

Federal Court



Cour fédérale

**Date: 20110622**

**Docket: T-1515-10**

**Citation: 2011 FC 736**

**Ottawa, Ontario, June 22, 2011**

**PRESENT: The Honourable Mr. Justice Crampton**

**BETWEEN:**

**ABBAS MAMNUNI**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Mr. Abbas Mamnuni, was at Vancouver International Airport, while en route from Toronto to China, when he was approached by a Canada Border Services Agency (CBSA) officer conducting currency export checks. The CBSA officer ended up seizing Euros, Canadian dollars and American currency, with a collective value of approximately \$53,000 CAD, from him. The officer suspected that the currency was proceeds of crime, as contemplated by sections 12 and 18 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,

SC 2000, c 17 (the “Act”). Mr. Mammuni then sought ministerial review of the seizure, in accordance with section 25 of the Act.

[2] In August 2010, the Manager of the Appeals Division of the Recourse Directorate, on behalf of the Minister of Public Safety and Emergency Preparedness (the “Minister’s Delegate”), found, pursuant to section 27 of the Act, that there was a contravention of the Act. Pursuant to section 29 of the Act, she also held that the seized currency would remain forfeited.

[3] The Applicant seeks to have the decision set aside on the basis that the Minister’s Delegate erred by:

- i) imposing an impossible burden of proof on the Applicant;
- ii) reaching her decision without regard to the fact that the seized currency was a collection and accumulation of non-reportable currency;
- iii) overlooking the requirements of section 14 of the Act; and
- iv) failing to reach her decision in accordance with the principles of natural justice.

[4] For the reasons that follow, this application is dismissed.

## **I. Background**

[5] Mr. Abbas Mammuni is a businessman who owns and operates a clothing store and a clothing import company, named Montberg Ltd. On February 26, 2009, he traveled from Toronto to China *via* Vancouver International Airport.

[6] While awaiting his onward flight at Vancouver International Airport, and after having passed through the standard security check, he was approached by a CBSA officer who informed him that he was conducting a currency export check. There are two very different versions of what then transpired.

[7] According to Mr. Mamnuni, the officer asked him whether he had currency in his possession equal to or greater than \$10,000, to which he immediately replied “yes”. When asked about the amount of money in his possession, he claims that he replied that he had about 32,500 Euros and a few hundred Canadian and American dollars. When he was then asked if he had reported the currency prior to his departure, he replied “no”. He was then escorted to an office where he was asked to produce all his currency. Mr. Mamnuni then presented 32,520 Euros, \$940 Canadian dollars, \$151 US dollars, 2,220 Chinese yuan and 110,000 Korean won. The Chinese and Korean currencies were returned to him for humanitarian purposes. The rest of the money was seized by the officer.

[8] According to the Respondent, Mr. Mamnuni was initially asked whether he was aware of the Act and to identify his travel destination. He replied that he knew the legislation and was traveling to China for business purposes. He was then asked if he had reported any currency to the CBSA prior to his departure. He replied that he had not done so. He was not asked if he had any money to declare. Instead he was escorted to the currency office for further examination, where he presented all of his currency to the officer. When asked why he failed to declare the money, as required by the Act, he stated that he simply forgot. In his subsequent written submissions, he attributed his forgetfulness, at least in part, to the fact that he had only purchased his airline ticket the evening before his departure from Toronto. As a result of the responses that he gave to various

questions posed by the officer, the officer seized Mr. Mammuni's Euros, Canadian and American dollars.

[9] On April 16, 2009, Mr. Mammuni sought a ministerial review of the officer's decision. After receiving multiple written submissions from Mr. Mammuni and a detailed written report from the officer in question, a CBSA Adjudicator (the "Adjudicator") recommended that the Minister's Delegate conclude that the Act had been contravened and that the seized currency should be confirmed as forfeited.

## **II. Relevant Legislation**

[10] The legislation relevant to this application is set forth in the Act and is attached to these reasons as Appendix "A".

[11] In brief, pursuant to section 3 of the Act, the purpose of the Act is to implement specific measures to detect and deter money laundering and the financing of terrorist activities, to facilitate the investigation of such conduct, to respond to threats posed by organized crime, and to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime and terrorist activity. In pursuit of these objectives, subsection 12(1) requires persons described in subsection 12(3) to report to a CBSA officer the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount, which is currently \$10,000, under the *Cross-Border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412.

[12] The persons referred to in subsection 12(3) include persons departing from Canada who have currency in their possession.

[13] Pursuant to subsection 18(1), if a CBSA officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments in question. Section 18(2) requires that a CBSA officer return the seized currency or monetary instruments upon payment of the prescribed penalty, unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime.

[14] Pursuant to section 25, a person from whom currency has been seized may, within 90 days after the date of the seizure, request a decision of the Minister as to whether subsection 12(1) was contravened. The Minister is then required to decide whether subsection 12(1) was contravened (section 27). If the Minister concludes that there was a contravention of subsection 12(1), the Minister may: (i) decide to return the currency or monetary instruments, or an equivalent amount of money, with or without payment of a penalty; (ii) decide that any penalty or portion thereof that has already been paid be remitted; or (iii) confirm the forfeiture in question (section 29).

[15] If a person is not satisfied with the Minister's decision under section 27 with respect to the issue of contravention, subsection 30(1) allows the person to appeal that decision by way of an action in the Federal Court.

[16] In addition to the foregoing, section 14 of the Act provides that if a person indicates to an officer that he or she has currency or monetary instruments to report under subsection 12(1), but the report has not yet been completed, the officer may, after giving notice in the prescribed manner to the person, retain the currency or monetary instruments until the officer is satisfied that the currency or monetary instruments have been reported under subsection 12(1) or the importer or exporter of

the currency or monetary instruments advises the officer that they do not wish to proceed with the import or export in question (subsections 14(1) and (3)).

### **III. The Adjudicator's Recommendation**

[17] After summarizing the officer's account of his initial exchanges with Mr. Mammuni, as set forth above, the Adjudicator summarized the remainder of what took place between the officer and Mr. Mammuni. According to the Adjudicator, Mr. Mammuni explained that he was traveling to China to buy clothes for his clothing store, that the Euros in question had been acquired over the past three years, and that the currency was part of his savings and was kept at his home. When asked why he did not keep it at the bank, the Applicant stated that it was his money and he could do whatever he wanted with it. When asked why he was carrying Euros to purchase clothing in China, the Applicant stated that Euros are easier than other currencies to carry around and that he could get a better rate for Euros in China.

[18] The Adjudicator noted that the interview revealed that the Applicant had an expensive lifestyle. He owned two vehicles and a house, on which he owed \$410,000. He paid \$4,900 a month for his store's rent, and despite claiming financial hardship, he had two personal bank accounts with balances of \$18,000 and \$9,000 respectively. The company's bank accounts also had balances of \$2,000 and \$50,000 respectively. In addition, he had accounts in China which had "unusual" movements of U.S. funds, although there had been no transactions in either account since May 2008.

[19] The Adjudicator also noted that Mr. Mammuni "kept contradicting himself" during the interview. For example, he initially stated that he kept his savings at home, but later explained that

he had brought the money home from his safety deposit box a couple of weeks earlier. He also gave conflicting evidence regarding whether his wife was aware of the money he kept at home.

[20] The Adjudicator then stated that the officer seized the currency as suspected proceeds of crime, based on 19 grounds, which included the following:

- i) There were signs at the airport regarding the currency legislation, but no report was made;
- ii) Mr. Mammuni claimed to know the currency legislation;
- iii) he admitted to having traveled with and properly reported currency over the reporting threshold on two other occasions;
- iv) he admitted to having been examined by CBSA officers before;
- v) he was traveling on tickets bought the day before;
- vi) he gave contradicting statements regarding his wife's knowledge of the currency;
- vii) he gave contradicting statements about keeping the money at home;
- viii) he was carrying 65 bills of 500 Euro notes, which are commonly used in money laundering because it is easier to transport large amounts of money in fewer bills to avoid detection;
- ix) he was nervous, with shifting weight and a dry mouth;

- x) he did not know how much income he had reported or made in the previous years, and legitimate income earners know their respective incomes; and
- xi) he was traveling on a purchasing trip without a purchasing list or a list of suppliers, without knowing what he wanted to purchase and without knowing how much he would spend.

[21] The Adjudicator proceeded to review the submissions made by Mr. Mamnuni in support of his request for ministerial review. Among other things, she summarized Mr. Mamnuni's version of his exchanges with the officer. She also acknowledged certain information which indicated that he had traveled to China frequently, that he had imported clothing from China, and had Chinese savings accounts, in which all transactions were either in U.S. or Chinese currencies.

[22] In addition, she observed that Mr. Mamnuni had provided his business tax returns for the fiscal years 2002-2008, which showed the following levels of income: (i) for 2002-03: \$11,993; (ii) for 2003-04: \$15,846; (iii) for 2004-2005: \$17,749; (iv) for 2005-06: \$21,453; and (v) for 2007-08: - \$271.40. As to his personal income, the evidence indicated that between 2006 and 2008, it rose from \$25,597 to \$39,638. As to other sources of funds, she noted that Mr. Mamnuni provided electronic transaction receipts of transfers made by his brother amounting to \$123,000, which he indicated was his inheritance from his father's passing that was then used as a down payment on his home.

[23] On October 16, 2009, the Adjudicator wrote Mr. Mamnuni a letter, stating that the documents he had submitted were evidence of cash flow, but that a link could not reasonably be established between the money seized in February 2009 and the documents dating back to 2007.



Among other things, she added that no explanation had been provided in respect of previously identified discrepancies. In this regard, she observed that: (i) his personal income tax reports demonstrate that his income was insufficient to support his lifestyle; (ii) at the time of the seizure, he stated that the money he received from his brother was used for a down payment on his home, not to purchase clothes in China; and (iii) he originally stated that he kept the currency at his home, only to later state that he had just brought the currency from his safety deposit box.

[24] Regarding whether the currency was properly reported, the Adjudicator concluded in her report that the evidence established that there was a contravention of the Act, because no written report had been made by Mr. Mammuni under the Act prior to his encounter with the officer. She noted the conflicting evidence regarding the exchange between the officer and Mr. Mammuni, and indicated that it was possible that the Applicant had the intention to make a declaration but did not have the time to do so when he was encountered by the officer. However, she observed that the Applicant stated that he had forgotten to report it, rather than that he had intended to make the report.

[25] Similarly, the Adjudicator rejected Mr. Mammuni's submissions with respect to whether a legitimate origin of the currency had been established. In this regard, she reiterated some of the factors that had been identified by the officer, including certain inconsistencies in his evidence.

[26] She also emphasized that the documentation provided by Mr. Mammuni only focused on his annual income and the financial situation of his company, and did not demonstrate the legal origin of the seized currency.

[27] In light of all the above, the Adjudicator recommended that: (i) under section 27 of the Act, the Minister's Delegate should find that there was a contravention of the Act or the Regulations with respect to the currency that was seized; and (ii) under section 29 of the Act, the Minister's Delegate should find that the seized currency should be "held as forfeit".

#### **IV. The Decision under Review**

[28] On August 23, 2010, the Minister's Delegate issued a decision that was broadly consistent with the Adjudicator's findings and recommendations. In explaining the reasons for her decision, she began by summarizing the Respondent's version of the exchanges that took place between the CBSA officer and Mr. Mamnuni at Vancouver International Airport. She then listed the above-mentioned 19 points that the officer had identified as providing reasonable grounds for suspecting that the currency in question was the proceeds of crime. She proceeded to observe that these grounds were accepted as valid in establishing reasonable grounds to suspect that the currency was the proceeds of a crime.

[29] The Minister's Delegate then reviewed Mr. Mamnuni's submissions regarding the origin of the currency. She noted that he had explained that the majority of the currency was to be used to purchase clothing in China and that the evidence presented included tax returns for Mr. Mamnuni's business, import documentation and other documentation supporting the explanation that his income was low and derived solely from the business. However, she found that this evidence did not establish an identifiable link between the seized currency and its lawful origin. She also observed that the currency conversion receipts submitted by the Applicant were dated between August 2006 and September 2008, well in advance of Mr. Mamnuni's trip to China, a country to which he claimed to travel one or two times per year for the past several years.

[30] In addition, she noted that Mr. Mamnuni's second explanation as to the origin of the currency was that the money constituted his inheritance from his father, which had been forwarded from his family in Iran. She observed that there was no evidence submitted to corroborate the claim that the money constituted his inheritance, and that at the time the currency was seized, he had indicated that his inheritance money had been used as a down payment on his home. Therefore, she stated that this explanation could not be accepted and did not demonstrate the legal origin of the seized currency.

[31] Based on the foregoing, the Minister's Delegate concluded that the explanations provided and the evidence submitted did not remove the suspicion that the currency was the proceeds of crime. She added that, in view of this conclusion, discretion could not be granted with respect to the forfeiture of the currency. As a result, the currency would remain forfeited.

## **V. Standard of Review**

[32] The standard of review applicable to the first issue that has been raised, regarding the burden of proof that was imposed on Mr. Mamnuni, is reasonableness (*Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255, at para 51; *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 281, at paras 9-13 ("Yang FCA")). That is also the standard of review applicable to the second issue that has been raised, regarding whether the Minister's Delegate erred by reaching her decision without regard to the fact that the currency was a collection and accumulation of non-reportable currency (*Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51-55).

[33] In my view, the issue that has been raised with respect to whether the Minister's Delegate erred by overlooking the requirements of section 14 of the Act is also subject to review on a standard of reasonableness, as this is, in essence, an issue involving the exercise of Ministerial discretion (*Dunsmuir*, above, at para 53) and, possibly, the interpretation of the circumstances in which the enabling, or "home," statute in question contemplates the exercise of such discretion (*Dunsmuir*, above, at paras 54 and 59; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 44; *Celgene Corp v Canada (Attorney General)*, 2011 SCC 1, at para 34; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, at paras 26, 37 and 38). That said, nothing turns on this, as I have determined that Parliament did not intend the discretion contemplated by section 14 of the Act to be exercised in circumstances where, as here, a person has failed to indicate that he or she has currency to report before passing through the security check at their point of departure from Canada and before being approached by a customs officer.

[34] The fourth issue that has been raised is somewhat awkwardly worded. However, it is, in essence, a question as to whether Ministerial discretion was exercised in accordance with the principles of procedural fairness. That issue is reviewable on a standard of correctness (*Dunsmuir*, above, at paras 55, and 79; *Khosa*, above, at para 43).

## **VI. Analysis**

### *A. Did the Minister's Delegate err by imposing an impossible burden of proof on the Applicant?*

[35] Mr. Mammuni submitted that the Minister's Delegate erred in law by imposing a burden and standard of proof on him that was too high. In this regard, he noted that the Adjudicator stated, in a letter to him dated October 1, 2009, that an explanation as to the origin of the currency "must be proven in sufficient details and with enough credible, reliable and independent evidence to establish

that no other reasonable explanation is possible” (emphasis added). Similarly, in a letter dated October 16, 2009, she stated that “failure to provide credible explanation to eliminate any doubts on the legitimate nature of the seized currency” would likely result in the continued forfeiture of the currency (emphasis added). Mr. Mammuni also noted that in her recommendation to the Minister’s Delegate, the Adjudicator characterized the burden of proof in essentially the same terms.

[36] In support of his position, Mr. Mammuni relied on *Yusufov v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 453 as authority for his view that the Adjudicator’s findings form part of the decision of the Minister’s Delegate. With respect to the burden of proof, he relied on *Qasem v Canada (Minister of National Revenue)*, 2008 FC 31.

[37] I do not agree with Mr. Mammuni’s submissions.

[38] In *Yusufov*, above, the parties agreed that the adjudicator’s Case Synopsis and Reasons formed part of the reasons for the Minister’s decision. There was no further discussion on the issue in the reasons given by Justice Judith A. Snider. However, in the subsequent case of *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 158 (“*Yang FC*”), Justice Snider rejected the position that the adjudicator in that case had actually made the decision under review, which was then “rubber-stamped” by the Minister’s Delegate. She did so after noting that there were differences between the decision of the Minister’s Delegate and recommendations made in the adjudicator’s Case Synopsis and Reasons. She observed that this indicated that the Minister’s Delegate did not simply “rubber-stamp” the Case Synopsis report, but had exercised his discretion and decision-making authority. Justice Snider’s conclusion on this point was not addressed in the Federal Court of Appeal’s decision upholding her decision (*Yang FCA*, above).

[39] As in *Yusufov*, above, the Minister's Delegate in the case at bar issued her own reasons for her decision. In that decision, she summarized Mr. Mammuni's submissions and evidence and then concluded that they "did not remove the suspicion that the currency was proceeds of crime." Based on the information summarized in the letter, which included the grounds relied upon by the officer in seizing the currency, I am satisfied that the Minister's Delegate did not merely "rubber stamp" the Adjudicator's recommendations, but rather exercised her own discretion and decision-making authority. My conclusion on this point is reinforced by the fact that, in her decision, the Minister's Delegate explicitly stated that she had "fully considered the documentation [Mr. Mammuni] provided as well as the reports from the issuing officer."

[40] The involvement of the Minister's Delegate in the case at bar was qualitatively very different from situations in which an administrative officer's report may be considered to form part of a reviewable decision taken by a Ministerial delegate or other person. In those situations, the decision of the Ministerial delegate or other person essentially "rubber stamps" the officer's decision, or does not explain the basis for the decision. For example, in the immigration field, the Computer Assisted Immigration Processing System (CAIPS) notes of administrative officers are sometimes considered to form part of the decision that is subject to judicial review, because the letter informing the applicant of the decision does not explain the grounds for the decision, and the CAIPS notes are the principle record of those grounds. For the reasons discussed above, the decision of the Minister's Delegate in the case at bar provided such grounds and reflected a full and true exercise of the discretion contemplated by the Act.

[41] In her decision, the only reference made to a burden was towards the end, after the Minister's Delegate had summarized Mr. Mammuni's evidence and had listed the officer's grounds

for suspecting the currency in question to be proceeds of crime. At that point, she concluded that “the documentation did not demonstrate the legal origin of the seized currency” and that “the explanations provided by you and the evidence submitted did not remove the suspicion that the currency was proceeds of crime.” She added: “[i]n view of the foregoing, discretion cannot be granted with respect to the forfeiture of the currency and, as such, it will remain forfeited.”

[42] The “did not demonstrate the legal origin of” and “did not remove the suspicion” language used by the Minister’s Delegate is very similar to the language that the Minister’s delegate employed in *Sellathurai*, above (see para 14); and in *Yang FC*, above (see para 23). Those cases were issued after this Court’s decision in *Qasem*, above, and therefore better reflect the current law on this point.

[43] In *Sellathurai*, above, at para 43, the Federal Court of Appeal noted that such language mischaracterizes the nature of the discretion exercised under section 29, as this suggests that the seizing officer’s decision is being reassessed. However, “once the breach of section 12 is confirmed, the only issue remaining is whether the Minister will grant relief from forfeiture.”

[44] The Court of Appeal then proceeded to address the standard of proof applicable to decisions taken under section 29 of the Act. At para 51 of its decision, it stated:

... 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.

[45] This approach was followed a short while later, in *Yang FCA*, above, at para 13. There, the Court of Appeal stated, after quoting at length from the majority decision in *Sellathurai*, above:

[13] The Minister, quite properly, sought to obtain from the appellant additional information respecting the legitimacy of the funds. He was not satisfied that any credible one had been presented. He came to the conclusion that the appellant had “failed to provide any legitimate documentary evidence or information to demonstrate that the funds were legitimately obtained” and that “Reasonable suspicion still stands” (A.B., p. 06). The Minister, not having been satisfied, to use the words of Pelletier J.A. at para 50, “that the seized funds are not proceeds of crime”, it was reasonably open to him to confirm the forfeiture.

[46] Based on the foregoing, and the evidence that was before the Minister’s Delegate, I am satisfied that it was reasonably open to her to decline to exercise her discretion to confirm the forfeiture of the currency in question. Mr. Mamnuni was repeatedly and consistently asked to provide sufficient details to establish the legal origin of the currency. He failed to do so. He must now bear the consequences.

*B. Did the Minister’s Delegate err by reaching her decision without regard to the fact that the currency was a collection and accumulation of non-reportable currency?*

[48] Mr. Mamnuni made various submissions in support of this ground of challenge of the decision made by the Minister’s Delegate. In essence, his position is that it was not reasonable for her to reject his explanation for why he was unable to provide greater substantiation for his assertion that the seized currency represented an accumulation of savings over a period of three years. In short, his explanation was that those savings were converted to Euros in several transactions that were each unreportable, because they were each for a monetary value below \$10,000.00. Given that



the exchange transactions were below that threshold, he did not keep any documentation regarding the origin of the funds.

[49] I disagree with Mr. Mammuni's submissions on this point. In brief, they fail to recognize that it was his burden to satisfy the Minister's Delegate that the seized currency was not proceeds of crime (*Sellathurai*, above, at para 50). As noted by the Minister's Delegate, the currency conversion receipts, like the other evidence provided by Mr. Mammuni, "did not demonstrate the legal origin of the seized currency." Accordingly, it was entirely reasonable for her to decline to exercise her discretion, notwithstanding that Mr. Mammuni had provided those conversion receipts to her.

[50] In my view, this outcome was well within the range of acceptable ones in this case that are defensible in respect of the facts and law. The decision of the Minister's Delegate on this point was also appropriately justified, transparent and intelligible (*Dunsmuir*, above, at para 47).

*C. Did the Minister err by overlooking the requirements of section 14 of the Act?*

[51] In his written submissions, Mr. Mammuni appeared to take the position that the Adjudicator and the Minister's Delegate both erred by determining that section 12 of the Act had been contravened, without having regard to the "oral declaration" that he claims to have made to the officer prior to entering the verification room at Vancouver International Airport.

[52] In response, the Respondent submitted that this Court has no jurisdiction to consider this ground of review. In short, the Respondent's position is that this issue goes to whether a report, whether written or otherwise, was made pursuant to subsection 12(1) of the Act. In turn, the determination of whether there has been a contravention of subsection 12(1) is made pursuant to section 27; and section 30 provides that appeals of such decisions may be made by way of an action in this Court.

[53] I agree with the Respondent's position on this point, which is well supported by the jurisprudence of this Court (see, for example, *Dupre v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177, at paras 24-25; *Dokaj v Canada (Minister of National Revenue)*, 2005 FC 1437, at paras 32-38; *Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 50, at paras 34-35; and *Ondre v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 454, at para 15).

[54] In any event, it should be noted for the record that Mr. Mammuni's counsel conceded, during his oral submissions before this Court, that Mr. Mammuni had contravened subsection 12(1).

[55] Mr. Mammuni also submitted that the officer had an obligation to consider exercising discretion in his favour pursuant to section 14 once he made his "oral declaration" to the officer. In this regard, he referred to provisions in the CBSA's Memorandum D19-14-1 and in the *CBSA Enforcement Manual* that essentially repeat what is stated in subsection 14(1). He also noted that the latter document adds that "[n]egligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty action." However, this begs the questions of whether Mr. Mammuni was "a person making a report" and whether the discretion referred to in subsection 14(1) was intended to be applied in circumstances such as those in the case at bar. Moreover, insofar as the quoted passage from the *CBSA Enforcement Manual* is concerned, that passage appears in a section of the manual that concerns amending currency reports, not making late reports.

[56] Another passage in the Manual that Mr. Mammuni attempted to rely upon addressed procedures to be followed during a search. However, he claims to have made his "oral declaration"

at the outset of his exchange with the officer. At that time, the officer was simply having an initial exploratory conversation with Mr. Mamnuni.

[57] Mr. Mamnuni further asserts that in exercising her discretion under section 29, the Minister's Delegate erred by failing to "address and analyze the issues surrounding the officer's failure to exercise discretion under section 14 and the consequences of such failure."

[58] In support of his position, Mr. Mamnuni stated that a "plain reading" of section 14 reflects that Parliament enacted that section to ensure that money will not be taken from persons who "candidly and readily" inform a customs officer that they "have currency to report but forgot to complete the report." Relying on the Supreme Court of Canada's decision in *Maple Lodge Farms Ltd v Canada*, [1982] 2 SCR 2, he asserted that, in exercising their discretion, Ministers are required "to act in good faith and *to have regard to all relevant considerations*, not be swayed by irrelevant ones *and not make their decisions perversely and capriciously*" (emphasis in original).

[59] Once again, this begs the questions of whether: (i) Mr. Mamnuni "candidly and readily" informed the officer that he had currency to report and simply forgot to complete the report; (ii) the officer and the Minister's Delegate failed to act in good faith and to have regard to all relevant considerations; and (iii) the latter two individuals were swayed by irrelevant considerations or made their decisions in a perverse and capricious manner. In my view, the evidence does not support any of these propositions.

[60] I am satisfied that, in accepting the officer's version of his exchanges with Mr. Mamnuni, the Minister's Delegate implicitly rejected Mr. Mamnuni's version of the exchanges he had with the officer. The discrepancy between Mr. Mamnuni's version of those exchanges and the officer's version was clearly described in the Adjudicator's *Case Synopsis and Reasons for Decision* ("Case

Synopsis”). That document also noted that the Adjudicator specifically requested that the officer respond to Mr. Mammuni’s statement that, “when asked if he had money to declare, he stated that he did”. In addition, the Case Synopsis noted that the officer confirmed that he never asked the claimant if he had any currency to declare. Instead, he asked Mr. Mammuni if he had made a declaration and he replied “no”. In the officer’s view, “the point of finality had been reached”.

[61] I am satisfied that the Minister’s Delegate turned her mind to the discrepancy between the two versions of what happened, because she clearly stated, at the outset of her decision, that she had “reviewed the enforcement action, the evidence and the law as it applies in [this] case” and had “fully considered the documentation [Mr. Mammuni] provided as well as the reports from the issuing office.”

[62] In then describing the officer’s version of his exchanges with Mr. Mammuni, the Minister’s Delegate implicitly rejected Mr. Mammuni’s version of those exchanges. As a consequence, there was nothing more for her to consider in respect of the alleged “oral declaration”. In short, she evidently was satisfied that no such declaration, as contemplated by section 14, had been made. As such, there was nothing in relation to section 14 for the Minister’s Delegate to consider in exercising her discretion under section 29.

[63] In any event, I fail to see how the alleged oral declaration might have been of assistance to the Minister’s Delegate, whose focus in making her decision under section 29 was upon whether she was satisfied that the seized currency was not proceeds of crime (*Sellathurai*, above, at para 50). The fact that an oral declaration may have been made regarding the existence of those funds on Mr. Mammuni’s person would not have materially assisted the Minister’s Delegate to satisfy herself that the seized currency was not proceeds of crime.

[64] Moreover, I am satisfied that Parliament did not intend the discretion contemplated in section 14 to be exercised in circumstances such as those that existed in this case. In particular, there were signs at Vancouver International Airport reminding travelers of the Act; Mr. Mammuni conceded that he was familiar with the Act and that he had made currency reports in the past. He admitted that he had not made a report under the Act in respect of the currency that he was carrying before he was approached by the officer, notwithstanding that he had opportunities to do so prior to his departure in Toronto and again in Vancouver. In addition, he had already passed through security.

[65] Contrary to his claims of having “candidly and readily” informed the officer that he had currency to report, there is no evidence to suggest that he had any intention of “candidly and readily” reporting or indicating, in any way, that he had currency to report, prior to when he was approached by the officer. His position seems to be that: (i) he was entitled to refrain from reporting or providing any indication whatsoever that had currency to report, until he was approached by the officer; and (ii) he was entitled to the exercise of the discretion contemplated by section 14 until that point in time, provided that he then indicated to the officer that he had currency to report.

[66] I disagree.

[67] In my view, the discretion contemplated by subsection 14(1) is no longer available once a person who has passed through security and has not yet indicated that he has currency or monetary instruments to report, is approached by a customs officer. In my view, it would seriously undermine the objectives of the Act that are set forth in section 3 thereof, to interpret subsection 14(1) in a manner that it could be applied in such circumstances. The obligation is on the person who is exporting currency with a value of \$10,000.00 or greater to report that currency. That obligation is

proactive and must be fulfilled prior to the point in time at which a customs officer in the post-security check area of an airport approaches the person.

[68] Even if I am wrong and subsection 14(1) might be said to continue to be available in such circumstances, I am satisfied that, in view of the additional relevant considerations that were present in this case, the officer did not err in failing to explicitly consider exercising his discretion under subsection 14(1) in Mamnuni's favour. I am also satisfied that the Minister's Delegate did not err in failing to take into account, in exercising her discretion under section 29 of the Act, "the issues surrounding the officer's failure to exercise discretion under s. 14 and the consequences of such failure", even if Mr. Mamnuni's claims of having made an "oral declaration" to the officer are accepted as true.

[69] In short, the additional relevant considerations that were present in this case are such that it was reasonable and entirely appropriate for: (i) the officer to have failed to consider exercising his discretion under subsection 14(1); and (ii) the Minister's Delegate to have failed consider the relevance of that failure by the officer, in exercising her discretion under section 29 of the Act.

[70] Those additional considerations included: (i) the various contradictory statements that were made by Mr. Mamnuni to the officer; (ii) his nervous demeanour; (iii) the officer's determination that Mr. Mamnuni had an expensive lifestyle, yet claimed to be experiencing financial hardship and subsequently provided copies of income tax returns in which he reported "relatively low" personal income; and (iv) the fact that Mr. Mamnuni claimed to be on a purchasing trip, yet he was not in possession of any purchasing list or any list of suppliers in China, he did not know what and how much clothing he wanted to buy, and he did not know how much money he would spend purchasing clothing.

[71] In summary, I am satisfied that neither the officer nor the Minister's Delegate erred as Mr. Mammuni has suggested, in connection with section 14 of the Act.

*D. Did the Minister's Delegate err by failing to reach her decision in accordance with the principles of natural justice?*

[72] Mr. Mammuni asserts that the Minister's Delegate erred by failing to have regard for the fact that there was a breach of natural justice when the CBSA sought a legal opinion and did not share that opinion with him or give him an opportunity to participate in the decision-making process. In this latter regard, Mr. Mammuni asserts that the Adjudicator's Case Synopsis ought to have been disclosed to him prior to when he received that document after commencing this application for judicial review and requesting a copy of the Certified Tribunal Record, pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106.

[73] Mr. Mammuni further submitted that both the Adjudicator and the Minister's Delegate had a duty to: (i) disclose the legal opinion and Case Synopsis to him; and (ii) to provide him with an opportunity to address the Adjudicator's views and recommendations, which were external sources of evidence that were provided to the Minister's Delegate and were prejudicial to his position. In his view, the failure to disclose those documents, and their existence, to him deprived him of clear notice of the case he had to meet, and the opportunity to make appropriate submissions in response thereto. Among other things, he asserted that the date of the legal opinion and the fact that it was obtained in respect of "oral declarations" demonstrated that the officer's version of his exchange with Mr. Mammuni lacked credibility.

[74] I disagree with each of the foregoing submissions and assertions.

[75] The legal opinion, received on March 20, 2009, approximately three weeks after Mr. Mamnuni's encounter with the officer, was protected by solicitor-client privileged, assuming that it was intended to be kept confidential by the parties to that communication (*Pritchard v Ontario (Human Rights Commission)*, [2004] 1 SCR 809, at paras 19-21, and 27; *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204, at para 14). Mr. Mamnuni did not adduce any evidence to indicate that the legal opinion was not intended to be kept confidential. Although the privilege may have been waived when the Case Synopsis, which quoted from the opinion, was disclosed to Mr. Mamnuni in response to his request under Rule 317, that waiver did not occur until after the Minister's Delegate issued the decision under review.

[76] In any event, even if the legal opinion should have been disclosed to Mr. Mamnuni, I am satisfied that he was not prejudiced by the failure to disclose that opinion to him, at least for the purposes of this judicial review. The essence of that legal opinion was simply that "oral declarations" to an officer do not constitute reports for the purposes of subsection 12(1). This precise point was conceded by Mr. Mamnuni's counsel during the oral hearing.

[77] Moreover, the legal opinion went to the issue of whether an "oral declaration" constituted a report for the purposes of section 12(1). As discussed in Part IV.C above, the issue of whether there was a breach of subsection 12(1) of the Act is a matter for the Minister's Delegate to decide under section 27 of the Act, and this Court has no jurisdiction on an application for review to review that particular decision.

[78] As to the potential significance of the date of the legal opinion, there are many possible explanations as to why the legal opinion may have been requested by the officer, prior to when Mr. Mamnuni made his initial request under section 25 of the Act for a decision as to whether



subsection 12(1) was contravened. I do not agree that the fact that the legal opinion was requested prior to that point in time demonstrates that an “oral declaration” had in fact been made by Mr. Mamnuni, and that the officer’s version of events was therefore “not credible.” Indeed, it is not even clear that the legal opinion was requested by the officer and in connection with this particular manner. Even assuming that the officer requested the opinion in respect of this matter, there are many reasons why he may have done so, including simply in anticipation of this argument being raised by Mr. Mamnuni. In my view, it was reasonably open to both the Adjudicator and the Minister’s Delegate to accept the officer’s version of events, particularly given all of the circumstances that existed in this case, including those that are summarized at paragraph 70 above.

[79] I am satisfied that the failure to disclose the legal opinion and the Case Synopsis, which is also a privileged document (*Maax Bath*, above, at para 14), to Mr. Mamnuni did not breach his procedural fairness rights (*Pritchard*, above, at para 31). As previously noted, in exercising her discretion under section 29, the focus of the Minister’s Delegate was upon whether she was satisfied that the seized currency was not proceeds of crime (*Sellathurai*, above, at para 50). Mr. Mamnuni was provided with numerous opportunities to address this issue and the shortcomings that the Adjudicator identified with respect to his submissions and evidence. It does not follow from the fact that he ultimately failed to satisfy the Adjudicator or the Minister’s Delegate on this point that his procedural fairness rights were violated. On the contrary, I am satisfied that they were not violated.

[80] As noted in *Dag v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 427, at para 52:

[52] ... [T]he need to provide evidence to support the applicants’ claim regarding the origin of the funds was always made clear to them, and that they were in fact provided with an opportunity to do so, both at their meeting with the adjudicator and through their

additional written submissions. Since they were also challenging the finding of the customs officers that they had contravened subsection 12(1) of the Act, the need to make submissions to that effect appears to me to be self-evident, as is the need to justify their decision to carry the currency on their person rather than rely on a transaction through a financial institution, which is the normal practice for business owners such as themselves. All conclusions drawn by the adjudicator relied on the factual records of the customs officers and the evidence submitted by the applicants. The applicants were provided with an opportunity to make all the submissions they wished, and were granted extensions of deadline for doing so, but failed to provide the necessary evidence to sustain their claim on the legitimate provenance of the funds in question. Therefore, I agree with the respondent that there would have been no benefit to either the applicants or the decision-maker in communicating the adjudicator's report to the applicants before rendering a final decision.

## **VII. Conclusion**

[81] The application for judicial review is dismissed.

[82] There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that this application for judicial review is dismissed.

“Paul S. Crampton”

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Judge

## APPENDIX “A”

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

*Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, LR 2000, ch 17*

### 3. The object of this Act is

(a) to implement specific measures to detect and deter 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:

(i) establishing record keeping and client identification requirements for financial services providers and other persons or entities that engage in businesses, professions or activities that are susceptible to being used for money laundering or the financing of terrorist activities,

(ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and

(iii) establishing an agency that is responsible for dealing with reported and other information;

(b) to respond to the threat posed by organized crime by providing law

### 3. La présente loi a pour objet :

a) de mettre en oeuvre des mesures visant à détecter et décourager le 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 :

(i) imposer des obligations de tenue de documents et d'identification des clients aux fournisseurs de services financiers et autres personnes ou entités qui se livrent à l'exploitation d'une entreprise ou à l'exercice d'une profession ou d'activités susceptibles d'être utilisées pour le recyclage des produits de la criminalité ou pour le financement des activités terroristes,

(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,

(iii) constituer un organisme chargé de l'examen de renseignements, notamment ceux portés à son attention en application du sous-alinéa (ii);

b) de combattre le crime organisé en fournissant aux responsables de

enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

l'application de la loi les renseignements leur permettant de priver les criminels du produit de leurs activités illicites, tout en assurant la mise en place des garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

(c) 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.

c) d'aider le Canada à remplir ses engagements internationaux dans la lutte contre le crime transnational, particulièrement le recyclage des produits de la criminalité, et la lutte contre les activités terroristes.

[...]

[...]

**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.

[...]

[...]

**14.** (1) Subject to subsections (2) to (5), if a person or an entity indicates to an officer that they have currency or monetary instruments to report under subsection 12(1) but the report has not yet been completed, the officer may, after giving notice in the prescribed manner to the person or entity, retain the currency or monetary instruments for the prescribed period.

**14.** (1) Sous réserve des paragraphes (2) à (5), si la personne ou l'entité indique à l'agent qu'elle a des espèces ou effets à déclarer en application du paragraphe 12(1) mais que la déclaration n'a pas encore été complétée, l'agent peut, moyennant avis à la personne ou l'entité selon les modalités réglementaires, retenir les espèces ou effets pour la période réglementaire.

[...]

[...]

(3) Currency or monetary instruments may no longer be retained under subsection (1) if, during the period referred to in that subsection:

(3) Les espèces ou effets ne peuvent plus être retenus en application du paragraphe (1) si, durant la période visée à ce paragraphe, l'un des événements suivants se produit :

(a) the officer is satisfied that the currency or monetary instruments have been reported under subsection 12(1);  
or

a) l'agent constate qu'ils ont été déclarés en conformité avec le paragraphe 12(1);

(b) the importer or exporter of the currency or monetary instruments advises the officer that they have decided not to proceed further with importing or exporting them.

b) l'importateur ou l'exportateur informe l'agent qu'il a renoncé à poursuivre leur importation ou exportation.

[...]

[...]

**18.** (1) If an officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments.

**18.** (1) S'il a des motifs raisonnables de croire qu'il y a eu contravention au paragraphe 12(1), l'agent peut saisir à titre de confiscation les espèces ou effets.

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities.

(2) Sur réception du paiement de la pénalité réglementaire, l'agent restitue au saisi ou au propriétaire légitime les espèces ou effets saisis sauf s'il soupçonne, pour des motifs raisonnables, qu'il s'agit de produits de la criminalité au sens du paragraphe 462.3(1) du *Code criminel* ou de fonds destinés au financement des activités terroristes.

[...]

[...]

**23.** Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada from the time of the contravention of subsection 12(1) in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

**23.** Sous réserve du paragraphe 18(2) et des articles 25 à 31, les espèces ou effets saisis en application du paragraphe 18(1) sont confisqués au profit de Sa Majesté du chef du Canada à compter de la contravention au paragraphe 12(1) qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

[...]

[...]

**25.** A person from whom currency or

**25.** La personne entre les mains de qui ont

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.

[...]

**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.

**28.** If the Minister decides that subsection 12(1) was not contravened, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the penalty that was paid, or the currency or monetary instruments or an amount of money equal to their value at the time of the seizure, as the case may be.

**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 monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

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.

[...]

**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).

**28.** Si le ministre décide qu'il n'y a pas eu de contravention au paragraphe 12(1), le ministre des Travaux publics et des Services gouvernementaux, dès qu'il est informé de la décision du ministre, restitue la valeur de la pénalité réglementaire, les espèces ou effets ou la valeur de ceux-ci au moment de la saisie, selon le cas.

**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 réception de la pénalité réglementaire ou sans pénalité;

b) soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);

(c) 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).

**30.** (1) A person who requests a decision of the Minister under section 27 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 que soit rendue une décision en vertu de l'article 27 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.



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1515-10

**STYLE OF CAUSE:** ABBAS MAMNUNI v THE MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

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**APPEARANCES:**

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