

Date: 20071113

Docket: T-915-07

Citation: 2007 FC 1177

Ottawa, Ontario, November 13, 2007

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

KWONG CHAM SHONG DUPRE

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant, Ms. Dupre, failed to report her possession of \$53,100 (Canadian currency) to customs officials before attempting to board a flight from Vancouver International Airport to Shanghai, China. The currency was seized as forfeit for failure to report. Ms. Dupre requested a review of the seizure. A ministerial delegate determined that there were reasonable grounds to suspect the unreported currency is proceeds of crime and confirmed the forfeiture of the unreported funds.

[2] Ms. Dupre seeks judicial review of the ministerial delegate's decision on the basis that there were no reasonable grounds to suspect, at the time of the seizure, that the funds were proceeds of crime. Alternatively, she submits that there were no reasonable grounds to suspect, at the time of the decision, that the funds were proceeds of crime. She contends that the ministerial delegate failed to assess the totality of the evidence.

[3] For the reasons that follow, I conclude that the decision is sustainable. The ministerial delegate's conclusion that there were reasonable and probable grounds to suspect the currency is proceeds of crime is one that was reasonably open to her. Consequently, judicial intervention is not warranted and the application for judicial review must be dismissed.

The Legislation

[4] The legislative context underlying this matter is contained in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act). Among other things, the Act has as its objective the implementation of specific measures to detect and deter money laundering and the financing of terrorist activities. There is no suggestion that the impugned funds were for the purpose of financing terrorist activities.

[5] The provisions in relation to "Reporting of Currency and Monetary Instruments" are contained in Part 2 of the Act. These provisions have been interpreted and extensively discussed in the Federal Court of Appeal and Federal Court jurisprudence and need not be repeated here. See: *Tourki v. Canada*, 2007 FCA 186 aff'g (2006), 285 F.T.R. 291 (*Tourki*); *Dokaj v. Canada*, [2006] 2 F.C.R. 152 (F.C.) (*Dokaj*); *Thérancé v. Canada*, 2007 CF 136 (*Thérancé*); *Sellathurai v. Canada*,

2007 FC 208 (*Sellathurai*); *Dag v. Canada*, 2007 FC 427 (*Dag*); *Yusufov v. Canada*, 2007 FC 453 (*Yusufov*); *Ondre v. Canada*, 2007 FC 454 (*Ondre*); *Hamam v. Canada*, 2007 FC 691 (*Hamam*); *Tourki v. Canada*, 2007 CF 746 (*Tourki 2*); *Majeed v. Canada*, 2007 FC 1082 (*Majeed*); *Lyew v. Minister of Public Safety*, 2007 FC 1117 (*Lyew*). The relevant sections of the Act are attached to these reasons as Schedule “A”. At this point, suffice it to say that under subsection 12(1) of the Act, Ms. Dupre was obliged to report to Canada Customs that she was taking currency of more than \$10,000 out of the country.

Facts

[6] On December 4, 2005, customs officers were conducting currency export checks in relation to the applicant’s flight to China. A currency detector dog indicated on Ms. Dupre’s body and the officer approached Ms. Dupre as she was preparing to board her flight. When the officer asked her whether she was carrying any currency on her person, Ms. Dupre stated that she had “5-2-5-0”. When the officer requested clarification, Ms. Dupre said “five thousand two hundred fifty dollars”. The customs officer asked her to step aside.

[7] A second customs officer arrived to conduct an examination. Ms. Dupre, dressed in a large winter coat, several sweaters and shirts, thick sweat pants and snow boots, was in a crouched position on the floor. She began searching through her hand luggage and removed her jacket. When she was asked to stand, the customs officer noticed a bulge in her abdomen area. When questioned, Ms. Dupre indicated that the bulge contained “5-2-5-0-0”, “fifty-two thousand, five hundred”. She then removed money from her groin area. Thereafter, she was taken to a secure area for a secondary examination.

[8] Ms. Dupre produced three letters from three individuals indicating that each person had given her \$10,000 to take to China. She explained that her brother-in-law had also provided her with \$10,000. A discussion ensued regarding her employment during which Ms. Dupre indicated that she had quit a beautician's job in 2005. Because Ms. Dupre was in possession of an internet article regarding a crackdown on illegal "rub and tug" massage parlours, the officer asked whether she had worked in massage parlours. Ms. Dupre responded that she had not. Yet, in her possession were documents indicating that charges of operating a body parlour without a licence had been laid against one Mr. Venot, as an owner, and Ms. Dupre, as an operator. Also in her possession, and in her name, were two burlesque-entertainer licences from the City of Toronto, a holistic practitioner licence and Shiatsu masseuse certification. Ms. Dupre ultimately admitted to not having worked as a beautician since 2003, to being an occasional exotic dancer at various strip clubs, to being heavily in debt, and to being "poor and unemployed". At the end of the examination, four bundles of money totalling \$53,100 were seized as forfeit.

[9] Ms. Dupre was served with a notice of the circumstances of the seizure. In accordance with her right under section 25 of the Act, Ms. Dupre requested a decision from the Minister as to whether subsection 12(1) of the Act had been contravened. This request was acknowledged by Canada Border Services Agency (CBSA) and forwarded to a CBSA adjudicator in the CBSA Adjudications Division. Ms. Dupre was invited to furnish any evidence she wished to submit.

[10] Ms. Dupre forwarded correspondence and representations which included: declarations from Ms. Dupre, Messrs. Stan Giri, Pierre Venot and Daniel Dupre (her husband) and her sister. All

were to the effect that funds had been provided to Ms. Dupre to take to China. In the case of the gentlemen, the funds were for an investment opportunity in China and in the case of her sister, the funds were for delivery to family members. Her husband allegedly provided additional funds to repay a loan to Ms. Dupre's brother-in-law.

[11] Ms. Dupre submitted photographs of the Canada Immigration office at the Vancouver International Airport, a number of business documents and photocopies of her sister's passport and birth certificate. She claimed to have misunderstood "Customer Service" to be the area where she had to declare the currency and she provided an account of her efforts to report the currency in compliance with the Act. Further, she stated that during her interviews with the various customs officials, she had advised them that she did not understand their questions because her English was poor. She indicated that she did not know why a Chinese interpreter had not been provided to assist her. Subsequent submissions included documents relating to the financial circumstances of Messrs. Venot, Giri and Dupre, her brother-in-law, Ben Y Liu, and her sister.

[12] The adjudicator received comments from the seizing officer in response to Ms. Dupre's submissions. Among other things, the seizing officer related that Ms. Dupre was aware of the reporting requirement and that her English language skills were adequate. If language had been an issue, translators were available on site and could have been called. The seizing officer also noted that Ms. Dupre's submissions did not address the issue of the origin of the impugned currency. Further, no financial documents had been submitted for the portion of the currency that was stated to belong to Ms. Dupre.

[13] Three further sets of submissions were tendered by Ms. Dupre between October 10th and December 5th of 2006. Final comments from the seizing officer were provided on December 17th.

[14] On January 23, 2007, the adjudicator completed a case synopsis and reasons for decision (the case synopsis). This document contained an extensive recapitulation of Ms. Dupre's submissions and the seizing officer's comments.

[15] The adjudicator noted that an officer need only "suspect" that the currency is proceeds of crime. She listed a number of factors supporting the officer's decision to seize the currency. For instance, the documents on Ms. Dupre's person at the time of seizure indicated that one of the individuals for whom she was transporting money was charged for owning a body rub parlour where Ms. Dupre had also worked and could still be occupied, given her current employment as an exotic dancer; Ms. Dupre had taken careful measures to conceal the currency in that she had sewn it into her undergarments and hidden it under her clothing; the currency was bundled in a format not normally used by financial institutions; and Ms. Dupre did not provide: consistent or helpful evidence of the legitimate sources of the funds; any evidence as to its original source; consistent explanations about the nature of the business venture; or any documents providing evidence of the proposed investment.

[16] The adjudicator concluded that there had been a contravention of the Act with respect to the amount of \$47,850, but no contravention with respect to \$5,250. She recommended that \$5,250 be returned to Ms. Dupre pursuant to section 27 of the Act and that \$47,850 be held as forfeit under section 29 of the Act. These conclusions were forwarded to the ministerial delegate as a

recommendation. The ministerial delegate was also provided with the case synopsis and Ms. Dupre's submissions.

[17] By correspondence dated April 24, 2007, the ministerial delegate informed Ms. Dupre that there had been a contravention of subsection 12(1) of the Act. More specifically, the ministerial delegate determined, pursuant to section 27, that with respect to \$5,250, there had been no contravention and that "under section 28 of the [Act], the seized currency in the amount of \$5,250 be returned to the appellant". Pursuant to section 27, there had been a contravention in relation to \$47,850 and "under the provisions of section 29 of the [Act], I am authorizing that the seized currency in the amount of \$47,850 be held as forfeit". In her reasons, the ministerial delegate identified the following factors:

- Ms. Dupre had failed to report the currency despite having many opportunities to do so;
- she attempted to conceal the currency;
- she was transporting a large amount of currency over an international border;
- the money was not bundled in accordance with normal banking procedures;
- Ms. Dupre was unaware of the amount of money she possessed;
- there were discrepancies in the amounts of money provided by other parties;
- usually such a large amount of money would be wired or transferred to a company in this type of business venture;
- there were no supporting documents to prove the money was destined for the business in China;

- a legitimate business would keep a record of funds for tax purposes and such documents were absent in this case;
- Ms. Dupre possessed documents indicating several bank accounts and credit and debit cards for other individuals;
- she was uncooperative during the second examination.

It is the ministerial delegate's decision of April 24th that is the subject of this application for judicial review.

The Standard of Review

[18] The respondent submits that the applicable standard of review is that of patent unreasonableness. The applicant is content to rely on the respondent's submissions in this respect. There is divergence in the jurisprudence as to the standard of review to be applied to a decision pursuant to section 29 of the Act. The standard of patent unreasonableness has been applied (*Thérancé; Yusufov; Ondre; Hamam; Tourki 2*) as has the standard of reasonableness (*Sellathurai* and *Dag*). Justice Phelan recently commented in *Lyeu* that the distinction in the cases turns on the facts and issues in each case and particularly the extent to which the expertise of the decision-maker is utilized.

[19] In this case, as in the others, there is a strong privative clause in section 24 of the Act. This factor favours deference.

[20] As for expertise, the ministerial delegate concluded that Ms. Dupre had failed to provide a reasonable explanation as to the source of the impugned funds. Although credibility was an issue, the principal basis underlying the determination was the question regarding the source of the funds. Thus, the assessment required an analysis of the evidence relative to the legal threshold prescribed by the Act, an area where the decision-maker has greater expertise than the court. This factor also favours deference.

[21] The purpose of the Act, in part and for present purposes, is to detect and deter money laundering. To achieve this objective, the currency reporting scheme requires importers and exporters of currency to report to customs officials when they are importing or exporting currency or monetary instruments in excess of \$10,000. As Madam Justice Simpson stated in *Sellathuai*, Parliament has mandated serious sanctions, including forfeiture, in the event that there are reasonable grounds to suspect that the undeclared currency is proceeds of crime. Parliament has balanced the private and public interests in enacting the legislation. The role of the ministerial delegate is narrow and is confined to determining whether, on the facts of a particular case, forfeiture should be confirmed. This does not suggest a deferential approach. Justice Simpson's reasoning has been generally adopted by my colleagues and I endorse it and accept it as my own.

[22] Regarding the nature of the question, it is one of mixed fact and law because it requires the ministerial delegate to assess whether the evidence discloses reasonable grounds to suspect that the currency is proceeds of crime. The "legal" threshold is prescribed by the Act. This factor militates in favour of some deference.

[23] In balancing these factors, I arrive at a standard of review of reasonableness.

Analysis

Reasonable Grounds to Suspect at the Time of Seizure

[24] Ms. Dupre claims that she made a full declaration to the dog-handling customs officer and made every attempt to make a full disclosure. She was hampered from doing so by the lack of signage at the Vancouver International Airport and became confused between “Customer Service” and “Customs Service”. Additionally, her English skills were poor. She clarified her original declaration of “5-2-5-0” to fifty-two thousand, five hundred dollars. She was hindered by a difficulty expressing numbers in English. At the time, she had no motive to misstate the amount of money in her possession or to state the specific amount of \$5,250 over any other amount under \$10,000.

[25] In substance, this argument constitutes a request to review the issue of contravention of the Act. Such review – whether there was a contravention under subsection 12(1) of the Act – is made pursuant to section 27 of the Act. There exists a section 27 decision in this case. Ms. Dupre has a statutory right of appeal available to her in relation to the section 27 determination. If she wishes to contest the contravention finding, she must do so under the appeal process contained in section 30 of the Act: *Dokaj, Tourki*. I have no jurisdiction, on judicial review, to deal with the matter of contravention. The appropriate procedure to be followed in this regard was clearly enunciated in the ministerial delegate’s correspondence of April 24, 2007. Ms. Dupre cannot succeed on this front.

Reasonable Grounds to Suspect at the Time of Decision

[26] Ms. Dupre contends that her submissions and documentation were sufficient to dispel any suspicion that the currency she carried was proceeds of crime. She notes specifically:

- She did not avoid opportunities to report the currency. Rather, she sought to make a report and was “impeded” from so doing. In any event, the failure to report does not constitute a reasonable suspicion that the money is proceeds of crime;
- She did not conceal the money; it was in heavy clothing that was necessary, given the cold weather, for protection;
- Carrying a large sum of money over an international border is legal when reported and should not form the basis of a reasonable suspicion;
- A lack of detail was the result of her poor English skills and the officer “mixing” some of her own currency with the money around her waist;
- To say that money for business purposes would normally be transferred or wired is not an objective conclusion. Moreover, the language used by the officer acknowledges that this is not a hard and fast rule;
- She is not a business person and it was easier to carry the money. Because this is a legitimate means of transferring money, no negative inference should be drawn, particularly where not all of the money is destined for a business purpose;
- She provided documentary evidence of the company in China including a letter of intent. The officer sought further evidence of a joint venture. Such evidence could have been provided only when the company received cash payments from the investors;
- The absence of any records for tax purposes is understandable since the investment monies were never delivered to China;

- A number of letters, including statutory declarations from two individuals, were provided to demonstrate that the money was for investment purposes;
- She did not have the opportunity to address the ministerial delegate's concern about her possession of documents indicating bank accounts and credit and debit cards of others because this concern only appeared in the final decision;
- She was not uncooperative during the second examination.

[27] Ms. Dupre claims that the ministerial delegate has created an impossible burden whereby she could dispel the reasonable grounds to suspect only by demonstrating that the money in her possession was not derived from any crimes. Further, she points to "inconsistencies" between the seizing officer's handwritten notes and her narrative report.

[28] Distilled, most of these criticisms come within three categories. The allegations regarding efforts to report, the concealment of the currency and poor English skills relate to the issue of contravention. As noted above, the contravention determination must be challenged by way of an appeal. However, to the extent that these factors may have contributed to the ministerial delegate's conclusion of reasonable grounds to suspect the \$47,850 constitute proceeds of crime, some further observations are in order.

[29] First, although Ms. Dupre suggests that she attempted to report the currency and was unable to locate the Customs Office, she failed to approach an officer to make her declaration when she could have done so. Second, Ms. Dupre attempted to conceal her work history. Further, her declared income was less than \$20,000 in 2004 and she claimed to have no income in 2005.

Notwithstanding, she claimed that some of the money belonged to her. Third, the ministerial delegate acknowledged that the weather was cold but considered that Ms. Dupre was nonetheless overdressed. Moreover, the money was sewn into her undergarments. Fourth, the seizing officer indicated that Ms. Dupre's English skills were adequate and that interpreters were on site, if required. The officer did not see the need for an interpreter nor did Ms. Dupre request one. In any event, Ms. Dupre has had ample opportunity to explain any omissions and inconsistencies through her submissions.

[30] The allegations regarding the legality of transporting reported currency over international borders are not disputed. Notably, however, Ms. Dupre's account of the event is totally at odds with the observations of the seizing officer and the notes and narrative that were prepared contemporaneously with the incident. Ms. Dupre's submissions exhibit a total disregard for the fact that she did not report the funds before being apprehended. Further, she fails to acknowledge the various inconsistencies in her own evidence and she does not appear to recognize that the origin of the funds remains a problem.

[31] Most of the remaining contentions relate to the Chinese investment to which the bulk of the currency was ostensibly destined. Ms. Dupre relies heavily on the statutory declarations from Messrs. Giri and Venot to establish that the money was for the purpose of an investment. At this point, it is important to recognize that while the destination of the money was of concern, it was the source of the money which presented the more significant problem. The declarations do not establish the source of the funds allegedly provided by the individuals. Generally, they state simply that the individuals furnished specific sums of money to Ms. Dupre. In the case of those individuals

who claimed to have sufficient means to have provided the currency, the information did not demonstrate the lawful origin of the funds in question.

[32] In any event, even if the declarations are taken at face value, the ministerial delegate relied upon other factors to conclude that there were reasonable grounds to suspect that the currency is proceeds of crime.

[33] The ministerial delegate did not suggest that the alleged investment could be conducted only by wire transfer. The question as to why the payment was not by way of cheque or money order was legitimate. As for the “seizure” preventing the company in China from issuing any record or receipt of contract, the ministerial delegate simply found that it was unlikely that an international company would enter into a business venture without any documentation prior to the receipt of monies.

[34] The documents regarding the company in China did not address the origin of the funds. Additionally, the record contains a number of inconsistencies regarding the nature of that business. At the second examination, Ms. Dupre stated that she had no idea about the investment for which the money was destined. Subsequently, she explained that the investment was for an internet business. Later documents, tendered with submissions, indicate that the company is a powder company. Further, the amounts that her husband and associates intended to invest were identical to the amounts that Ms. Dupre ostensibly was transporting for family members, a fact that was rightly regarded as suspicious. Despite repeated references throughout the record regarding the

significance of the source of the money (disclosed to Ms. Dupre), the issue of source was not adequately addressed.

[35] This leaves two remaining contentions. Both can be disposed of summarily. In relation to the accounts and cards, Ms. Dupre was well aware of the credit and debit cards belonging to other persons in her possession. It was open to her to explain why she held them at any time. The invitation to submit any evidence that she wished was open-ended. The allegation of inconsistencies between the seizing officer's notes and narrative is nothing other than an exercise in minutia. For instance, it is inconsequential whether the officer noticed the bulge around Ms. Dupre's waist before or after Ms. Dupre pointed to her waist.

[36] It is important to recall that this is an administrative proceeding *in rem*. It concerns only the forfeited currency and whether there were reasonable grounds to suspect that it is proceeds of crime. The jurisprudence of this Court establishes that focus on the source of the currency is appropriate.

[37] Reasonable grounds to suspect is a lesser but included standard of reasonable and probable grounds to believe: *R. v. Monney*, [1999] 1 S.C.R. 652. In my view, in the circumstances, there was ample reason to suspect that the currency in Ms. Dupre's possession is proceeds of crime. Ms. Dupre created that suspicion by her conduct at the time of the seizure.

[38] The onus then shifted to Ms. Dupre to dispel the suspicion. To accomplish that end, she had to persuade the ministerial delegate as to the lawful source of the funds. The imposition of this

requirement is logical given that Ms. Dupre is best-placed to explain the origin of the currency that was in her possession. She simply failed to meet that onus.

[39] There is no merit to the allegation that Ms. Dupre's various submissions were not considered. They were considered but, in the final analysis, they were found to be unpersuasive and most were rejected.

[40] The ministerial delegate's decision withstands the scrutiny of a somewhat probing examination. It is not my function to re-weigh the evidence. Accordingly, there is no basis for my intervention.

ORDER

IT IS HEREBY ORDERED THAT the application for judicial review is dismissed with costs.

“Carolyn Layden-Stevenson”
Judge

SCHEDULE "A"
to the
Reasons for Order and Order dated November 13, 2007
in
KWONG CHAM SHONG DUPRE
and
MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS
T-915-07

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17

2. The definitions in this section apply in this Act.

"authorized person"

«personne autorisée »

"authorized person" means a person who is authorized under subsection 45(2).

"Centre"

«Centre »

"Centre" means the Financial Transactions and Reports Analysis Centre of Canada established by section 41.

"client"

«client »

"client" means a person or an entity that engages in a financial transaction or activity with a person or an entity referred to in section 5, and includes a person or an entity on whose behalf the person or the entity that engages in the transaction or activity is acting.

"Commissioner" [Repealed, 2005, c. 38, s. 124]

"courier"

«messenger »

"courier" means a courier as defined by regulation.

"customs office"

«bureau de douane »

"customs office" has the same meaning as in

Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, L.C. 2000, ch. 17

2. Les définitions qui suivent s'appliquent à la présente loi.

«activité terroriste »

"terrorist activity"

«activité terroriste » S'entend au sens du paragraphe 83.01(1) du Code criminel

«agent »

"officer"

«agent » S'entend au sens de « agent » ou « agent des douanes » au paragraphe 2(1) de la Loi sur les douanes.

«bureau de douane »

"customs office"

«bureau de douane » S'entend au sens du paragraphe 2(1) de la Loi sur les douanes.

«Centre »

"Centre"

«Centre » Le Centre d'analyse des opérations et déclarations financières du Canada constitué par l'article 41.

«client »

"client"

«client » Toute personne ou entité qui se livre à une opération ou à une activité financières avec une personne ou une entité visées à l'article 5, ainsi que toute personne ou entité pour le compte

subsection 2(1) of the Customs Act.

"entity"

«entité »

"entity" means a body corporate, a trust, a partnership, a fund or an unincorporated association or organization.

"legal counsel"

«conseiller juridique »

"legal counsel" means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor.

"mail"

«envois » ou

«courrier »

"mail" has the same meaning as in subsection 2(1) of the Canada Post Corporation Act.

"Minister"

«ministre »

"Minister" means, in relation to sections 24.1 to 39, the Minister of Public Safety and Emergency Preparedness and, in relation to any other provision of this Act, the Minister of Finance.

"money laundering offence"

«infraction de recyclage des produits de la criminalité »

"money laundering offence" means an offence under subsection 462.31(1) of the Criminal Code.

"officer"

«agent »

"officer" has the same meaning as in subsection 2(1) of the Customs Act.

"person"

«personne »

"person" means an individual.

de qui elle agit.

«commissaire » [Abrogée, 2005, ch. 38, art. 124]

«conseiller juridique »

"legal counsel"

«conseiller juridique » Dans la province de Québec, un avocat ou un notaire et, dans les autres provinces, un barrister ou un solicitor.

«entité »

"entity"

«entité » Personne morale, fiducie, société de personnes ou fonds, ou organisation ou association non dotée de la personnalité morale.

«envois » ou «courrier »

"mail"

«envois » ou «courrier » S'entend au sens du paragraphe 2(1) de la Loi sur la Société canadienne des postes.

«infraction de financement des activités terroristes »

"terrorist activity financing offence"

«infraction de financement des activités terroristes » Toute infraction visée aux articles 83.02 à 83.04 du Code criminel ou une infraction visée à l'article 83.12 de cette loi découlant d'une contravention à l'article 83.08 de la même loi.

«infraction de recyclage des produits de la criminalité »

"money laundering offence"

«infraction de recyclage des produits de la criminalité » L'infraction visée au paragraphe 462.31(1) du Code criminel.

«menaces envers la sécurité du Canada »

"threats to the security of Canada"

«menaces envers la sécurité du Canada » S'entend au sens de l'article 2 de la Loi sur le Service canadien du renseignement de sécurité.

«messenger »

"courier"

«messenger » S'entend au sens prévu par

"prescribed" «Version anglaise seulement »
 "prescribed" means prescribed by regulations made by the Governor in Council.

"President"
 «président »
 "President" means the President of the Canada Border Services Agency appointed under subsection 7(1) of the Canada Border Services Agency Act.

"terrorist activity"
 «activité terroriste »
 "terrorist activity" has the same meaning as in subsection 83.01(1) of the Criminal Code.

"terrorist activity financing offence"
 «infraction de financement des activités terroristes »
 "terrorist activity financing offence" means an offence under section 83.02, 83.03 or 83.04 of the Criminal Code or an offence under section 83.12 of the Criminal Code arising out of a contravention of section 83.08 of that Act.

"threats to the security of Canada"
 «menaces envers la sécurité du Canada »
 "threats to the security of Canada" has the same meaning as in section 2 of the Canadian Security Intelligence Service Act.

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.

(2) A person or entity is not required to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that those conditions have been met.

règlement.

«ministre »
 "Minister"
 «ministre » Le ministre de la Sécurité publique et de la Protection civile pour l'application des articles 24.1 à 39, et le ministre des Finances pour l'application des autres dispositions de la présente loi.

«personne »
 "person"
 «personne » S'entend d'un particulier.

«personne autorisée »
 "authorized person"
 «personne autorisée » Personne autorisée en vertu du paragraphe 45(2).

«président »
 "President"
 «président » Le président de l'Agence des services frontaliers du Canada, nommé en application du paragraphe 7(1) de la Loi sur l'Agence des services frontaliers du Canada.

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.

(2) Une personne ou une entité n'est pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à

(3) Currency or monetary instruments shall be reported under subsection (1)

(a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;

(b) in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;

(c) in the case of currency or monetary instruments exported from Canada by courier or as mail, by the exporter of the currency or monetary instruments;

(d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

(e) in any other case, by the person on whose behalf the currency or monetary instruments are imported or exported.

(4) If a report is made in respect of currency or monetary instruments, the person arriving in or departing from Canada with the

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

(b) on request of an officer, present the currency or monetary instruments that they are carrying or transporting, unload any conveyance or part of a conveyance or baggage and open or unpack any package or container that the officer wishes to examine.

(5) Officers shall send the reports they receive

l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

(3) Le déclarant est, selon le cas :

a) la personne ayant en sa possession effective ou parmi ses bagages les espèces ou effets se trouvant à bord du moyen de transport par lequel elle arrive au Canada ou quitte le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

b) s'agissant d'espèces ou d'effets importés par messenger ou par courrier, l'exportateur étranger ou, sur notification aux termes du paragraphe 14(2), l'importateur;

c) l'exportateur des espèces ou effets exportés par messenger ou par courrier;

d) le responsable du moyen de transport arrivé au Canada ou qui a quitté le pays et à bord duquel se trouvent des espèces ou effets autres que ceux visés à l'alinéa a) ou importés ou exportés par courrier;

e) dans les autres cas, la personne pour le compte de laquelle les espèces ou effets sont importés ou exportés.

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

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

b) à la demande de l'agent, lui présenter les espèces ou effets qu'elle transporte, décharger les moyens de transport et en ouvrir les parties et ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

under subsection (1) to the Centre.

13. A person or an entity that is required to report currency or monetary instruments may, at any time before they are retained under subsection 14(1) or forfeited as a result of a contravention of subsection 12(1), decide not to proceed further with importing or exporting them.

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.

(2) In the case of currency or monetary instruments imported or exported by courier or as mail, the officer shall, within the prescribed period, give the notice to the exporter if the exporter's address is known, or, if the exporter's address is not known, to the importer.

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

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

(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.

(4) The notice referred to in subsection (1) must state

(a) the period for which the currency or monetary instruments may be retained;

(5) L'agent fait parvenir au Centre les déclarations recueillies en application du paragraphe (1).

13. La personne ou l'entité qui a l'obligation de déclarer les effets ou espèces peut, en tout temps avant leur rétention en application du paragraphe 14(1) ou leur confiscation résultant d'une contravention au paragraphe 12(1), renoncer à poursuivre leur importation ou exportation.

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.

(2) Dans le cas où les espèces ou effets sont importés ou exportés par messenger ou par courrier, l'avis est donné, dans le délai réglementaire, à l'exportateur si son adresse est connue ou, dans le cas contraire, à l'importateur.

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

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

(4) L'avis doit contenir les éléments suivants :

a) la période de rétention;

b) la mention qu'il est mis fin à la rétention des espèces ou effets si, pendant cette période, ils sont déclarés conformément au paragraphe 12(1)

(b) that if, within that period, the currency or monetary instruments are reported under subsection 12(1) or the importer or exporter decides not to proceed further with importing or exporting them, they may no longer be retained; and

(c) that currency or monetary instruments retained at the end of that period are forfeited to Her Majesty in right of Canada at that time.

(5) Currency or monetary instruments that are retained by an officer under subsection (1) are forfeited to Her Majesty in right of Canada at the end of the period referred to in that subsection, and the officer shall send any incomplete report in respect of the forfeited currency or monetary instruments made under subsection 12(1) to the Centre.

15. (1) An officer may search

(a) any person who has arrived in Canada, within a reasonable time after their arrival in Canada,

(b) any person who is about to leave Canada, at any time before their departure, or

(c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area,

if the officer suspects on reasonable grounds that the person has secreted on or about their person currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection.

(2) An officer who is about to search a person under this section shall, on the person's request, without delay take the person before the senior officer at the place where the search is to take place.

(3) A senior officer before whom a person is taken under subsection (2) shall, if the senior

ou l'importateur ou l'exportateur renonce à poursuivre leur importation ou exportation; c) la mention qu'à la fin de cette période, les espèces ou effets retenus seront confisqués au profit de Sa Majesté du chef du Canada.

(5) Les espèces ou effets retenus en vertu du paragraphe (1) sont confisqués au profit de Sa Majesté du chef du Canada à l'expiration de la période visée à ce paragraphe et l'agent transmet au Centre toute déclaration incomplète entreprise dans le cadre du paragraphe 12(1) à l'égard de ces espèces ou effets.

15. (1) S'il la soupçonne, pour des motifs raisonnables, de dissimuler sur elle ou près d'elle des espèces ou des effets d'une valeur égale ou supérieure au montant réglementaire prévu pour l'application du paragraphe 12(1) et qui n'ont pas été déclarés en conformité avec ce paragraphe, l'agent peut fouiller :

a) toute personne entrée au Canada, dans un délai justifiable suivant son arrivée;

b) toute personne sur le point de sortir du Canada, à tout moment avant son départ;

c) toute personne qui a eu accès à une zone réservée aux personnes sur le point de sortir du Canada et qui quitte cette zone sans sortir du Canada, dans un délai justifiable après son départ de cette zone.

(2) Sur demande de la personne qu'il entend fouiller en vertu du présent article, l'agent la conduit devant l'agent principal du lieu de la fouille.

(3) L'agent principal, selon qu'il estime qu'il y a ou non des motifs raisonnables pour procéder à

officer believes there are no reasonable grounds for suspicion under subsection (1), discharge the person or, if the senior officer believes otherwise, direct that the person be searched.

(4) No person shall be searched under this section by a person who is not of the same sex, and if there is no officer of the same sex at the place where the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

16. (1) An officer may, in order to determine whether there are, on or about a conveyance, currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection, stop, board and search the conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it and direct that the conveyance be moved to a customs office or other suitable place for the search, examination or opening.

(2) An officer may, in order to determine whether there are, in baggage, currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and that have not been reported in accordance with that subsection, search the baggage, examine anything in it and open or cause to be opened any package or container in it and direct that the baggage be moved to a customs office or other suitable place for the search, examination or opening.

17. (1) An officer may examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds

la fouille, fait fouiller ou relâcher la personne conduite devant lui en application du paragraphe (2).

(4) L'agent ne peut fouiller une personne de sexe opposé. Faute de collègue du même sexe que celle-ci sur le lieu de la fouille, il peut autoriser toute personne de ce sexe présentant les qualités voulues à y procéder.

16. (1) L'agent peut, afin de vérifier si des espèces ou des effets d'une valeur égale ou supérieure au montant réglementaire prévu pour l'application du paragraphe 12(1) se trouvent à bord d'un moyen de transport et n'ont pas été déclarés conformément à ce paragraphe, immobiliser le moyen de transport, monter à son bord et le fouiller, examiner toute chose qui s'y trouve et en ouvrir ou faire ouvrir tous colis ou contenants, et le faire conduire à un bureau de douane ou à tout autre lieu indiqué pour ces opérations.

(2) L'agent peut, afin de vérifier si des espèces ou des effets d'une valeur égale ou supérieure au montant réglementaire prévu pour l'application du paragraphe 12(1) se trouvent parmi des bagages et n'ont pas été déclarés conformément à ce paragraphe, fouiller les bagages, examiner toute chose qui s'y trouve et en ouvrir ou faire ouvrir tous colis ou contenants, et faire conduire les bagages à un bureau de douane ou à tout autre lieu indiqué pour ces opérations.

17. (1) Un agent peut examiner tout envoi destiné à l'importation ou à l'exportation et ouvrir ou faire ouvrir ceux dont il soupçonne, pour des motifs raisonnables, qu'ils contiennent des espèces ou effets d'une valeur égale ou

contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1).

(2) An officer may not open or cause to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the Detailed Regulations of the Universal Postal Convention.

(3) An officer may cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

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.

(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.

(3) An officer who seizes currency or monetary instruments under subsection (1) shall

(a) if they were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and of the right to review and appeal set out in sections 25 and 30;

supérieure au montant réglementaire prévu pour l'application du paragraphe 12(1).

(2) L'agent ne peut ouvrir ou faire ouvrir un envoi pesant au plus trente grammes que si le destinataire ou l'expéditeur y consent ou que s'il porte, remplie par l'expéditeur, l'étiquette prévue à l'article 116 du Règlement détaillé de la Convention postale universelle.

(3) L'agent peut faire ouvrir en sa présence un envoi pesant au plus trente grammes par le destinataire, l'expéditeur ou la personne autorisée par ce dernier.

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) 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.

(3) L'agent qui procède à la saisie-confiscation prévue au paragraphe (1) :

a) donne au saisi, dans le cas où les espèces ou effets sont importés ou exportés autrement que par courrier, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 25 et 30;

b) donne à l'exportateur, dans le cas où les espèces ou effets sont importés ou exportés par

(b) if they were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and of the right to review and appeal set out in sections 25 and 30; and

(c) take the measures that are reasonable in the circumstances to give notice of the seizure to any person whom the officer believes on reasonable grounds is entitled to make an application under section 32 in respect of the currency or monetary instruments.

(4) The service of a notice under paragraph (3)(b) is sufficient if it is sent by registered mail addressed to the exporter.

19. An officer may call on other persons to assist the officer in exercising any power of search, seizure or retention that the officer is authorized under this Part to exercise, and any person so called on is authorized to exercise the power.

19.1 If an officer decides to exercise powers under subsection 18(1), the officer shall record in writing reasons for the decision.

20. If the currency or monetary instruments have been seized under section 18, the officer who seized them shall without delay report the circumstances of the seizure to the President and to the Centre.

21. (1) On request of an officer, any mail that is being sent from a place in Canada to a place in a foreign country and that contains or is suspected to contain currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) shall be submitted by the Canada Post Corporation to an officer.

courrier et son adresse est connue, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 25 et 30;

c) prend les mesures convenables, eu égard aux circonstances, pour aviser de la saisie toute personne dont il croit, pour des motifs raisonnables, qu'elle est recevable à présenter, à l'égard des espèces ou effets saisis, la requête visée à l'article 32.

(4) Il suffit, pour que l'avis visé à l'alinéa (3) b) soit considéré comme signifié, qu'il soit envoyé en recommandé à l'exportateur.

19. L'agent peut requérir main-forte pour se faire assister dans l'exercice des pouvoirs de fouille, de rétention ou de saisie que lui confère la présente partie. Toute personne ainsi requise est autorisée à exercer ces pouvoirs.

19.1 L'agent qui décide d'exercer les attributions conférées par le paragraphe 18(1) est tenu de consigner par écrit les motifs à l'appui de sa décision.

20. L'agent qui a saisi les espèces ou effets en vertu de l'article 18 fait aussitôt un rapport au président et au Centre sur les circonstances de la saisie.

21. (1) Sur demande d'un agent, les envois destinés à l'exportation sont soumis au contrôle douanier par la Société canadienne des postes s'ils contiennent ou si l'on soupçonne qu'ils contiennent des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire prévu pour l'application du paragraphe 12(1).

(2) Les envois soumis au contrôle douanier prévu par le présent article demeurent, pour

(2) All mail that is submitted to an officer under this section remains, for the purposes of the Canada Post Corporation Act, in the course of post unless it is retained or seized under this Part.

(3) If mail is retained or seized under this Part, notice of the retention or seizure shall be given in writing to the Canada Post Corporation within 60 days after the retention or seizure unless the mail has, before the expiry of that period, been returned to the Corporation.

(4) An officer shall deal with all mail submitted to the officer under this section in accordance with the laws relating to customs and this Part and, subject to those laws and this Part, shall return it to the Canada Post Corporation.

(5) Any non-mailable matter found by an officer in mail made available to the officer under this section shall be dealt with in accordance with the regulations made under the Canada Post Corporation Act.

22. (1) An officer who retains currency or monetary instruments forfeited under subsection 14(5) shall send the currency or monetary instruments to the Minister of Public Works and Government Services.

(2) An officer who seizes currency or monetary instruments or is paid a penalty under subsection 18(2) shall send the currency or monetary instruments or the penalty, as the case may be, to the Minister of Public Works and Government Services.
Forfeiture

23. Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are

l'application de la Loi sur la Société canadienne des postes, en cours de transmission postale, sauf s'ils sont retenus ou saisis en vertu de la présente partie.

(3) En cas de rétention ou de saisie d'envois en vertu de la présente partie, il doit en être donné avis par écrit à la Société canadienne des postes dans les soixante jours, sauf si, avant l'expiration de ce délai, ils ont été retournés à celle-ci.

(4) L'agent applique au contrôle des envois la législation relative aux douanes et la présente partie; sous réserve de cette législation et de la présente partie, il les retourne à la Société canadienne des postes.

(5) Il est disposé conformément aux règlements d'application de la Loi sur la Société canadienne des postes des objets inadmissibles que l'agent trouve dans le courrier soumis à son contrôle.

22. (1) En cas de confiscation aux termes du paragraphe 14(5) des espèces ou effets retenus, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

(2) En cas de saisie d'espèces ou d'effets ou de paiement d'une pénalité réglementaire aux termes du paragraphe 18(2), l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

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)

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.

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

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

(a) cancel the seizure, or cancel or refund the penalty, if the Minister is satisfied that there was no contravention; or
(b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced.

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

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may within 90 days after the date of the seizure

qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

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

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

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

(2) La somme qui est remboursée à une personne ou entité en vertu de l'alinéa (1)a) est majorée des intérêts au taux réglementaire, calculés à compter du lendemain du jour du paiement de la somme par celle-ci jusqu'à celui de son remboursement.

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

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.

26. (1) If a decision of the Minister is requested under section 25, the President shall without delay serve on the person who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

(2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

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.

(2) If charges are laid with respect to a money laundering offence or a terrorist activity financing offence in respect of the currency or monetary instruments seized, the Minister may defer making a decision but shall make it in any case no later than 30 days after the conclusion of all court proceedings in respect of those charges.

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

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,

douane le plus proche du lieu de la saisie.

26. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 25 un avis exposant les circonstances de la saisie à l'origine de la demande.

(2) Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

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).

(2) Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité ou pour infraction de financement des activités terroristes ont été intentées relativement aux espèces ou effets saisis, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

(3) Le ministre signifie sans délai par écrit à la personne qui a fait la demande un avis de la décision, motifs à l'appui.

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

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
- (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.

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.

(2) The total amount paid under paragraph (1)(a) shall, if the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

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.

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) 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.

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).

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme versée en vertu de l'alinéa (1)a) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

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.

(2) La Loi sur les Cours fédérales et les règles

(2) The Federal Courts Act and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

(3) The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

(4) If the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, the total amount that can be paid under subsection (3) shall not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

31. The service of the President's notice under section 26 or the notice of the Minister's decision under section 27 is sufficient if it is sent by registered mail addressed to the person on whom it is to be served at their latest known address.

Third Party Claims

32. (1) If currency or monetary instruments have been seized as forfeit under this Part, any person or entity, other than the person or entity in whose possession the currency or monetary instruments were when seized, who claims in respect of the currency or monetary instruments an interest as owner or, in Quebec, a right as owner or trustee may, within 90 days after the seizure, apply by notice in writing to the court for an order under section 33.

(2) A judge of the court to which an application is made under this section shall fix

prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en a été informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

(4) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

31. Il suffit, pour que les avis visés aux articles 26 et 27 soient considérés comme respectivement signifiés par le président ou le ministre, qu'il en soit fait envoi en recommandé à la dernière adresse connue du destinataire.

32. (1) En cas de saisie-confiscation effectuée en vertu de la présente partie, toute personne ou entité, autre que le saisi, qui revendique sur les espèces ou effets un intérêt en qualité de propriétaire ou, au Québec, un droit en qualité de propriétaire ou de fiduciaire peut, dans les quatre-vingt-dix jours suivant la saisie, requérir par avis écrit le tribunal de rendre l'ordonnance visée à l'article 33.

(2) Le juge du tribunal saisi conformément au présent article fixe à une date postérieure d'au moins trente jours à celle de la requête l'audition de celle-ci.

a day, not less than 30 days after the date of the filing of the application, for the hearing.

(3) The applicant shall serve notice of the application and of the hearing on the President, or an officer delegated by the President for the purpose of this section, not later than 15 days after a day is fixed under subsection (2) for the hearing of the application.

(4) The service of a notice under subsection (3) is sufficient if it is sent by registered mail addressed to the President.

(5) In this section and sections 33 and 34, "court" means

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) in the Province of Quebec, the Superior Court;
- (c) in the Provinces of Nova Scotia and British Columbia, the Yukon Territory and the Northwest Territories, the Supreme Court;
- (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench;
- (e) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court; and
- (f) in Nunavut, the Nunavut Court of Justice.

33. If, on the hearing of an application made under subsection 32(1), the court is satisfied

- (a) that the applicant acquired the interest or right in good faith before the contravention in respect of which the seizure was made,
- (b) that the applicant is innocent of any complicity in the contravention of subsection 12(1) that resulted in the seizure and of any collusion in relation to that contravention, and
- (c) that the applicant exercised all reasonable care to ensure that any person permitted to obtain possession of the currency or monetary instruments seized would report them in

(3) Dans les quinze jours suivant la date ainsi fixée, le requérant signifie au président, ou à l'agent que celui-ci délègue pour l'application du présent article, un avis de la requête et de l'audition.

(4) Il suffit, pour que l'avis prévu au paragraphe (3) soit considéré comme signifié, qu'il soit envoyé en recommandé au président.

(5) Au présent article et aux articles 33 et 34, «tribunal» s'entend :

- a) dans la province d'Ontario, de la Cour supérieure de justice;
- b) dans la province de Québec, de la Cour supérieure;
- c) dans les provinces de la Nouvelle-Écosse et de la Colombie-Britannique, le territoire du Yukon et les Territoires du Nord-Ouest, de la Cour suprême;
- d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et de l'Alberta, de la Cour du Banc de la Reine;
- e) dans les provinces de l'Île-du-Prince-Édouard et de Terre-Neuve, de la Section de première instance de la Cour suprême;
- f) dans le Nunavut, de la Cour de justice du Nunavut.

33. Après l'audition de la requête visée au paragraphe 32(1), le requérant est en droit d'obtenir une ordonnance disposant que la saisie ne porte pas atteinte à son droit ou à ses intérêts et précisant la nature et l'étendue de l'un comme des autres au moment de la contravention si le tribunal constate qu'il remplit les conditions suivantes :

- a) il a acquis son droit ou ses intérêts de bonne foi avant la contravention;
- b) il est innocent de toute complicité relativement à la contravention qui a entraîné la

accordance with subsection 12(1), the applicant is entitled to an order declaring that their interest or right is not affected by the seizure and declaring the nature and extent of their interest or right at the time of the contravention.

34. (1) A person or entity that makes an application under section 32 or Her Majesty in right of Canada may appeal to the court of appeal from an order made under section 33 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court.

(2) In this section, "court of appeal" means, in the province in which an order referred to in subsection (1) is made, the court of appeal for that province as defined in section 2 of the Criminal Code.

35. (1) The Minister of Public Works and Government Services shall, after the forfeiture of currency or monetary instruments has become final and on being informed by the President that a person or entity has obtained a final order under section 33 or 34 in respect of the currency or monetary instruments, give to the person or entity

(a) the currency or monetary instruments; or
(b) an amount calculated on the basis of the interest of the applicant in the currency or monetary instruments at the time of the contravention in respect of which they were seized, as declared in the order.

(2) The total amount paid under paragraph (1)(b) shall, if the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or

saisie ou de toute collusion à l'égard de la contravention;

c) il a pris des précautions suffisantes concernant toute personne admise à la possession des espèces ou effets saisis pour que ceux-ci soient déclarés conformément au paragraphe 12(1).

34. (1) L'ordonnance visée à l'article 33 est susceptible d'appel, de la part du requérant ou de Sa Majesté du chef du Canada, à la cour d'appel. Le cas échéant, l'affaire est entendue et jugée selon la procédure ordinaire régissant les appels interjetés devant cette juridiction contre les ordonnances ou décisions du tribunal.

(2) Au présent article, «cour d'appel» s'entend de la cour d'appel, au sens de l'article 2 du Code criminel, de la province où est rendue l'ordonnance visée au paragraphe (1).

35. (1) Le ministre des Travaux publics et des Services gouvernementaux, une fois la confiscation devenue définitive et dès qu'il a été informé par le président que la personne ou l'entité a, en vertu des articles 33 ou 34, obtenu une ordonnance définitive au sujet des espèces ou effets saisis, fait remettre à cette personne ou entité :

a) soit les espèces ou les effets;

b) soit une somme dont le montant est basé sur la valeur de son droit sur les espèces ou effets au moment de la contravention, telle qu'elle est fixée dans l'ordonnance.

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme versée en vertu de l'alinéa (1)b) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais

monetary instruments.
Disclosure and Use of Information

36. (1) Subject to this section and subsection 12(1) of the Privacy Act, no official shall disclose the following:
(a) information set out in a report made under subsection 12(1), whether or not it is completed;
(b) any other information obtained for the purposes of this Part; or
(c) information prepared from information referred to in paragraph (a) or (b).

(1.1) An officer who has reasonable grounds to suspect that the information referred to in subsection (1) is relevant to determining whether a person is a person described in sections 34 to 42 of the Immigration and Refugee Protection Act or is relevant to an offence under any of sections 117 to 119, 126 or 127 of that Act may use that information.

(2) An officer who has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence may disclose the information to the appropriate police force.

(3) An officer may disclose to the Centre information referred to in subsection (1) if the officer has reasonable grounds to suspect that it would be of assistance to the Centre in the detection, prevention or deterrence of money laundering or of the financing of terrorist activities.

(3.1) If an officer decides to disclose information under subsection (2) or (3), the officer shall record in writing the reasons for the decision.

afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

36. (1) Sous réserve des autres dispositions du présent article et du paragraphe 12(1) de la Loi sur la protection des renseignements personnels, il est interdit au fonctionnaire de communiquer les renseignements :
a) contenus dans une déclaration faite aux termes du paragraphe 12(1), qu'elle soit complétée ou non;
b) obtenus pour l'application de la présente partie;
c) préparés à partir de renseignements visés aux alinéas a) ou b).

(1.1) L'agent peut utiliser les renseignements visés au paragraphe (1) s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles afin d'établir si une personne est visée par les articles 34 à 42 de la Loi sur l'immigration et la protection des réfugiés ou qu'ils se rapportent à toute infraction prévue aux articles 117 à 119, 126 et 127 de cette loi.

(2) L'agent peut communiquer les renseignements visés au paragraphe (1) aux forces policières compétentes s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité ou à une infraction de financement des activités terroristes.

(3) L'agent peut communiquer au Centre les renseignements visés au paragraphe (1), s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles pour la détection, la prévention ou la dissuasion en matière de recyclage des produits de la criminalité ou de financement des activités terroristes.

(3.1) L'agent qui décide de communiquer des renseignements en vertu des paragraphes (2) ou (3) est tenu de consigner par écrit les motifs à

(4) An official may disclose information referred to in subsection (1) for the purpose of exercising powers or performing duties and functions under this Part.

(5) Subject to section 36 of the Access to Information Act and sections 34 and 37 of the Privacy Act, an official is required to comply with a subpoena, an order for production of documents, a summons or any other compulsory process only if it is issued in the course of

(a) criminal proceedings under an Act of Parliament that have been commenced by the laying of an information or the preferring of an indictment; or

(b) any legal proceedings that relate to the administration or enforcement of this Part.

(6) In this section and section 37, "official" means a person who obtained or who has or had access to information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Part.

37. No official shall use information referred to in subsection 36(1) for any purpose other than exercising powers or performing duties and functions under this Part.

Agreements for Exchange of Information

38. (1) The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has reporting requirements similar to those set out in this Part, whereby

(a) information set out in reports made under subsection 12(1) in respect of currency or

l'appui de sa décision.

(4) Le fonctionnaire peut communiquer les renseignements visés au paragraphe (1) dans l'exercice de ses attributions qui lui sont conférées sous le régime de la présente partie.

(5) Sous réserve de l'article 36 de la Loi sur l'accès à l'information et des articles 34 et 37 de la Loi sur la protection des renseignements personnels, le fonctionnaire ne peut être contraint par citation, assignation, sommation, ordonnance ou autre acte de procédure obligatoire à comparaître ou à produire des documents, sauf s'ils sont délivrés ou rendus dans le cadre :

a) de poursuites criminelles intentées en vertu d'une loi fédérale, à l'égard desquelles une dénonciation ou une mise en accusation a été déposée;

b) de toute procédure judiciaire concernant l'administration ou l'application de la présente partie.

(6) Au présent article et à l'article 37, «fonctionnaire » s'entend de toute personne qui a obtenu des renseignements visés au paragraphe (1) ou y a eu accès dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie.

37. Le fonctionnaire ne peut utiliser les renseignements visés au paragraphe 36(1) que dans la mesure où il en a besoin dans l'exercice de ses attributions qui lui sont conférées sous le régime de la présente partie.

38. (1) Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger — ou un organisme de celui-ci — qui exige des déclarations similaires à celles que prévoit la présente partie, un accord écrit stipulant que :

a) les renseignements figurant dans les

monetary instruments imported into Canada from that state will be provided to a department, institution or agency of that state that has powers and duties similar to those of the Canada Border Services Agency in respect of the reporting of currency or monetary instruments; and

(b) information contained in reports in respect of currency or monetary instruments imported into that state from Canada will be provided to the Canada Border Services Agency.

(2) When an agreement or arrangement referred to in subsection (1) is in effect with a foreign state or an institution or agency of that state and a person fulfils the reporting requirements of that state in respect of currency or monetary instruments that are imported into that state from Canada, the person is deemed to have fulfilled the requirements set out in section 12 in respect of the exportation of the currency or monetary instruments.

(3) The information received under an agreement or arrangement referred to in subsection (1) shall be sent to the Centre and, for the purposes of any provision of this Act dealing with the confidentiality of information or the collection or use of information by the Centre, is deemed to be information set out in a report made under section 12.

38.1 The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has powers and duties similar to those of the Canada Border Services Agency, whereby the Canada Border Services Agency may, if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist

déclarations faites au titre du paragraphe 12(1) à l'égard des espèces ou effets importés de cet État au Canada sont communiqués à un ministère ou organisme de cet État dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada en matière de déclarations à l'égard des espèces ou effets importés; b) les renseignements figurant dans les déclarations à l'égard des espèces ou effets importés dans cet État du Canada sont communiqués à l'Agence des services frontaliers du Canada.

(2) Pendant la période de validité de l'accord visé au paragraphe (1) avec un État étranger ou un organisme de celui-ci, la personne qui fait les déclarations exigées par cet État à l'égard des espèces ou effets qui y sont importés du Canada est réputée avoir fait les déclarations exigées au titre de l'article 12 à l'égard de l'exportation de ces espèces ou effets du Canada.

(3) Les renseignements obtenus en vertu d'un accord visé au paragraphe (1) sont envoyés au Centre et, pour l'application de toute disposition de la présente loi sur la confidentialité des renseignements ou la collecte ou l'utilisation de ceux-ci par le Centre, sont réputés être des renseignements figurant dans une déclaration faite au titre de l'article 12.

38.1 Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger ou un organisme de celui-ci dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada, un accord écrit stipulant que celle-ci peut fournir à ce gouvernement ou à cet organisme les renseignements qui figurent dans le rapport visé à l'article 20, si elle a des motifs raisonnables de soupçonner que ces renseignements seraient

activity financing offence, provide information set out in a report made under section 20 to that government, institution or agency.

39. (1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial powers or duties of the Minister, under this Part.

(2) The President may authorize an officer or a class of officers to exercise powers or perform duties of the President under this Part.

utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité ou à une infraction de financement des activités terroristes.
élévation

39. (1) Le ministre peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions, y compris les pouvoirs et fonctions judiciaires ou quasi-judiciaires, qui lui sont conférés en vertu de la présente partie.

(2) Le président peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions qui lui sont conférés en vertu de la présente partie.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-915-07

STYLE OF CAUSE: KWONG CHAM SHONG DUPRE
v.
MPSEP

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 7, 2007

**REASONS FOR ORDER
AND ORDER:** Layden-Stevenson J.

DATED: November 13, 2007

APPEARANCES:

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Vancouver, BC

FOR THE APPLICANT

Mr. Graham Stark

FOR THE RESPONDENT

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