Immigration) v Khosa,* 2009 SCC 12 at paras 3, 36, [2009] 1 SCR 339).

[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.

[27] In addition, as concerns the monies that Mr. Tran claims his mother-in-law gave him from her old age security and pension cheques, as counsel for the respondent correctly notes, the evidence tendered to the delegate does not establish that the cash withdrawn from the mother-in-law's account was actually from government social benefit cheques. The bank statement for the mother-in-law shows that two direct deposits were made on November 24, 2012 for "Senior's Benefit MSP/DIV" in the amount of $181.82 each, leaving a balance of $375.28 (Respondent's Record at p 57). The statement also indicates that on December 2, 2012, a deposit of $2069.93 was made and an identical amount withdrawn the same day, leaving a balance of $383.98 (Respondent's Record at p 58). Thus, the evidence does not show that the $2000.00 Mr. Tran claimed to have received from his mother-in-law came from government social benefit cheques.

[28] Turning to consideration of the monies Mr. Tran alleges were withdrawn from his home equity line of credit, as counsel for the respondent likewise submitted, a careful review of the evidence indicates that there is no proof that $4000.00 was withdrawn on the line of credit by Mr. Tran. Rather, the evidence he submitted to the delegate consists of a receipt in the name of "Tran Thai", and shows a $4000.00 withdrawal from a home line of credit made on March 2, 2010, some ten months before Mr. Tran's trip to Vietnam. Thus, Mr. Tran failed to establish a legitimate source for these funds as well.

[29] There was therefore more than ample basis for the delegate to have concluded that Mr. Tran had not established a legitimate source for the funds seized and held as forfeit and, accordingly, the delegate's decision is reasonable. In short, it cannot be said that the delegate's conclusion that she was not satisfied that the funds were not proceeds of crime or destined for terrorism was

unreasonable because Mr. Tran failed to establish a legitimate source for the funds. And, indeed, if anything, the evidence tendered gives rise to greater doubt about where the monies came from. This, coupled with the shifting versions of events offered by Mr. Tran, provided the delegate a sound basis to refuse to exercise her discretion to set aside the forfeiture. Her factual determination cannot be said to be "perverse", "capricious" or "without regard to the material" before her.

Did the delegate err in imposing an "all or nothing" approach to granting relief from forfeiture?

[30] As is apparent from the foregoing, the third issue posed by Mr. Tran regarding the unreasonableness of a so-called "all or nothing" approach to the exercise of discretion under subsection 29(1) of the Act does not arise on these facts because contrary to what he asserts, he did not establish that the funds from his mother-in-law were from her governmental social benefits cheques or that he withdrew funds from his home equity line of credit as he claims to have done. Thus, there is no need to decide whether a refusal to grant relief from forfeiture is unreasonable when some of the seized funds are proven to have come from legitimate sources. I would, however, note that in *Admasu v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 451 at para 12-13, my colleague Justice Rennie recently determined that a ministerial decision refusing relief in such circumstances is not unreasonable in light of the provisions in the Act, which make it clear that the Minister cannot grant partial relief from forfeiture.

[31] For these reasons this application for judicial review will be dismissed.

Costs

[32] The respondent seeks an award of costs, but the applicant requests that in the event the application is dismissed, no award of costs be made as he and the individuals who provided him the funds are of modest means and should suffer no more than the forfeit of the funds seized.

[33] There is no proof before me of the means of the applicant or those whom he alleges provided him the monies before me. I also note that most of the decided cases where applications such as the present were dismissed, the respondent was awarded its costs (see e.g. *Sellathurai*; *Dupre*; *Sidhu*; *Yang v Canada (Minister of Public Safety)*, 2008 FCA 281; *Dag v Canada (Minister of Public Safety and Emergency Preparedness*, 2008 FCA 95). (A rare exception appears to be the decision in *Kang*, where the respondent was found to have made a number of errors in its handling of the funds, and Justice Mosley exercised his discretion on that basis and awarded no costs.)

[34] I see no reason to stray from the usual outcome on costs in this case as the respondent made no mistakes in its handling of the funds and was entirely successful in this application. I have accordingly determined that costs should be awarded to the respondent. In the event counsel for the parties cannot agree as to quantum, they may file written submission of no more than 5 pages in length with me by June 17, 2013.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed with costs;
2. In the event the parties cannot agree as to the quantum of the costs to be paid to the respondent, they may file written submission with me of no more than 5 pages in length by June 17, 2013.

"Mary J.L. Gleason"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-164-12
STYLE OF CAUSE:	TRUNG TRAN V THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	April 18, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	GLEASON J.
DATED:	June 4, 2013

APPEARANCES:

Austin Nguyen	FOR THE APPLICANT
Angela Fritze	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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