Federal Court  Cour fédérale

Date: 20140801

Docket: T-1372-13

Citation: 2014 FC 770

Ottawa, Ontario, August 1, 2014

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

SCOTT HERON

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In the fall of 2012, Mr. Heron was charged with a number of offences under the *Criminal Code*, RSC, 1985, c C-46 and the *Customs Act*, RSC, 1985, c1 (2nd Supp) (the "Act") for, *inter alia*, illegally importing and smuggling goods into Canada. Following his arrest on these charges, he was served with a Notice of Ascertained Forfeiture demanding payment in an

amount equal to the deemed value of these goods (the "Notice"). According to the Act, Mr. Heron had 90 days from that date to object to the Notice. He did eventually file an objection to the Notice, but the lawyer he had instructed to do so missed the prescribed deadline by two days as he thought this deadline had to be calculated in months rather than in days. This late filing resulted in the objection being rejected. Mr. Heron then sought from the Respondent Minister (the "Minister") an extension of time to proceed with his objection. His request was refused.

[2] As the Act permits him to do, Mr. Heron is now asking this Court to extend that 90-day time limit in order to allow him to file his objection. In order to succeed, he has to meet the following three conditions. First, his application to the Court had to be filed within the year following the expiration of that time limit, and as soon as circumstances permitted. This was done. He then has to show that he had a *bona fide* intention to object to the Notice. The Minister concedes that he did show such an intention.

[3] The only issue to be decided then is whether Mr. Heron meets the third and final condition, which is whether it would be "just and equitable" to grant his application for an extension of time. In this regard, Mr. Heron claims it would be "just and equitable" to grant his application because the Minister has suffered no prejudice from the late filing of the objection, and the computational error that led to this late filing is an excusable error. The Minister responds that Mr. Heron's application must be dismissed because he did not provide satisfactory explanations to justify the entire duration of the delay and because both inadvertence and heavy workload of counsel are insufficient excuses for delay when one requests an extension of time.

[4] For the reasons that follow, I find that Mr. Heron is entitled to an extension of time.

II. Background

A. *The Ascertained Forfeiture Process*

[5] Notices of Ascertained Forfeiture are issued under s. 124 of the Act when the Minister has reasonable grounds to believe that a person has contravened any of the provisions of the Act or Regulations in respect of any goods or conveyance. In particular, they are issued when the goods are not found or if their seizure would be impractical. They consist of a written notice demanding payment of an amount of money, which is normally equal to the aggregate of the value for duty of the goods and the amount of duties levied on them.

B. *The Ascertained Forfeiture Objection Process*

[6] Section 129 of the Act allows a person who has been served with a Notice of Ascertained Forfeiture to object to this enforcement action by applying for ministerial review under s. 131 of the Act. Such objection, however, must be brought within 90 days of the service of the Notice. If that person fails to request a ministerial review within that time frame, he or she may apply to the Minister, under s. 129.1 of the Act, for an extension of time to seek such a review.

[7] If the Minister refuses to grant the requested extension of time, then the person to whom a Notice of Ascertained Forfeiture has been served may turn to this Court, under s. 129.2 of the Act, in order to seek an extension of time to file his or her request for ministerial review.

[8] In both instances, claimants must meet the same set of conditions, the one set out in ss. 129.1(5) and 129.2(4) of the Act. According to this set of conditions, they must show:

a. that the application for an extension of time was made within one year after the expiration of the prescribed 90 day time limit;

b. that within this prescribed time limit, they were either unable to request a ministerial review or to instruct another person to do so on their behalf, or they had a *bona fide* intention to request that review;

c. that it would be "just and equitable" to grant the application; and

d. that the application was made as soon as circumstances permitted.

[9] The statutory provisions referred to above are reproduced in the Annex to this decision.

C. *Mr. Heron's Objection to the Ascertained Forfeiture*

[10] In the case at bar, the Notice was served on Mr. Heron on November 27, 2012. It demanded payment in the amount of $783,741.15. About three days later, he instructed his lawyer to file an objection to the Notice. The said objection was signed by Mr. Heron's lawyer on February 20, 2013 and filed with the Minister on February 26, 2013, that is 92 days after service of the Notice.

[11] On April 23, 2013, Mr. Heron was informed that his request for a ministerial review could not be allowed because the prescribed 90-day time limit had not been respected. He was also informed that he could seek an extension of that time limit from the Minister, which he did on May 1 2013.

[12] In support of this request, Mr. Heron's lawyer alleged having been unable to properly review his client's file in due time due to a particularly demanding workload in December 2012 and January 2013, and to his desire to receive, prior to drafting the objection, the disclosure of the Crown on the charges Mr. Heron was facing. He also alleged that he had made an honest mistake by computing the prescribed time limit as a 3-month period instead of a 90-day period.

[13] On July 16, 2013, the Minister denied Mr. Heron's request for an extension of time on the ground that the reasons advanced by his lawyer for not filing the request for ministerial review within the prescribed time period did not establish that he was either unable to file such request himself within that time period or to instruct another person to do it on his behalf.

[14] Mr. Heron was then informed that he could apply to this Court under s. 129.2 of the Act for an extension of time to file his request for ministerial review. This is what he did.

III. Issue

[15] There is only one issue to be resolved in the present case and it is whether it would be "just and equitable" to grant Mr. Heron's application for an extension of time.

[16] This is indeed the only area of dispute between the parties as they otherwise agree that all the other conditions set out in ss. 129.2(4) of the Act have been satisfied in the present instance.

[17] An application brought under s. 129.2 of the Act is not a judicial review application. It is a proceeding in which the Court has to conduct its own analysis of the facts and the law, with no

need to apply any standard of review to the Minister's decision to refuse a request for an extension of time (*Cantell v Canada (Minister of National Revenue*) [*Cantell*], 2004 FC 1134, at para 7).

IV. Analysis

A. *The "just and equitable" criteria*

[18] The expression "just and equitable" is not defined in the Act and there is very little jurisprudence dealing with it in the context of s. 129.2 of the Act. What seems clear though is that what will be "just and equitable" in the context of an application for an extension of time brought under that provision will vary from one case to another, according to fact situation arising in each of them (*Canada (Attorney General) v. Hennelly*, 244 NR 399, [1999] FCJ No 846 (QL) [*Hennelly*] at para 4 and *Cantell*, above, at para 14).

[19] Although the criteria to be met are not formulated in the exact same manner, the test applied by this Court on applications for an extension of time brought in the context of appeals or judicial review applications can, in my view, inform how s. 129.2's "just and equitable" criteria is to be understood. As a matter of fact, the Minister has submitted a certain number of decisions rendered in such context in support of his position that it would not be just and equitable to grant Mr. Heron's application for an extension of time.

[20] According to this test, a person seeking an extension of time to appeal or judicially review a decision must show: (a) a continuing intention to pursue the claim; (b) the claim has

some merit; (c) no prejudice to the responding party arises from the delay; and (d) a reasonable explanation for the delay exists (*Hennelly*, above, at para 3; *Canada (Minister of Human Resources Development) v Hogervost*, 2007 FCA 41, at para 32; *Strungmann v Canada (Citizenship and Immigration)* [*Strungmann*], 2011 FC 1229, at para 9).

[21] The case law makes it clear, however, that the underlying consideration when weighing these four factors is that justice must be done between the parties, which could even mean that in certain circumstances, an extension of time would still be granted even if one of the criteria is not satisfied (*Hogervost*, above, at para 33; *Strungmann*, above, at para 9).

[22] There is, in my view, a close resemblance between this underlying consideration and the "just and equitable" criteria of s. 129.2 as both concepts ensure that in any given case, all the circumstances are to be taken into account and that some measure of flexibility can be applied so that justice be done between the parties.

[23] In stating that, I am mindful of the importance of time limits imposed by Parliament for the commencement of challenges to administrative decisions, and of the public interest these time limits serve by bringing finality to administrative decisions (*Hogervost*, above, at para 24; *Strungmann*, above, at para 8; *Dawe v. Her Majesty the Queen*, 86 FTR 240 (FCA), [1994] FCJ No1327 [*Dawe*], at para 18).

B. *Application of the just and equitable criteria to the facts of the case*

[24] Mr. Heron contends that the circumstances of this case favour the granting of the present application. In that regard, he claims that the Minister did not suffer any prejudice from the late filing of the objection, that the late filing came about as a result of inadvertence from his counsel in computing the 90-day time limit and that the delay resulting from the late filing was of only two days. He further contends that this is not a case in which counsel filed his material months after the expiration of the prescribed time limit or filed it late as a result of an ill-conceived tactical decision.

[25] In response, the Minister stresses the importance of time limits imposed by Parliament and submits that Mr. Heron's claim, when measured against that principle, must fail because he did not provide satisfactory explanations to justify the entire duration of the delay, and because both inadvertence and heavy workload of counsel are insufficient excuses for delay when one requests an extension of time.

[26] In my view, the Minister's position cannot be upheld.

[27] I can find no cases, and the Minister's counsel has not offered any, that would support this contention or give an illustration of a situation where all the other criteria of s. 129.2 are met and it is still found not just and equitable to grant the requested extension of time.

[28] I agree with Mr. Heron that the lack of prejudice to the Minister, coupled with the *bona fide* intention to file an objection and the explanation provided for the delay, militate towards granting the extension of time.

[29] The reasons and circumstances underlying the present request for an extension of time are simply not giving rise to any asserted injustice:

i. Mr. Heron reacted promptly to the service of the Notice by diligently hiring and instructing counsel to file an objection to the Notice;

ii. the late filing was, for all intents and purposes, the result of a computational error on the part of the lawyer who thought that the prescribed time limit was a 3-month period rather than a 90-day period ;

iii. the prescribed time limit was exceeded by only two days, which could not have possibly caused any prejudice to the Minister;

iv. this is not a case in which counsel filed the objection months after the expiration of the prescribed time limit or filed it late as a result of an ill-conceived tactical decision;

v. when it was pointed out to Mr. Heron that the 90-day deadline had been missed, he immediately took action by seeking an extension of time from the Minister and, then, when this request was refused, from this Court;

vi. the amount Mr. Heron is called upon to pay by virtue of the Notice is significant and not granting an extension of time would, in these circumstances, inequitably prevent Mr. Heron from bringing his case to the Minister for a review of the Notice, as contemplated by s. 131 of the Act;

[30] The jurisprudence submitted by the Minister is not helpful to the position it is putting forward.

[31] In *Cantell*, this Court found that the claimant, who acted some 10 months after the fact, had not satisfied any of the requirements set out in ss. 129.2(4) of the Act (*Cantell*, above, at para 12-13). In *Kerzner*, the applicant failed to establish that she was unable to request a ministerial review either herself or through another person. She also failed to establish that she had a *bona fide* intention to request such a review, the evidence showing that the decision to request the review had only arisen when the applicant was refused, many months after the seizure of the goods, a Nexus pass. The Court in *Kerzner* did not consider whether it would be just and equitable to grant the extension of time as it was already clear that the applicant had not met all the criteria set out in ss. 129.2(4) of the Act (*Kerzner v Canada (Minister of National Revenue)*, 2005 FC 1574, at para 22-23).

[32] In *Marimac Inc*, another case involving ss. 129.2(4) of the Act, the evidence showed that the applicant was aware of the notices of penalty issued under the Act but that it knowingly failed to act or instruct someone to act on its behalf in order to request a ministerial review (*Marimac Inc. v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 353, 311 FTR 181, at para 27).

[33] In *Dawe*, the Federal Court of Appeal set aside a judgment granting the applicant an extension of time to commence an action under s. 135 of the Act. In that case, the applicant had given instructions to his lawyer to commence the action two days before the limitation period

was to expire and the action was filed six days after the limitation period had expired. The primary issue in that case was whether the *Federal Court Rules* could be used to enlarge the limitation period prescribed by s. 135 of the Act. The Court of Appeal answered that question in the negative as it found that these Rules did not allow for an extension of limitation periods found in statutes (*Dawe*, above, at para 15-19).

[34] *Time Data Recorder International* is the last case invoked by the Minister which involves the Act. However, it does not concern an application for an extension of time. It is invoked to support the proposition that seizures and forfeitures under the Act are not criminal but civil proceedings so that it was not a valid excuse for the lawyer for Mr. Heron to wait to receive disclosure from the Crown regarding the charges laid against his client in order to craft a more informed objection to the Notice (*Time Data Recorder International Ltd* v *Minister of National Revenue (Customs and Excise)*, 211 NR 229 (FCA)).

[35] But, as I see it, the late filing in this case was first and foremost the result of a computational error. In these circumstances, the dichotomy between the civil and penal components of the Act has little, if any, bearing on the issue to be resolved in this case. According to the evidence before me, the objection was drafted and signed by Mr. Heron's lawyer on February 20, 2013, which is within the prescribed 90-day time limit. It is therefore reasonable to assume that if it had not been for the lawyer's computational error, the objection would have been filed in time despite the fact the lawyer waited to receive disclosure from the Crown, and despite his alleged heavy workload.

[36] The non-*Customs Act* case law relied on by the Minister is not helpful either. In *Strungmann*, above, it is true that this Court emphasized the need to justify the delay in its entire duration. However, in that case, the judicial review application was filed some 10 months after the expiration of the prescribed time limit. Here, the time limit was exceeded by two days.

[37] In *Hogervost*, above, and *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883, two cases involving proceedings before the Pension Appeal Board, the prescribed limitation period applicable in these cases was exceeded by more than seven years in each case.

C. *The Lawyer's Computational Error is Excusable*

[38] The Minister relies on the Federal Court of Appeal's decision in *Hennelly*, above, to claim that inadvertence by counsel is not a sufficient excuse for delay. However, I agree with Mr. Heron that that Court's subsequent judgment in *Poitras v Sawridge Band*, 2011 FCA 310 [*Sawridge Band*] no longer allows for such a categorical and unequivocal conclusion. Although, as the Minister points out, *Sawridge Band* was decided in a purely procedural context, it does nevertheless comment on *Hennelly* and on what that Court meant in that case. This cannot be ignored. In my view, therefore, *Sawridge Band*, stands for the proposition that *Hennelly* has not abolished inadvertence as a possible reason to forgive delay, whatever the context in which it is invoked.

[39] As Mr. Justice Stratas stated in *Sawridge Band*, inadvertence comes in all shapes and sizes, sometimes forgivable, sometimes not, and it must be considered "in light of the

appropriate legal test and all the surrounding factual circumstances" (*Sawridge Band*, above, at para 13).

[40] Here, as I have already indicated, the computational error of Mr. Heron's lawyer, in light of the appropriate legal test and all the surrounding factual circumstances, was an excusable one. By analogy, this is no different, in my view, than the many cases where this Court has granted an extension of time for bringing an application for judicial review on the basis that a party wrongly, but in good faith, proceeded in another court (*Canada* (*Attorney General) v Larkman*, 2012 FCA 204, at para 81).

[41] This Court's decision in *Muneeswarakumar v Canada (Citizenship and Immigration)*, 2012 FC 446, does not support the Minister's position on inadvertence. In that case, the sole explanation given by the applicants for the delay in filing a judicial review application was an alleged "inadvertent oversight" in providing their counsel with the information about the charges they were facing. The applicants' application for an extension of time was dismissed because the record was silent on what had caused the oversight or on what was involved in the oversight (*Muneeswarakumar*, above, at para 17). This is not the case here.

[42] I am therefore satisfied, when balancing the just and equitable aspect of granting the application for both parties, that the lack of prejudice to the Minister from the two days' late filing, coupled with the *bona fide* intention to file an objection and the explanation provided for the delay, justify granting the extension of time.

[43] Again, I am aware that the deadline sought to be extended in this case is one imposed by Parliament and serves an important public interest. I am also mindful of the fact that the time limit prescribed by s. 129 of the Act is a long and reasonable one. But Parliament has also provided for a mechanism allowing for that time period to be extended in certain circumstances. If this mechanism is to be meaningful, it has to apply to a case like this one and allow, as a result, that justice be done between the parties.

[44] According to ss. 129.2(3) of the Act, in granting the present application, I may impose any terms that I consider just or order that the request under s.129 be deemed to have been made on the date the order was made.

[45] As Mr. Heron's objection to the Notice has already been filed, I shall therefore, in granting Mr. Heron's application for an extension of time, order that the objection be deemed to have been made on the date of the present order.

[46] Mr. Heron did not seek costs. None shall therefore be awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for an extension of time is granted.

2. The applicant's objection to the Notice of Ascertained Forfeiture, served on him on November 27, 2012, is deemed to have been made on the date of the present order.

3. The whole without costs.

"René LeBlanc"

Judge

ANNEX

Customs Act, RSC, 1985, c 1 (2nd Supp)

Sections 124, 129 and 131

124. (1) Where an officer believes on reasonable grounds that a person has contravened any of the provisions of this Act or the regulations in respect of any goods or conveyance, the officer may, if the goods or conveyance is not found or if the seizure thereof would be impractical, serve a written notice on that person demanding payment of

(a) an amount of money determined under subsection (2) or (3), as the case may be; or

(b) such lesser amount as the Minister may direct.

(2) For the purpose of paragraph (1)(a), an officer may demand payment in respect of goods of an amount of money of a value equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto

(a) at the time the notice is served, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies; or

(b) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case.

(3) For the purpose of paragraph (1)(a), an officer may demand payment in respect of a conveyance of an amount of money of a value equal to the value of the conveyance at the time the notice is served, as determined by the Minister.

Loi sur les douanes, LRC (1985), ch 1 (2e suppl)

Articles 124, 129 et 131

124. (1) L'agent qui croit, pour des motifs raisonnables, à une infraction à la présente loi ou à ses règlements du fait de marchandises ou de moyens de transport peut, si on ne les trouve pas ou si leur saisie est problématique, réclamer par avis écrit au contrevenant :

a) soit le paiement du montant déterminé conformément au paragraphe (2) ou (3), selon le cas;

b) soit le paiement du montant inférieur ordonné par le ministre.

(2) Pour l'application de l'alinéa (1)a), s'il s'agit de marchandises, le paiement que peut réclamer l'agent est celui du total de leur valeur en douane et des droits éventuellement perçus sur elles, calculés au taux applicable :

a) au moment de la signification de l'avis, si elles n'ont pas fait l'objet de la déclaration en détail ou de la déclaration provisoire prévues au paragraphe 32(1), (2) ou (5) ou si elles sont passibles des droits ou droits supplémentaires prévus à l'alinéa 32.2(2)b) dans le cas visé au paragraphe 32.2(6);

b) au moment où elles ont fait l'objet de la déclaration en détail ou de la déclaration provisoire prévues au paragraphe 32(1), (2) ou (5), dans les autres cas.

(3) Pour l'application de l'alinéa (1)a), s'il s'agit de moyens de transport, le paiement que peut réclamer l'agent est celui de leur contre-valeur, déterminée par le ministre, au moment de la signification de l'avis.

(4) For the purpose of calculating the amount of money referred to in subsection (2), where the value for duty of goods cannot be ascertained, the value of the goods at the time the notice is served under subsection (1), as determined by the Minister, may be substituted for the value for duty thereof.

(4) Dans les cas où, pour les calculs visés au paragraphe (2), il est impossible d'établir la valeur en douane des marchandises, on peut y substituer leur valeur, déterminée par le ministre, au moment de la signification de l'avis.

(4.1) Sections 117 and 119 and subsection (2) apply to a contravention of this Act or the regulations in respect of goods that have been or are about to be exported, except that the references to "value for duty of the goods" in those provisions are to be read as references to "value of the goods".

(4.1) Les articles 117 et 119 et le paragraphe (2) s'appliquent aux infractions à la présente loi ou aux règlements à l'égard de marchandises exportées ou sur le point de l'être, la mention de « valeur en douane des marchandises » valant mention de « valeur des marchandises ».

(4.2) For the purposes of subsection (4.1), the expression "value of the goods" means the total of all payments made or to be made by the purchaser of the goods to or for the benefit of the vendor.

(4.2) Pour l'application du paragraphe (4.1), la valeur des marchandises est égale à l'ensemble de tous les paiements que l'acheteur a faits, ou s'est engagé à faire, au vendeur ou au profit de celui-ci à leur égard.

(4.3) If the value of the goods cannot be determined under subsection (4.2), the Minister may determine that value.

(4.3) Dans le cas où il est impossible d'établir la valeur des marchandises en application du paragraphe (4.2), le ministre peut déterminer cette valeur.

(5) Service of the notice referred to in subsection (1) is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at his latest known address.

(5) Il suffit, pour que l'avis prévu au paragraphe (1) soit considéré comme signifié, qu'il soit envoyé en recommandé à la dernière adresse connue du destinataire.

(6) A person on whom a notice of ascertained forfeiture has been served shall pay, in addition to the amount set out in the notice, interest at the prescribed rate for the period beginning on the day after the notice was served and ending on the day the amount is paid in full, calculated on the outstanding balance. However, interest is not payable if the amount is paid in full within thirty days after the date of the notice.

(6) Le destinataire de l'avis est tenu de payer, en plus de la somme mentionnée dans l'avis, des intérêts au taux réglementaire, calculés sur le solde impayé pour la période allant du lendemain de la signification de l'avis jusqu'au jour du paiement intégral de la somme. Toutefois, aucun intérêt n'est exigible si la somme est payée intégralement dans les trente jours suivant la date de l'avis.

129. (1) The following persons may, within ninety days after the date of a

129. (1) Les personnes ci-après peuvent, dans les quatre-vingt-dix jours suivant la

seizure or the service of a notice, request a decision of the Minister under section 131 by giving notice in writing, or by any other means satisfactory to the Minister, to the officer who seized the goods or conveyance or served the notice or caused it to be served, or to an officer at the customs office closest to the place where the seizure took place or closest to the place from where the notice was served:

(a) any person from whom goods or a conveyance is seized under this Act;

(b) any person who owns goods or a conveyance that is seized under this Act;

(c) any person from whom money or security is received pursuant to section 117, 118 or 119 in respect of goods or a conveyance seized under this Act; or

(d) any person on whom a notice is served under section 109.3 or 124.

saisie ou la signification de l'avis, en s'adressant par écrit, ou par tout autre moyen que le ministre juge indiqué, à l'agent qui a saisi les biens ou les moyens de transport ou a signifié ou fait signifier l'avis, ou à un agent du bureau de douane le plus proche du lieu de la saisie ou de la signification, présenter une demande en vue de faire rendre au ministre la décision prévue à l'article 131 :

a) celles entre les mains de qui ont été saisis des marchandises ou des moyens de transport en vertu de la présente loi;

b) celles à qui appartiennent les marchandises ou les moyens de transport saisis en vertu de la présente loi;

c) celles de qui ont été reçus les montants ou garanties prévus à l'article 117, 118 ou 119 concernant des marchandises ou des moyens de transport saisis en vertu de la présente loi;

d) celles à qui a été signifié l'avis prévu aux articles 109.3 ou 124.

(2) The burden of proof that notice was given under subsection (1) lies on the person claiming to have given the notice.

(2) Il incombe à la personne qui prétend avoir présenté la demande visée au paragraphe (1) de prouver qu'elle l'a présentée.

129.1 (1) If no request for a decision of the Minister is made under section 129 within the time provided in that section, a person may apply in writing to the Minister for an extension of the time for making the request and the Minister may grant the application.

(2) An application must set out the reasons why the request was not made on time.

(3) The burden of proof that an application has been made under subsection (1) lies on the person claiming to have made it.

(4) The Minister must, without delay after making a decision in respect of an application, notify the applicant in writing

129.1 (1) La personne qui n'a pas présenté la demande visée à l'article 129 dans le délai qui y est prévu peut demander par écrit au ministre de proroger ce délai, le ministre étant autorisé à faire droit à la demande.

(2) La demande de prorogation énonce les raisons pour lesquelles la demande visée à l'article 129 n'a pas été présentée dans le délai prévu.

(3) Il incombe à la personne qui affirme avoir présenté la demande de prorogation visée au paragraphe (1) de prouver qu'elle l'a présentée.

(4) Dès qu'il a rendu sa décision, le ministre en avise par écrit la personne qui a

of the decision.

(5) The application may not be granted unless

(a) it is made within one year after the expiration of the time provided in section 129; and

(b) the applicant demonstrates that

(i) within the time provided in section 129, the applicant was unable to request a decision or to instruct another person to request a decision on the applicant's behalf or the applicant had a bona fide intention to request a decision,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

129.2 (1) A person may apply to the Federal Court to have their application under section 129.1 granted if

(a) the Minister dismisses that application; or

(b) ninety days have expired after the application was made and the Minister has not notified the person of a decision made in respect of it.

If paragraph (a) applies, the application under this subsection must be made within ninety days after the application is dismissed.

(2) The application must be made by filing a copy of the application made under section 129.1, and any notice given in respect of it, with the Minister and the Administrator of the Court.

(3) The Court may grant or dismiss the application and, if it grants the application, may impose any terms that it considers just or order that the request under section 129 be deemed to have been made on the date the order was made.

demandé la prorogation.

(5) Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

a) la demande est présentée dans l'année suivant l'expiration du délai prévu à l'article 129;

b) l'auteur de la demande établit ce qui suit :

(i) au cours du délai prévu à l'article 129, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander une décision,

(ii) il serait juste et équitable de faire droit à la demande,

(iii) la demande a été présentée dès que possible.

129.2 (1) La personne qui a présenté une demande de prorogation en vertu de l'article 129.1 peut demander à la Cour fédérale d'y faire droit :

a) soit après le rejet de la demande par le ministre;

b) soit à l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre ne l'a pas avisée de sa décision.

La demande fondée sur l'alinéa a) doit être présentée dans les quatre-vingt-dix jours suivant le rejet de la demande.

(2) La demande se fait par dépôt auprès du ministre et de l'administrateur de la Cour d'une copie de la demande de prorogation présentée en vertu de l'article 129.1 et de tout avis donné à son égard.

(3) La Cour peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que la demande soit réputée avoir été présentée à la date de l'ordonnance.

(4) The application may not be granted unless

(a) the application under subsection 129.1(1) was made within one year after the expiration of the time provided in section 129; and

(b) the person making the application demonstrates that

(i) within the time provided in section 129 for making a request for a decision of the Minister, the person was unable to act or to instruct another person to act in the person's name or had a bona fide intention to request a decision,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

(4) Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

a) la demande de prorogation a été présentée en vertu du paragraphe 129.1(1) dans l'année suivant l'expiration du délai prévu à l'article 129;

b) l'auteur de la demande établit ce qui suit :

(i) au cours du délai prévu à l'article 129, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander une décision,

(ii) il serait juste et équitable de faire droit à la demande,

(iii) la demande a été présentée dès que possible.

131. (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

(b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so contravened; or

(c) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or

131. (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :

a) le motif d'infraction à la présente loi ou à ses règlements pour justifier soit la saisie des marchandises ou des moyens de transport en cause, soit la signification à leur sujet de l'avis prévu à l'article 124;

b) le motif d'utilisation des moyens de transport en cause dans le transport de marchandises ayant donné lieu à une infraction aux mêmes loi ou règlements, ou le motif de cette infraction, pour justifier soit la saisie de ces moyens de transport, soit la signification à leur sujet de l'avis prévu à l'article 124;

c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a

a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

(d) [Repealed, 2001, c. 25, s. 72]

(1.1) A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.

(2) The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.

(3) The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1).

réellement eu non-conformité.

d) [Abrogé, 2001, ch. 25, art. 72]

(1.1) La personne à qui a été signifié un avis visé à l'article 130 peut aviser par écrit le ministre qu'elle ne produira pas de moyens de preuve en application de cet article et autoriser le ministre à rendre sans délai une décision sur la question.

(2) Dès qu'il a rendu sa décision, le ministre en signifie par écrit un avis détaillé à la personne qui en a fait la demande.

(3) La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).

FEDERAL COURT

SOLICITORS OF RECORD

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