Federal Court Cour fédérale

Date: 20231205

Docket: T-2541-22

Citation: 2023 FC 1630

Ottawa, Ontario, December 5, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

KARIM MENEBHI

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Karim Menebhi, brings an application for judicial review, pursuant to s 18.1 of the *Federal Courts Act* (RSC, 1985, c. F-7), concerning a decision made on behalf of the Minister of Public Safety and Emergency Preparedness (the Minister). The decision, dated November 4, 2022, concerns currencies seized in accordance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (SC 2000, c 17) [the Act] and forfeited to His Majesty in Right of Canada pursuant to s 29 of the Act.

I. Preliminary issue

[2] Before proceeding with an examination of the merits of the judicial review application, the Court must ascertain what is validly before it. That is needed because the Applicant appears to seek to challenge two distinct decisions made by the Ministerial Delegate.

[3] Challenging two decisions in one judicial review application is, in and of itself, problematic. That is because Rule 302 of the *Federal Courts Rules* (SOR/98-106) provides specifically that "an application for judicial review shall be limited to a single order in respect of which relief is sought". Ostensibly, the Notice of Application seeks to challenge the decision made under s 27 of the Act as well as the one under s 29.

[4] The more important issue in this case is that the two decisions, if they were to be challenged, must be challenged through different recourses. As a matter of fact, the Ministerial Delegate points out in the decision under review that the decision made pursuant to s 27 must be challenged through an action in the Federal Court. Section 30 of the Act requires that the person from whom currency or monetary instruments were seized challenge the decision that the required reporting under s 12(1) was not done by an action in the Federal Court. The decision under s 29 must be challenged by way of an application for judicial review. That is the decision which confirms that the currency or monetary instruments are forfeited. To put it simply, the two decisions must be challenged through different means. In the case of s 27, it is the failure to report that must be challenged by an action while the forfeiture of the currency or monetary

instruments is subject to judicial review. As is well known, the rules governing an action and those applicable on judicial review are quite different.

[5] In the case at bar, the Applicant signals that he wants to challenge the decision ordered on November 4, 2022. However, the Ministerial Delegate makes two distinct determinations: under s 27, there is a contravention of s 12 of the Act which creates the obligation to report the importation of currency or monetary instruments of a value equal to or greater than the $10,000 CDN limit. Under s 29 it is decided that the seized currency or monetary instruments shall be forfeited.

[6] Binding case law from the Federal Court of Appeal disposes of the issue. In *Docherty v Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 89 [*Docherty*], one reads at paragraphs 14 and 15:

> [14] While this may strike Mr. Docherty as an instance of procedural rigidity, the fact is that Parliament specifically provided that attacks on the correctness of the decision as to whether section 12 was breached are to be commenced by action. While the Court has a discretion to ensure that no proceeding is rejected because it was commenced by the wrong originating document (see Rule 57 of the *Federal Courts Rules*, SOR/98-106), that discretion is subject to the opening words of Rule 63 which direct the Court to respect Parliament's choice as to the form of originating document in a particular case. This ground of appeal fails as well.
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> [15] As a result, the only decision which was properly before the Federal Court was the Section 29 Decision, that is, the Minister's Delegate's decision to decline to grant Mr. Docherty relief from forfeiture pursuant to section 29. On that question, the standard of review is reasonableness: see *Sellathurai*, cited above, at para. 25.

That decision was recently followed in our Court in *Besse v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1003, and in *Chowdhury v Canada*, 2022 FC 1449.

[7] Indeed, the Court of Appeal had reached the same conclusion six years earlier in *Tourki v Canada (Public Safety and Emergency Preparedness)*, 2007 FCA 186, [2008] 1 FCR 331. The Court confirms that the action contemplated by s 30 relates to the decision made by the Minister under s 27. It also confirms the bifurcated process, one concerning the seizure and one concerning the forfeiture of the currency or monetary instruments seized as forfeit under ss 18.1 of the Act. As a result of the bifurcated process, the jurisdiction of the Federal Court is limited (paras 16 to 18) in the sense that the appropriate remedy for the decision made under s 29 is a judicial review application, while it is an action concerning the s 27 decision. Our Court said that much in *Evans v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1516 [*Evans*].

[8] Only the second decision, concerning s 29, is validly before the Court. That was the conclusion reached in *Evans* (paras 18-19), a conclusion that is inescapable and with which I agree. At the hearing of the judicial review application, the matter was addressed squarely by the parties. The Court indicated that its conclusion is that only the forfeiture aspect could be validly before the Court. The contravention of s 12 is not before this Court. This judgment and its reasons are solely concerned with the forfeiture and the case proceeded on that basis.

II. The facts

[9] It should therefore be understood that the facts relating to the seizure at the border crossing on February 3, 2022, are presented for the sole purpose of providing the background to

the matter that is validly before this Court: whether a reviewing court should intervene in the decision to forfeit the currency or monetary instruments seized as forfeit on that day.

[10] The Applicant, Karim Menebhi, is an American citizen of Moroccan descent who owns two restaurants in Rhode Island. On February 3, 2022, the Applicant and his girlfriend arrived in Canada through the St-Armand port of entry. According to the Applicant, he was on the way to visit his nephew in Montreal for one day.

[11] It was discovered that the Applicant and his companion in the car did not meet the COVID-19 entrance requirements then in place. At the primary examination area, the Applicant declared to the Border Services Officer that he was not importing currency totalling or exceeding $10,000.00 CDN. A declaration of any imported or exported currency totalling more than $10,000 CDN is a requirement pursuant to s 12(1) of the Act. Instead, he indicated that he was carrying $40 worth of gifts.

[12] The Applicant and his companion were directed to a secondary examination area, in order to explain that he did not meet Canada’s entrance requirements and to confirm his declaration. At the secondary examination area, two Border Services Officers [BSOs] met the Applicant. They explained that they would be conducting a search of the vehicle and asked the Applicant and his companion to exit the vehicle. They asked the Applicant to empty his pockets. Obviously, the Applicant did not execute himself because, afterwards, BSO Côté noticed a bulge in the Applicant’s pants and asked him to empty it. It contained $3,000-$4,000 USD. The officer asked

the Applicant if he was carrying any other currency with him. He said no. That was not accurate either.

[13] The subsequent search of the car revealed a suitcase containing six envelopes with near pristine (unfolded) American $100 bills inside them. The inscription “10K” was written on five of the envelopes while the sixth envelope was marked with the inscription “5K”. Together with the $100 bills in the Applicant’s pocket, there were 587 bills of $100 USD. In total, the Applicant was found in possession of an amount approximately valued at $75,000 CDN.

[14] The BSOs seized the currency pursuant to s 18(1) of the Act and brought the Applicant to an interrogation room for questioning. The Applicant alleges that the BSOs’ behaviour was discriminatory and that the officers’ behaviour changed when they discovered that he was born in Morocco.

[15] When questioned on why he did not declare the currency, the Applicant replied that he was only asked to declare Canadian currency. When asked about the origin of the currency in his possession, the Applicant stated it was cash revenue from his two restaurants.

[16] During the interrogation, the Applicant explained that he did not deposit the cash in his business bank account and that he does not declare the business’ cash earning on his taxes, in order to lessen his tax burden.

[17] The Applicant claimed that he wanted to give the funds to his nephew in Montreal during his one-day visit in the form of a gift, as he recently got married, and to support his new business. When asked to provide details about the nephew he was visiting, the Applicant did not know his address, and stated that his nephew was 27 years old, when it was later revealed that his nephew was 29 years old at the time. Furthermore, the Applicant had not come to Montreal to visit in nine years, although the nephew had gone to the United States in the last four or five years. In fact, the report of the seizing officer indicates that the Applicant knew little about his nephew who would be receiving $55,000 USD, without asking for money, and the Applicant saying that he had decided the week before to travel to Montreal from Rhode Island in February to offer 550 bills of $100 USD each. Indeed, the Applicant told the seizing officer that he had only $30,000 USD in his personal bank account.

[18] The Applicant's story remained inconsistent. He first did not have an answer for why he wanted to give his nephew more money than was in his personal chequing account. He then explained that he did not mind giving his nephew this money because his businesses would generate that amount of profit every two weeks. He then changed this answer from two weeks to two months.

[19] The Applicant tried to prove the legitimate origin of the currency by showing the BSOs a one-line email from his accountant sent that day that simply stated that the currency came from the operation of his businesses. BSO Boisvenue explained that this was insufficient evidence. That statement was never substantiated by the accountant.

[20] BSO Côté received authorization to search the Applicant's phone. Through this search and additional interrogation, he learned that the Applicant has the goal of purchasing a home in Morocco.

[21] Due to the opinion of the BSOs about the inconsistency and implausibility of the Applicant's explanations, they did not release the Applicant's currency on payment of the prescribed penalty. Rather, pursuant to s 18(2) of the Act, they held the seized currency as forfeit, because they concluded that there were "reasonable grounds to suspect" that the currency constituted the proceeds of crime.

[22] I reproduce in its entirety the list of findings made by the seizing officer. They are in his February 6, 2022 report, three days after the seizure was completed:

1. Subject in possession of US$59,003.00 not declared
2. Subject never declared the money in the United States before leaving
3. Subject continued to hide the money contained in his pockets
4. Subject continued to hide the money in his vehicle
5. Subject's trip was planned at the last minute (around one week ago or less)
6. Subject travelled 12 hours during a snow storm to go to dinner
7. Subject travelling with someone whom he met recently and who is not aware of the purpose of his trip
8. Subject carrying US$55,000.00 in 6 separate envelopes with each one indicating the amount inside (10k on 5 envelopes and 5k on one envelope).
9. Subject does not know why he is carrying the money in 6 different envelopes with the amount written on top

10. No official proof of the source of the money

11. Most of the money is in the denomination of US$100 (587 x US$100.00 bills)

12. Most of the money is intact and unfolded without knowing why the bills are not damaged due to wear and tear

13. Carrying money in a suitcase in the trunk of the vehicle

14. Subject declared that he hid the money in his closet

15. Subject said that he has never declared money from his restaurants as income

16. Story about the money changes (entrance fee for a show/dinner/payment from his first restaurant/payment from his 2nd restaurant)

17. Subject changed the time needed to save the total money he is carrying

18. Subject declared that he was coming to give money to his nephew in Montreal

19. Subject declared not having seen his nephew for 9 years/changed his declaration to 4-5 years

20. No conversation between the subject and his nephew found on the phone

21. Subject does not know the personal address and age of his nephew

22. Nephew already has a good income/no money problems

23. Subject never comes to Canada/Last entries 9 years ago

24. Subject's total spending is very high compared to his annual income

25. Subject declared that he has a total of US$30,000.00 in his personal bank account.

26. Subject wants to give more money to his nephew, whom he has not seen in years, than the total amount of his personal savings.

27. Subject said that he can make a similar amount (US$55,000.00) in a short period of time

28. Subject used a third party to open a bank account in Morocco

In effect, this constitutes the reasons to justify the seizure. The report was shared with the Applicant as part of the Notice of the Circumstances of the Seizure required by subsection 26(1) of the Act.

[23] The Applicant was transferred into RCMP custody. After the RCMP conducted their own interrogation, they released the Applicant. He returned to the United States. The RCMP did not subsequently press charges against the Applicant.

[24] Pursuant to s 25 of the Act, the Applicant requested a ministerial review of the seizure decision.

[25] The Applicant did not challenge the seizure after the Minister's Delegate made his determination that there had been a contravention to the obligation to disclose the possession of currency or monetary instruments of a value of at least $10,000 CDN. An action before this Court was possible in accordance with s 30 of the Act. There was no such action.

III. The decision under review

[26] By a decision dated November 4, 2022, a Ministerial Delegate made two distinct findings, one concerning section 27 and one concerning section 29.

A. *Section 27 decision*

[27] Firstly, the Delegate decided, pursuant to s 27 of the Act, that the Applicant had contravened s 12(1) of the Act by bringing currency into Canada that exceeded the prescribed amount of $10,000.00 CDN without making a mandatory declaration to that effect. In this decision, the Minister's Delegate highlighted the fact that the Applicant's counsel did not challenge the allegation that the seized currency had not been reported by the Applicant. Though the Applicant's counsel tried to make the argument that the seizure was arbitrary as the search was undertaken without a warrant, the Minister's Delegate explained that BSOs have the authority to perform warrantless searches for valid customs reasons. Moreover, the Applicant's counsel tried to argue that the seizure was moot when the Applicant was denied entry related to COVID-19 entrance requirements, because the currency was never actually imported into Canada. The Minister's Delegate rejected this argument because the Applicant did arrive in Canada and failed to report currency over the prescribed amount. As already pointed out, this part of the decision is not properly before this Court in this proceeding.

B. *Section 29 decision*

[28] Secondly, the Ministerial Delegate made the discretionary s 29 decision to hold the seized currency as forfeit, since the evidence submitted by the Applicant did not convince her that the currency came from a legitimate origin.

[29] The Applicant provided, *inter alia*, multiple bank statements and a 2020 Tax Return document to try to illustrate that this currency came from a legitimate source. However, the

Minister's Delegate concluded that the Applicant had not met his burden of proof because the document he submitted provided no traceable link to the currency that was eventually seized by BSOs. The Minister found that the Applicant was unable to do so in this case. The Minister's Delegate also highlighted that the Applicant provided no explanation for the placement of the currency in envelopes labelled "10K" and "5K" and no evidence of the origin of the cash in those envelopes.

[30] The Ministerial Delegate explained that the burden at this stage is on the Applicant to show the legitimate origin of the currency seized. Thus, the issue for the Minister is not "whether the Minister is able to demonstrate that reasonable grounds to suspect the currency was proceeds of crime exists [*sic*], but solely whether the appellant is able to convince the Minister to use discretion to overturn the forfeiture and this, by demonstrating that the currency was of legitimate origin" (Decision, p 5 of 6).

[31] The Ministerial Delegate explained that bank statements (between June 2021 and January 2022) prove little because they do not link the currency withdrawn to the currency seized upon arrival in Canada. Moreover, there is no clarification concerning how withdrawals were made in anticipation of the trip on February 3, 2022, and why the currency ended up in six envelopes. Thus, says the decision maker, "no explanation was provided as to why the currency was placed in separate envelopes in increments of $10,000, nor was it demonstrated how and when the currency within the six envelopes was acquired, deposited and withdrawn" (Decision, p 5 of 6). The Applicant reported income, but there is no information to indicate how much of the income comes from cash transactions. In effect, bank statements or tax returns do not explain six

envelopes containing $55,000 USD in cash. The income generated by the two restaurants "appears to be lesser than the total amount of currency seized" (Decision, p 5 of 6).

[32] In the circumstances, the Ministerial Delegate found that the legitimate origin of the currency seized was not established. Accordingly, having concluded that subsection 12(1) of the Act (failure to declare) was contravened, the Ministerial Delegate decided that the currency is to remain held as forfeit.

IV. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act

[33] The Act has a number of means to attain its object to detect and deter money laundering and the financing of terrorist activities. Specific measures include record keeping and client identification requirements for financial services providers and requiring the reporting of cross-border movements of currency and monetary instruments.

[34] Measures, such as reporting cross-border movements of currency and monetary instruments, are specifically provided for. It is subsection 12(1) of the Act that creates an obligation to report the importation of currency or money instruments. The subsection reads as follows:

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.

A person arriving in Canada is obligated to report currency and monetary instruments of value equal to or greater than $10,000 CDN (ss 12(3)). The law requires the person to answer questions and present the currency or monetary instruments being carried or transported (ss 12(4)).

[35] The Act provides for search powers of persons, conveyances and baggages (s 16), as well as the opening of mail being imported (s 17).

[36] It is s 18 of the Act that gives the power to seize as forfeit the currency or monetary instruments. The power is triggered by the contravention of ss 12(1), the obligation to report where currency and monetary instruments reach at least a value of $10,000 CDN. However, the currency or money instruments are returned on payment of a penalty unless there are reasonable grounds to suspect they are proceeds of crime or funds for use in the financing of terrorist activities (ss 18(1) and (2)).

[37] Currency and money instruments seized as forfeit are forfeited to the Crown in right of Canada by operation of the law unless, firstly, there are not grounds to suspect they are proceeds of crime or funds for use in the financing of terrorist activities. Evidently, that exception did not apply in the case at hand since the seized currency was not returned by the seizing officer. The other possibility, pursuant to s 23, is through corrective measures.

[38] It is section 25 which allows the person from whom currency or monetary instruments were seized to request a decision by the Minister as to whether the obligation to report (ss 12(1)) was contravened. The decision whether the obligation to report was contravened is made in

accordance with s 27 of the Act. That is the decision that can be challenged through an action in the Federal Court.

30 (1) A person who makes a request under section 25 for a decision of the Minister may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.	**30 (1)** La personne qui a demandé, en vertu de l'article 25, que soit rendue une décision peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.
(2) The *Federal Courts Act* and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.	**(2)** La *Loi sur les Cours fédérales* et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

Since the Applicant never launched such action, it is established that the Applicant contravened his obligation to report.

[39] However, even if there was contravention of the reporting obligation, it is still possible to seek some reprieve through s 29.

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	**a)** soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de

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;	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 ministerial decision can be made the subject of a judicial review application, in accordance with s 18.1 of the *Federal Courts Act*.

V. The Applicant's Argument and Analysis

[40] Unfortunately, the argument concerning the forfeiture was suffused with considerations pertaining to the seizure of the $59,000 USD. The matter is not before the Court. It must be accepted that the seizure was not challenged in these proceedings (*Docherty*, *supra*).

[41] The Applicant submits that the Minister "has to determine if the evidence submitted regarding the forfeited currency satisfactorily shows that it does not represent proceeds of crime" (memorandum of fact and law, para 10). The Applicant refers to *Bouloud v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 41, at para 3 [*Bouloud*]. In fact, the words were lifted from paragraph 3. That is certainly accurate. But it is not clear what argument the Applicant seeks to derive from *Bouloud*. The context in which this was said is to be amplified by the sentence preceding the reference to the absence of proceeds of crime. In fact, the Court of Appeal speaks of the Minister's discretion under section 29 being limited. That is because the burden to satisfy the reviewing court remains on an applicant who must show that the seized property is not proceeds of crime, usually by establishing the legitimate source of the funds (but not exclusively). The Minister must be persuaded by the Applicant that the seized funds are not proceeds of crime. The Court of Appeal reasserted in *Bouloud* its paragraph 50 in *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 255, [2009] 2 FCR 576 [*Sellathurai*]:

> [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.

That constitutes the true test that the Applicant must meet.

[42] In his attempt to meet the test, the Applicant takes issue with the seizure:

- the Applicant believes the seizure was discriminatory on the ground of his ethnicity; that explains, claims the Applicant, why the one-line email received by the Applicant from his accountant on February 3, 2022, after he asked for confirmation by his accountant that the money came from his business ventures, was not retained. Counsel confirmed at the hearing, though, that there was on this record no further elaboration obtained by the Applicant the day of the seizure, or later, on the laconic email: in effect the accountant did not testify concerning how the two restaurants generated $59,000 USD in cash;
- it is contended that text message exchanges between the Applicant's nephew and the Applicant contradict the version of the officers. We do not have an explanation as to how a few text messages would contradict the officer's finding that the Applicant knew relatively little about his nephew to help explain bringing to Canada 587 $100 USD bills. The Applicant did not know the address of his nephew, was mistaken as to his age, had not visited his nephew in Montreal in nine years, was bringing money his nephew did not need and came to visit for a day during a snow storm;
- the fact that the RCMP did not press charges is presented as confirmation that the seized currency is not proceeds of crime. The Applicant argues that the decision not to prosecute is proof positive that these are not proceeds of crime because it has been established that the source of funds is not illegal;

- the Applicant suggests that the absence of *prima facie* evidence that funds are illegitimate should be considered.

[43] As far as arguments relate to the seizure, they are of no moment in these proceedings. At any rate, at this stage the issue confronting the Applicant is rather to establish that the funds seized as forfeit are not proceeds of crime. Nevertheless, comments may be warranted concerning the RCMP decision not to press charges and the suggestion that the absence of *prima facie* evidence should have been considered.

[44] During the hearing, counsel for the Applicant argued that the decision not to press charges showed that there was not any evidence. That is not what the record shows. It merely refers to the fact that the RCMP did not press charges: no reason was alluded to. Reasons to decline to prosecute vary from no reliable evidence whatsoever, to the opinion that the likelihood of success of proving the case beyond a reasonable doubt is not present, to not wishing to seek the extradition of a possible offender. Indeed, the standard in a criminal prosecution, beyond a reasonable doubt, is significantly different from matters in civil cases, where the standard is balance of probabilities (*Canada (Attorney General) v Fairmont Hotels Inc*, 2016 SCC 56, [2016] 2 SCR 720, para 35 [*Fairmont*]).

[45] The mere fact that a prosecution is not pressed is of low probative value, at best, because of the high standard that must be met. The contention that “no prosecution whatsoever was ordered, this militates in favour of the Applicants [*sic*] and reverses the onus inasmuch as the

officer has to indicate on which reasonable element he relies to maintain the seizure" (memorandum of fact and law, para 23) is without merit.

[46] Similarly, the absence of *prima facie* evidence that funds are illegitimate is in my view an empty proposition. First, this is not the test that must be met. It is worth repeating what was eloquently said in *Sellathurai, supra*: "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 came from a legitimate source." The burden is on the Applicant, and it is not reversed. Second, the point of the matter is that it is for the Applicant to convince, on a balance of probabilities, not to seek to reverse the burden by merely suggesting an absence of *prima facie* evidence. Third, there was simply no absence of *prima facie* evidence. The Applicant did not report 587 $100 USD bills he had in his possession, 550 of those bills being in envelopes marked with "10K" and "5K" In fact, the seizing officer gave a list of findings which justified the seizure that was conducted because there were obvious grounds to believe the Applicant had not reported what he was obligated by law to disclose, and the evidence was sufficient to suspect those constituted proceeds of crime. At any rate, it is not for the Minister to have *prima facie* evidence, but rather for an applicant to show that the currency or monetary instruments are not proceeds. In the case at hand, the large quantity of $100 USD bills was never explained, the Ministerial Delegate noting that it was not "demonstrated how and when the currency within the six envelopes was acquired, deposited and withdrawn" (Decision, p. 5 of 6).

[47] It bears repeating. The scheme of the Act is a function of an obligation to report. If the officer has reasonable grounds to believe the disclosing report has not been made, the officer may seize as forfeit. In order not to return the seized currency or monetary instruments, reasonable grounds to suspect the seized currency constitutes proceeds suffice. The lack of further challenge is dispositive of the issue of the seizure, including that there were reasonable grounds to suspect $59,000 USD constituted proceeds of crime.

[48] Finally, it is argued that there was no importation of currency or monetary instruments since the Applicant was legally unable to enter the territory and to import money instruments in Canada. This too is without merit.

[49] The Act is clear. The reporting is mandatory according to ss 12(3) by whoever "arrives" in Canada. That same person arriving in Canada must answer questions and comply with the specific requirements on ss 12(4). Moreover that argument is again made in relation to the s 27 decision, an argument which is not before this Court. At any rate, the issue was squarely addressed by the Ministerial Delegate and the Applicant would have had to show that it was unreasonable to conclude as the Delegate did, and not merely to offer some other differing view. The Delegate wrote:

> Although your representative further argued that you were unable to enter Canada on that day due to having no proof of COVID test or ARRIVE CAN, the fact remain [*sic*] that you did arrive in Canada, you intended on entering the country to go visit your nephew in Montreal and you failed to report the currency in your possession upon arrival in Canada, as required.
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> (Decision, p. 4 of 6)

[50] There was, of course, never any doubt that the standard of review is reasonableness, as indeed readily agreed by the parties (*Sellathurai*, para 25; *Canada (Public Safety and Emergency Preparedness) v Huang*, 2014 FCA 228, [2015] 4 FCR 437, para 36; *Sandwidi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 995, 330 ACWS (3rd) 3, para 25). The Applicant did not meet his burden of showing that the decision under review was unreasonable.

[51] The Applicant's task concerning the only decision validly before this Court was to show that it was unreasonable, as the notion is known in administrative law, and not that the Applicant disagreed with the Decision in the hope that the reviewing court would share his misgivings concerning the outcome.

[52] A reviewing court is instructed by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], to have as a starting point the principle of judicial restraint (para 13) and to adopt a posture of respect in view of the distinct role conferred on decision makers by Parliament (para 14). The focus is on the decision made and not on the conclusion that the reviewing court would have reached, had it been in the shoes of the administrative decision maker (para 15). As the Supreme Court puts it in *Vavilov*, "[t]he reasonableness standard requires that the reviewing court defer to such a decision" (para 85).

[53] Of course, a reviewing court will not defer to any decision made by an administrative decision maker. The review must be robust (*Vavilov*, para 12). But, first and foremost, it is for the party challenging the decision to convince the reviewing court that the decision is

unreasonable (*Vavilov*, para 100), that is that "any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (para 100).

[54] The Supreme Court identified two types of fundamental flaws that would make a decision unreasonable. A failure of rationality internal to the reasoning process will be one. The reasoning must be rational and logical; there must be a line of reasoning between the evidence before the decision maker to the conclusion reached. There was no such failure alluded to by the Applicant, let alone proven.

[55] The other type of fundamental flaw is where the decision is untenable in light of the constraints of a factual or legal nature that bear on it. *Vavilov* gives a number of such constraints:

- government statute scheme;
- other statutes or the Common Law;
- principles of statutory interpretation;
- evidence before the decision maker;
- submissions of the parties, in that the decision maker must meaningfully grapple with the key issues raised;
- past practices and past decisions;
- impact of decision of the affected individuals.

There was not any demonstration before this Court that the decision under review was unreasonable.

[56] As I have tried to show, the arguments which are validly before the Court on judicial review never threatened the administrative decision as not being justified, transparent and intelligible, which are the hallmarks of reasonableness (*Vavilov*, para 99).

[57] At the hearing of the judicial review application, the Applicant insisted that the "Minister imposed an unreachable burden of proof" (memorandum of fact and law, para 11) in rejecting the evidence offered by him. I disagree.

[58] First, the Minister does not impose a burden of proof. It is the Act itself and the law of judicial review which sets out the requirement that must be met.

[59] Second, the Minister's Delegate did not ignore the exculpatory evidence offered by the Applicant: she found that it fell short of the mark and the Applicant did not convince that the reasoning was fundamentally flawed. Indeed, the Applicant sought to argue that somehow he benefited from a reverse onus of some sort. There was no authority to support such proposition; it is meritless in view of the scheme of the Act and the burden that falls on an applicant who needs to show on a balance of probabilities that the funds are not proceeds of crime. To paraphrase the Court of Appeal in *Sellathurai*, the Minister is not deciding that the funds are proceeds of crime: he is merely not satisfied that they are not proceeds of crime.

[60] The Respondent argues that the Minister's Delegate provided reasons for the s 29 decision that were more than adequate. The Minister's Delegate gave an overview of the legislative framework and the positions of the parties. She explained that the burden of proof was

on the Applicant. She indicated that she had reviewed the whole file before her, and referred to specific documents provided by the Applicant, such as his bank statement and tax return statement. She also referred to the Notice of Circumstances of Seizure that had set out the weaknesses of the Applicant's evidence, and indicated that she had given the Applicant the chance to submit additional documents. I agree. The Applicant was provided ample opportunities to address the gaps in his submissions. It is just that it is the evidence that was seen as being insufficient to satisfy the decision maker.

[61] I do not agree that the decision maker imposed an unreachable burden of proof on the Applicant. The Applicant submitted several bank statements, lottery revenue statements and a tax return document as evidence of the legitimate origin of his currency. This is despite the fact that the Applicant admitted during interrogation he claimed that the origin of the currency was cash transactions of his two restaurants which he did not deposit in his bank account and which he did not declare on his taxes, in order to minimize his tax burden. I find it difficult to understand how bank statements and tax returns would be helpful to proving the currency's legitimacy. As was explained by Justice Mosley in *Kang*, it is not unreasonable to conclude that the evidence submitted by an applicant is insufficient if it does not contain corroborating evidence that actually links the seized currency to a legitimate source (*Singh Kang v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 798, 393 FTR 90 at paras 40-41, cited in *Tran v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 600, at para 25 [*Tran*]). Bank statements and tax returns in and of themselves prove little if they are not accompanied by additional evidence which links the seized currency to a legitimate origin (*Tran* at para 26. See also *Rihane v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 875 at para 39).

The Minister's Delegate reasonably concluded that these documents were insufficient to prove the Applicant's case. Notably, the 2020 Tax Return document, while reporting an income, did not specify the origin of the income and showed a reported amount inferior to the currency seized. In other words, the tax statement is of no assistance and the same can largely be said of the bank statements which do not assist in explaining the original of 587 $100 USD bills.

[62] At the heart of this case is the fact that 550 of the 587 bills were in envelopes marked with the incriptions "10K" and "5K". As the decision maker wrote, there was no explanation as to why the funds are in envelopes, and how and when the currency was acquired to end up in the six envelopes. Unfolded $100 USD bills end up in envelopes: the decision maker notes that there was no explanation provided in spite of correspondence showing that the Applicant was offered numerous opportunities to supplement his evidence. The Court can only conclude that the decision under review is reasonable. The Applicant did not discharge his burden.

VI. Conclusion

[63] The only matter before the Court is whether the Ministerial Delegate made a reasonable decision in confirming that the currency or monetary instruments, which were seized as forfeit on February 3, 2022, pursuant to s 18 of the Act, are forfeited to the Crown. The seizure itself was not challenged.

[64] In matters of that nature, binding authority is to the effect that an applicant must persuade the decision maker to exercise the discretion to grant relief from forfeiture by satisfying the decision maker that the seized currency or monetary instruments do not constitute proceeds of

crime. The obvious approach is, of course, to show that the currency or monetary instruments come from a legitimate source. That is what this Applicant attempted to achieve.

[65] The decision maker was not persuaded. That decision is reviewable if the Applicant establishes on a balance of probabilities that the decision is unreasonable, that is that it does not bear the hallmarks of reasonableness. They are "justification, transparency and intelligibility, and whether [the decision] is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, para 99).

[66] The Applicant did not satisfy his burden before this Court. The record before the Minister did not establish that the 587 $100 USD bills came from a legitimate source. The presence of bank accounts, lottery revenue statements or tax return documents are not helpful in establishing the currency's origin and legitimacy.

[67] In the present case, the Minister's Delegate is constrained by the nature of her discretion under s 29 of the Act. In order to grant relief from forfeiture, she must determine whether there is sufficient evidence of the legitimate origin of the seized currency or, more generally, are not proceeds of crime. The Minister's Delegate clearly sets out the legislative framework of the Act, explains her role, and reiterates that the burden of proof falls on the Applicant. She clearly explains her decision not to grant relief from forfeiture through references to several key pieces of evidence provided by the Applicant and explanations as to why she found them to be insufficient. For example, she clearly explained why bank statements are insufficient to prove the legitimate origin of income that was claimed to never have been deposited in that bank account.

Since a traceable origin of the currency was not shown, the Minister's Delegate clearly explained that, as a result, she would not extend her discretion to grant relief from forfeiture. This is a conclusion which is internally coherent and in line with the powers granted to the Minister pursuant to s 29 of the Act.

[68] Consequently, the application for judicial review must be dismissed. The Respondent requested costs, which are estimated to be around $3,060, according to Column III of Tariff B. I believe that a lump sum of $2,500, including disbursements and tax, is appropriate in the circumstances.

JUDGMENT in T-2541-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. Costs in the amount of $2,500 including disbursements and tax are awarded to the Respondent.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2541-22
STYLE OF CAUSE:	KARIM MENEBHI v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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