

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120411

Docket: A-1-11

Citation: 2012 FCA 108

**CORAM: SHARLOW J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Appellant

and

DEREK PRUE

Respondent

Heard at Edmonton, Alberta, on February 13, 2012.

Judgment delivered at Ottawa, Ontario, on April 11, 2012.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

SHARLOW J.A.
TRUDEL J.A.

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] This is an appeal of a judgment of the Federal Court, rendered in a simplified action (2010 FC 1234, 379 F.T.R. 105). The Federal Court set aside an otherwise lawful decision of the Minister of Public Safety and Emergency Preparedness (Minister) on the ground of delay on the part of the Minister that the Court found resulted in a denial of natural justice. The issue to be decided on this appeal is whether the Federal Court erred in law by finding that the delay constituted a denial of natural justice.

[2] The ministerial decision at issue was rendered pursuant to section 131 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) (Act) relating to a notice of ascertained forfeiture served upon the respondent. In order to consider the significance of the delay in issue it is helpful to consider the administrative scheme in which the Minister's decision was made.

The Ascertained Forfeiture Provisions of the Act

[3] As the Federal Court Judge noted, the four-step administrative process relating to ascertained forfeitures was succinctly explained by Justice Fish, writing for the Court, in *Martineau v. Canada (Minister of National Revenue – M.N.R.)*, 2004 SCC 81, [2004] 3 S.C.R. 737 at paragraphs 41 to 44:

41. First, under s. 124 of the [*Customs Act*], a customs officer must have reasonable grounds to believe that a provision of the [*Customs Act*] has been contravened. Once this precondition has been met, and once it has been established that it would be difficult to seize the goods and conveyances related to the customs offence, the officer may demand that the offender pay an amount of money equal to the value of the goods.

42. Second, the person to whom a notice of ascertained forfeiture applies has 90 days to ask the Minister to review the customs officer's decision (s. 129(1)(d) of the [*Customs Act*]). The Minister then serves notice of the reasons in support of the imposed sanction (s. 130(1) of the [*Customs Act*]). Within 30 days after notice of the reasons is served, the alleged offender may make submissions and give evidence, in writing, to the Minister (ss. 130(2) and 130(3) of the [*Customs Act*]).

43. Third, the Minister decides whether the ascertained forfeiture is valid (s. 131 of the [*Customs Act*]). This decision "is not subject to review or to be ... otherwise dealt with except to the extent and in the manner provided by subsection 135(1)" (s. 131(3) of the [*Customs Act*]).

44. Fourth, and finally, the person who requested the Minister's decision may, within 90 days after being notified of the decision, appeal by way of an action in the Federal Court (s. 135(1) of the [*Customs Act*]).

[4] The sections of the Act referred to by Justice Fish, as well as other relevant sections of the Act, are set out in the appendix to these reasons.

The Facts

[5] The action in the Federal Court proceeded on the basis of a short statement of agreed facts.

For the purpose of the simplified action it was agreed that:

1. On or about January 22, 2001, Derek Prue entered Canada driving a Ford Expedition motor vehicle bearing serial number 1FMRU1562YLB55458 (the “goods”) leased by himself from the Ford Motor Company through a dealership in Texas, United States of America.
2. At the time of driving the goods into Canada, Derek Prue did not report the goods to Canadian Customs officers at the border.
3. On May 8, 2002, RCMP Customs & Excise personally served Derek Prue at Kingsway Lexus Toyota located at 12820 – 97 Street, Edmonton, Alberta with a copy of the notice of ascertained forfeiture marked at tab 1 of exhibit “A”.
4. The notice of ascertained forfeiture specified that the “goods were unlawfully imported into Canada and the payment of duties lawfully payable was not made in contravention of Sec 12, 17 and 32 of the Customs Act.”
5. On June 5, 2002, Derek Prue requested a decision of the Minister.
6. On June 10, 2002, RCMP Customs & Excise faxed a copy of Derek Prue’s appeal to Customs Collections in Calgary, Alberta.
7. Derek Prue’s appeal was first brought to the attention of the Recourse Directorate of Canada Border Services Agency on December 9, 2005.
8. On December 13, 2005, the Recourse Directorate of Canada Border Services Agency (“CBSA”) sent a letter addressed to Derek Prue at R.R. 275, 50410 – 11, Stony Plain, AB, T7Z 1Z8 (the “notification address”) acknowledging receipt of his appeal.
9. On December 19, 2005, CBSA sent a letter by registered mail addressed to Derek Prue at the notification address providing the reasons for the notice of

ascertained forfeiture and affording Derek Prue 30 days to provide any additional information or documentation in relation to his appeal.

10. When its December 19, 2005 letter to Derek Prue was returned by Canada Post marked “unclaimed”, CBSA resent the letter January 20, 2006 by regular mail addressed to Derek Prue at the notification address.
11. Attached at tab 2 of exhibit “A” is a copy of the record that was before the Minister’s delegate, Catherine Anderson, when she rendered her decision to dismiss the appeal.
12. On January 24, 2007, Catherine Anderson, Senior Program Advisor with CBSA sent a letter addressed to Derek Prue at the notification address notifying him of the dismissal of his appeal (the “decision letter”). The decision letter specified as follows:

“After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, there has been a contravention of the *Customs Act* or the Regulations in respect of the notice that was served, pursuant to section 124.

...

The evidence submitted by the issuing office established that the vehicle is of foreign origin and was not properly reported to Customs and duty paid as required. Therefore, a contravention of section 12 of the *Customs Act* did, in fact, occur.

The evidence indicates that, on October 22, 2001, you were stopped by the R.C.M. Police (RCMP). You were driving a Texas-registered vehicle bearing an Alberta licence plate that belonged to another vehicle. You were unable to satisfy the RCMP that the vehicle was lawfully imported. In addition, a further investigation revealed that, although you claimed that you used an Alberta licence plate because the Texas licence plate had been stolen, this theft was never reported to the police. On this basis, the evidence would indicate that you unlawfully imported the vehicle into Canada. By placing an Alberta licence plate on it, you attempted to conceal its true identity. Although the RCMP initially seized the vehicle, you were able to regain possession of it

and unlawfully disposed of it by returning it to Ford. Therefore, it was considered appropriate to issue an ascertained forfeiture, as the vehicle is no longer available for seizure. The penalty at the second level as assessed by the RCMP and the value assessed based on the lease agreement value were considerate [*sic*] appropriate in determining the penalty.”

13. Canada Post returned the decision letter to CBSA. A Canada Post Track A Package printout from January 22, 2008 indicates: “Recipient not located at address provided. Item being returned to sender.” CBSA did not resend the decision letter to Derek Prue until February 29, 2008.
14. Derek Prue lived at the notification address sporadically from 2005 to 2007.
15. Derek Prue owned the home located at the notification address from when it was built in 2005 until it was sold in 2007.
16. On February 29, 2008, after being contacted by a representative for Derek Prue, CBSA sent another copy of the decision letter by mail addressed to Derek Prue at Site 101, Comp 7, RR 1, Alberta Beach, Alberta, T0E 0A1. Attached as tab 3 of exhibit “A” is a copy of this correspondence.

The Decision of the Federal Court

[6] The Judge began his analysis by noting that subsection 131(1) of the Act requires the Minister to make his decision “as soon as is reasonably possible having regard to the circumstances” (reasons, paragraph 23). After reviewing the time taken compared to the inherent time requirements of the matter, the cause of the delay and the impact of the delay, the Judge found that the Minister had failed to comply with subsection 131(1) of the Act because he did not provide reasons as soon as reasonably possible in the circumstances (reasons, paragraph 33).

[7] The Judge then turned to consider whether, by virtue of the delay, the Minister breached the rules of procedural fairness or natural justice. He characterized the relevant period of delay to be from June 5, 2002 (when Mr. Prue requested a decision of the Minister) to January 20, 2006 (when

the CBSA resent the December 19, 2005 letter to Mr. Prue) (reasons, paragraph 39). The December 19, 2005 letter explained to Mr. Prue the reasons for the notice of ascertained forfeiture and afforded him 30 days in which to provide additional information or documentation.

[8] The Judge rejected Mr. Prue's contention that he had been prejudiced in his ability to provide additional information or documents because of the delay (reasons, paragraph 46).

However, the Judge then made the following findings:

41. Were it only for the alleged difficulty in reconstructing his movements several years later, I would have difficulty finding that the plaintiff was prejudiced by the Minister's delay. However, the delay clearly worked to his disadvantage in that interest on the assessed value of the vehicle began to run from the date of the ascertained forfeiture, as counsel for the Minister conceded during the hearing. Counsel was unable to tell me what the total amount outstanding was now.

42. It is correct, as the defendant submits, that the question of quantum is not before this Court and that the plaintiff's remedy against the amount of the penalty assessed against him was to bring an application for judicial review of that decision which he did not do. While I am unable to assess what the quantum of penalty and interest should be, I believe that the Court is entitled to take that factor into consideration in determining whether the plaintiff has been prejudiced. Accordingly, I find that the plaintiff has been prejudiced by the Minister's failure to consider his appeal in a timely manner during a period in which interest on the assessed value of the vehicle was accruing.

[9] The Judge then considered the reasonableness of the Minister's determination that Mr. Prue had contravened section 12 of the Act. The Judge found that it was not unreasonable for the Minister to have found that Mr. Prue breached section 12 of the Act (reasons, paragraph 44).

[10] Having so found, the Judge went on to conclude as follows:

45. It is apparent that both parties involved in this matter have not diligently observed their responsibilities. Mr. Prue was obliged to declare the vehicle on bringing it into Canada which he failed to do. In other circumstances, I would have

had little difficulty in finding that the seizure and forfeiture of the vehicle or the forfeiture of its assessed value was warranted.

46. But Mr. Prue was entitled pursuant to s. 131(1) of the *Customs Act*, to receive reasons for the Minister's decision on his appeal of the forfeiture within a time period that is "reasonably possible having regard to the circumstances". That did not happen due to an error on the part of the Minister's officials in misplacing the plaintiff's request for a decision. This caused a three and a half-year delay in providing the plaintiff with reasons for the notice of ascertained forfeiture.

47. There are no circumstances in this case which justify a delay of three and a half years in making a decision and providing reasons to Mr. Prue. I find that there was a failure to comply with s. 131(1), that Mr. Prue was prejudiced by that failure and was denied natural justice. Consequently, I find in his favour.

48. In the particular circumstances of this case, I will not award costs to Mr. Prue despite his success in the outcome. As I have found above, the ascertained forfeiture was reasonable. But for the error on the part of the Minister to consider his request to review the forfeiture in a timely manner, Mr. Prue would have been liable for that amount.

Standard of Review

[11] This is an appeal from a simplified action. As such, the standard of review is that articulated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: correctness on questions of law, and palpable and overriding error on questions of fact, or mixed fact and law where there is no extricable question of law.

Application of the Standard of Review

[12] The leading authority to consider whether and how to remedy prejudice caused by delay in administrative proceedings is *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307. The following principles were articulated by the majority of the Court:

- The principles of natural justice and the duty of fairness include the right to a fair hearing. Undue delay in the processing of an administrative proceeding that impairs the fairness of the hearing (for example, where essential witnesses have died or are unavailable, or evidence has been lost) can be remedied (paragraph 102);
- Where the delay is insufficient to jeopardize the right to a fair hearing in an evidentiary sense, one must consider whether the delay amounts to a denial of natural justice or an abuse of process (paragraph 104);
- Where the fairness of the hearing has not been compromised, few lengthy delays will constitute an abuse of process. To be an abuse of process, the delay must be clearly unacceptable and have directly caused a significant prejudice (paragraph 115);
- In order to find an abuse of process a court must be satisfied that “the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted”. The proceedings must be “unfair to the point that they are contrary to the interests of justice”. “Cases of this nature will be extremely rare” (paragraph 120);
- It must be demonstrated that the delay was “so oppressive as to taint the proceedings” (paragraph 121); and
- There must be more than a lengthy delay to constitute an abuse of process. “[T]he delay must have caused actual prejudice of such magnitude that the public’s sense of decency and fairness is affected” (paragraph 133).

[13] Turning to the application of these principles by the Federal Court, the Judge found as a fact that the delay did not jeopardize Mr. Prue's right to a fair hearing. In the words of the Judge, Mr. Prue's submission on this point "amounts to little more than a claim that he would have had a better recollection of his comings and goings across the border at that time and could possibly have found some witnesses or documents to support his appeal" (reasons, paragraph 40).

[14] Since the Judge found that Mr. Prue suffered no evidentiary prejudice, to impugn the Minister's decision on the ground of the delay the Judge was, as a matter of law, required to find some significant prejudice accruing to Mr. Prue such that the delay tainted the proceeding, or that it would be contrary to the interests of justice to allow the Minister's decision to stand.

[15] The Judge made no such finding. Instead, he found that Mr. Prue was disadvantaged by the delay in the sense that interest on the assessed value of the vehicle ran from the date of the ascertained forfeiture.

[16] In my respectful view, the Judge erred in law by elevating any enhanced liability for interest to the level of an abuse of process or a breach of natural justice. I say this because:

- i. By not paying the amount of the ascertained forfeiture (\$18,178.61) Mr. Prue continued to have the benefit of the use of these monies.
- ii. Had Mr. Prue paid the sum of \$18,178.61 immediately upon receipt of the notice of ascertained forfeiture, and then submitted his appeal and been successful on this appeal, he would have been entitled to the return of the sum of \$18,178.61

(paragraph 132(1)(a) of the Act) together with interest (subsection 132(2) of the Act).

- iii. Subsection 3.3(1) of the Act permits the Minister to waive or cancel all or any portion of any interest otherwise payable under the Act, except with respect to the collection of any debt due to Her Majesty under Part V.1 of the Act. In such a case, section 97.211 of the Act (contained in Part V.1 of the Act) allows the Minister of National Revenue to grant the interest relief contemplated in subsection 3.3(1) of the Act. Mr. Prue was therefore able to request interest relief from the Minister of National Revenue.

[17] In these circumstances, it cannot be said that, as a matter of law, the delay so tainted the process that it would be contrary to the interests of justice to uphold the reasonableness of the Minister's decision. Mr. Prue continued to have the use of his money, could have avoided any obligation for interest by paying the amount of the ascertained forfeiture and even now can request interest relief.

[18] It follows that the Judge erred by setting aside an otherwise reasonable decision.

[19] For these reasons, I would allow the appeal and set aside the judgment of the Federal Court. Giving the judgment that the Federal Court should have made, I would dismiss the respondent's appeal from the decision of the Minister. I would not, however, interfere with the Judge's decision that the parties should each bear their own costs in the Federal Court.

[20] The respondent to this appeal did not appear in this Court, and I would not make any order as to the costs of this appeal.

“Eleanor R. Dawson”

J.A.

“I agree.

K. Sharlow J.A.”

“I agree.

Johanne Trudel J.A.”

APPENDIX

Subsections 3.3(1), subsection 97.211(1), section 124, paragraph 129(1)(d),
subsections 130(1), (2) and (3), subsections 131(1), (2) and (3), paragraph 132(1)(a),
subsection 132(2) and subsection 135(1) of the *Customs Act* read as follows:

3.3 (1) Except with respect to the collection of any debt due to Her Majesty under Part V.1, the Minister or any officer designated by the President for the purposes of this section may at any time waive or cancel all or any portion of any penalty or interest otherwise payable by a person under this Act.

[...]

97.211 (1) The Minister may, for the purposes of administering or enforcing this Part, exercise any of the following powers that are necessary for the collection of debts due to Her Majesty under this Part:

- (a) the powers provided for in paragraphs (a) and (b) of the definition “prescribed” in subsection 2(1) as well as those provided for in subsections 3.3(1) and (2), 43(1) and 115(1); and
- (b) any other powers that are conferred under any provision of this Act that is specified by the Governor in Council on the recommendation of the Minister and the Minister of Public Safety and Emergency Preparedness.

[...]

124. (1) Where an officer believes on reasonable grounds that a person has contravened any of the provisions of

3.3 (1) Sauf à l’égard de la perception de toute créance de Sa Majesté sous le régime de la partie V.1, le ministre ou l’agent que le président charge de l’application du présent article peut, en tout temps, annuler tout ou partie des pénalités ou intérêts à payer par ailleurs par une personne en application de la présente loi, ou y renoncer.

...

97.211 (1) Le ministre peut, pour l’application et le contrôle d’application de la présente partie, exercer les pouvoirs ci-après nécessaires à la perception des créances de Sa Majesté sous le régime de la présente partie :

- a) les pouvoirs prévus aux alinéas a) et b) de la définition de « réglementaire » au paragraphe 2(1), ainsi qu’aux paragraphes 3.3(1) et (2), 43(1) et 115(1);
- b) ceux qui sont prévus dans les dispositions de la présente loi précisées par le gouverneur en conseil, sur recommandation du ministre et du ministre de la Sécurité publique et de la Protection civile.

...

124. (1) L’agent qui croit, pour des motifs raisonnables, à une infraction à la présente loi ou à ses règlements du

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.

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.

(4.1) 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”.

(4.2) 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.

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

(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.

(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

(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) 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) 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) 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) 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) 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

outstanding balance. However, interest is not payable if the amount is paid in full within thirty days after the date of the notice.

[...]

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

[...]

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

[...]

130. (1) Where a decision of the Minister under section 131 is requested under section 129, the President shall forthwith serve on the person who requested the decision written notice of the reasons for the seizure, or for the notice served under section 109.3 or 124, in respect of which the decision is requested.

(2) The person on whom a notice is served under subsection (1) may, within thirty days after the notice is served, furnish such evidence in the matter as he desires to furnish.

(3) Evidence may be given under subsection (2) by affidavit made before

exigible si la somme est payée intégralement dans les trente jours suivant la date de l'avis.

...

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

...

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

...

130. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 129 un avis des motifs de la saisie, ou des motifs de l'avis prévu aux articles 109.3 ou 124, à l'origine de la demande.

(2) La personne visée au paragraphe (1) dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

(3) Les moyens de preuve visés au paragraphe (2) peuvent être produits

any person authorized by an Act of Parliament or of the legislature of a province to administer oaths or take affidavits.

par déclaration sous serment faite devant toute personne autorisée par une loi fédérale ou provinciale à faire prêter serment et à recevoir les déclarations sous serment.

[...]

...

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

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) 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;

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) 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

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

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 réellement eu non-conformité.

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

d) [Abrogé, 2001, ch. 25, art. 72]

[...]

...

(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.

(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) 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).

(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).

[...]

...

132. (1) Subject to this or any other Act of Parliament,

132. (1) Sous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale :

(a) where the Minister decides, under paragraph 131(1)(a) or (b), that there has been no contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, or, under paragraph 131(1)(b), that the conveyance referred to in that paragraph was not used in the manner described in that paragraph, the Minister shall forthwith authorize the removal from custody of the goods or conveyance or the return of any money or security taken in respect of the goods or conveyance; and

a) le ministre, s'il décide, en vertu des alinéas 131(1)a) ou b), que les motifs d'infraction ou, en vertu de l'alinéa 131(1)b), que les motifs d'utilisation des moyens de transport visés à cet alinéa n'ont pas été valablement retenus, autorise sans délai la levée de garde des marchandises ou moyens de transport en cause, ou la restitution des montants ou garanties qui en tenaient lieu;

[...]

...

132. (2) Where any money is authorized under subsection (1) to be returned to any person, there shall be paid to that person, in addition to the money returned, interest on the money at the prescribed rate for the period beginning on the day after the day the money was paid and ending on the day

132. (2) Il est versé aux bénéficiaires de montants dont la restitution est autorisée en application du paragraphe (1), en plus des montants restitués, des intérêts au taux réglementaire, calculés sur ces montants pour la période commençant le lendemain du versement des

the money is returned.

montants et se terminant le jour de leur restitution.

[...]

...

135. (1) A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant.

135. (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-11

STYLE OF CAUSE: Minister of Public Safety and
Emergency Preparedness
v. Derek Prue

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: February 13, 2012

REASONS FOR JUDGMENT BY: Dawson J.A.

CONCURRED IN BY: Sharlow J.A.
Trudel J.A.

DATED: April 11, 2012

APPEARANCES:

Kerry E.S. Boyd FOR THE APPELLANT

No appearance FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPELLANT
Deputy Attorney General of Canada

No appearance FOR THE RESPONDENT