

Date: 20080425

Docket: T-1101-06

Citation: 2008 FC 539

Ottawa, Ontario, April 25, 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

KHETAM THAIHER ZEID

Plaintiff

and

**MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] This proceeding is a statutory appeal by way of action brought by Khetam Thaiher Zeid pursuant to section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (*PCMLTFA*) against the Minister of Public Safety and Emergency Preparedness (Minister). Since this is a trial *de novo*, the task of this Court is not to review the record that was before the Minister when the decision was made, but rather to determine whether the evidence that is before the Court shows that Mrs. Zeid contravened the cross border currency reporting requirement.

[2] The plaintiff challenges the Minister's decision that she failed to report currency, in contravention of section 12 of the *PCMLTFA*. She submits that she was unaware of the statutory requirement to report and that she had no intention to mislead custom officials.

[3] At the end of the hearing, I indicated that I would dismiss the appeal. Here are my reasons for coming to that conclusion.

I. Facts

[4] The parties have agreed that the facts set out below are deemed to have been proven without the necessity of leading any further evidence. Much to their credit, the parties have also agreed that the documents attached as exhibits to their partial agreed statement of facts are authentic and constitute proof of the truth of their contents, thus relieving the defendant from bringing several Custom officials to the Court to give oral evidence. I shall therefore reproduce in full the partial agreed statement of facts (the "Agreement") in the following paragraphs.

[5] On August 28, 2005, the plaintiff had in her possession currency in the following amounts: \$CAN 10,000.00 (Canadian dollars) and \$USD 7,910.00 (American dollars) [hereinafter "the Currency"]. At the prevailing exchange rate, the total value of the Currency was approximately \$19,468.27 Canadian dollars.

[6] At that time, the plaintiff was a passenger in an automobile driven by her son. Together, they crossed the border from Canada to the United States located near Emerson, Manitoba and Pembina, North Dakota. The Currency was not reported to Canada Customs when it was exported to the United States.

[7] When the plaintiff's son was refused entry to the United States by American border officials because of his criminal record, the plaintiff and her son decided to return to Canada.

[8] At the Canadian border crossing located at Emerson, Manitoba there was a sign posted in both English and French that advises travellers entering or leaving Canada with CAN \$10,000 or more to report this to Canadian Customs. Photographs of this sign are attached as exhibit "A" to the Agreement.

[9] When the plaintiff and her son arrived at the Canadian border crossing, they were questioned by a Canadian Customs official about whether they were in possession of currency worth \$10,000.00 or more. The plaintiff's son answered the question in the negative. As for the plaintiff, she remained silent when the question was asked and allowed her son to respond on her behalf.

[10] Just prior to the arrival of the plaintiff and her son at the Canadian border crossing, the Canadian Customs official had been given a Lookout Synopsis prepared by the Intelligence

Division of the Canada Border Services Agency. A copy of the Lookout Synopsis is attached as exhibit “B” to the Agreement.

[11] The Canadian Customs official then referred the plaintiff and her son to a secondary examination. During the course of this examination, the plaintiff’s purse was searched, revealing \$2,500.00 Canadian Dollars. The plaintiff was then asked by a Customs official whether she had any other money on her or in the vehicle. The plaintiff answered “no”.

[12] The plaintiff then spontaneously stated that she in fact had her “life savings” on her and proceeded to remove an envelope she had concealed beneath her shirt. The plaintiff also indicated that she had \$10,000.00 underneath her clothes and voluntarily removed a money belt she had secured underneath her clothing in the area of her waist. When asked how much money was in the envelope, the plaintiff initially stated she did not know and then said there was “about \$7,600.00”.

[13] A count performed by Customs officials revealed that the envelope in fact contained \$USD 7,910.00 American dollars and the money belt contained \$CAD 10,000.00 Canadian dollars.

[14] As the Currency, worth over \$10,000.00 Canadian dollars, had not been reported to Customs officials, contrary to subsection 12(1) of the *PCMLTFA*, it was seized as forfeit pursuant to subsection 18(1) of the *PCMLTFA*.

[15] In addition, as Customs officials felt they had reasonable grounds to suspect that the Currency was proceeds of crime, they decided not to return it to the plaintiff pursuant to subsection 18(2) of the *PCMLTFA*.

[16] The Customs officials involved in the seizure of the Currency prepared narrative reports, which describe what occurred. These six reports are attached as exhibits “C” to “H” to the Agreement.

[17] The plaintiff then requested a decision of the defendant as to whether subsection 12(1) of the *PCMLTFA* had been contravened, pursuant to section 25 of the *PCMLTFA*. Such a decision was rendered on March 31, 2006, pursuant to section 27 of the *PCMLTFA*. Specifically, the defendant determined that subsection 12(1) of the *PCMLTFA* had indeed been contravened by the plaintiff as a result of her failure to report the Currency to Customs officials.

[18] On July 4, 2006, the plaintiff commenced the present statutory appeal by way of action by having a statement of claim issued in this Court pursuant to section 30 of the *PCMLTFA*.

[19] The plaintiff admits that the Currency in her possession on August 28, 2005 was not reported to Canadian Customs officials when she exported it to the United States.

[20] The plaintiff admits that the Currency in her possession on August 28, 2005 was not reported to Canadian Customs officials when she imported it back into Canada.

II. The issue

[21] The only issue before the Court, according to counsel for the plaintiff, is whether or not there was a deliberate and knowledgeable contravention of the cross-border currency reporting requirements in respect to the Currency.

[22] The plaintiff contends that she was unaware of her legal obligation to report the exportation and importation of money from and to Canada, as she did not see any sign or notice at the border and did not hear the Custom official's questions to her son. She argues that the Court is entitled to consider whether or not there was a deliberate and knowledgeable contravention of the cross-border currency reporting requirements in respect of the Currency to determine if she was in contravention of section 12 of the *PCMLTFA*.

[23] On the other hand, the defendant's position is that the plaintiff cannot establish factually, on a balance of probabilities, that her failure to report the Currency was unintentional. More importantly, however, the defendant submits that, as a matter of law, the plaintiff's subjective intention is not relevant to the question of whether or not she contravened subsection 12(1) of the *PCMLTFA*.

III. The PCMLTFA cross-border currency reporting regime

[24] The objectives of the *PCMLTFA* are clearly set out in the statute. They include the following:

3. The object of this Act is

(a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including

(...)

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

(...)

(b) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring

3. La présente loi a pour objet:

a) de mettre en oeuvre des mesures visant à détecter et décourager le recyclage des produits de la criminalité et le financement des activités terroristes et à faciliter les enquêtes et les poursuites relatives aux infractions de recyclage des produits de la criminalité et aux infractions de financement des activités terroristes, notamment :

(...)

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

(...)

b) de combattre le crime organisé en fournissant aux responsables de l'application de la loi les renseignements leur permettant de priver les criminels du produit de leurs activités illicites, tout en assurant la mise en place des

that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

(c) to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity.

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

[25] In order to implement the objective specified in section 3(a)(ii), Part 2 of the *PCMLTFA* provides for a currency reporting regime whereby importers and exporters of currency must make a report to a Customs official whenever they import or export large quantities of currency or monetary instruments into or out of Canada. My colleague Justice Layden-Stevenson very aptly set out the objectives and mechanics of the regime in *Dokaj v. Canada (Minister of National Revenue)*, 2005 FC 1437 [*Dokaj*], and I need not repeat that overview here. For ease of understanding, however, I will briefly highlight the most relevant provisions of that legislative scheme in the following paragraphs. These provisions can be found attached to these reasons as Schedule "A".

[26] The relevant reporting requirements in the case at bar (which involved both an exportation and an importation of currency) stem from subsections 12(1) and 12(3)(a) of the *PCMLTFA* along with sections 2, 3, 4 and 11 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412. These provisions require every person who imports to or exports from

Canada currency or monetary instruments worth \$10,000.00 or more to report this importation or exportation to a Customs official.

[27] In the event a person imports to or exports from Canada currency worth \$10,000.00 or more and fails to report, the currency is subject to seizure as forfeit by a Customs official pursuant to subsection 18(1) of the *PCMLTFA*, if that official believes on reasonable grounds that subsection 12(1) has been contravened.

[28] Pursuant to subsection 18(2) of the *PCMLTFA*, the Customs official must then decide whether there are reasonable grounds to suspect that the currency is proceeds of crime or funds for terrorist financing. If the official answers to this question are in the affirmative, the seized currency must remain as forfeit. If the official answers to this question in the negative, he or she must return the currency upon receipt of the prescribed penalty, which ranges from \$250.00 to \$5,000.00.

[29] Furthermore, section 23 of the *PCMLTFA* provides that currency seized as forfeit pursuant to subsection 18(1) of the *PCMLTFA* is automatically forfeited to Her Majesty in Right of Canada from the time of the contravention of subsection 12(1) in respect of which it was seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

[30] As per section 24 of the *PCMLTFA*, the forfeiture of seized currency 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 25 to 30 of the *PCMLTFA*, which sets out the review and appeal procedure with respect to forfeitures effected under Part 2 of the *PCMLTFA*.

[31] Specifically, section 25 of the *PCMLTFA* permits either the person from whom the currency was seized under section 18 or the lawful owner of the currency to request a decision of the Minister as to whether subsection 12(1) of the *PCMLTFA* was contravened, provided such a request is made in writing within 90 days after the date of the seizure.

[32] If a request for a decision is made by a person entitled thereto pursuant to section 25 of the *PCMLTFA*, the President of the Canada Border Services Agency is obliged to serve that person with written notice of the circumstances of the seizure pursuant to subsection 26(1) of the *PCMLTFA*. That person is then entitled, pursuant to subsection 26(2) of the *PCMLTFA*, to provide any evidence in the matter that he or she desires to furnish, provided he or she does so within 30 days of receiving the Commissioner's written notice. The Minister must then, pursuant to section 27 of the *PCMLTFA*, make a decision with respect to whether subsection 12(1) of the *PCMLTFA* was contravened. This decision of the Minister can be termed "the Section 27 Decision".

[33] If the Minister decides that there was no failure to report, the currency or the assessed penalty must then be returned, pursuant to section 28 of the *PCMLTFA*.

[34] If, on the other hand, the Minister decides that there was a failure to report, the Minister must then render a second decision, as per section 29 of the *PCMLTFA*, with respect to the

appropriate sanction for the infraction. This decision is effectively a review of the quantum of the sanction imposed by the Customs official pursuant to subsection 18(2) (i.e., full forfeiture or a penalty ranging from \$250.00 to \$5,000.00). Section 29 of the *PCMLTFA* requires the Minister to either confirm the Customs official's decision with respect to the sanction or to reduce it to some lesser penalty. This second decision of the Minister can be termed "the Section 29 Decision".

[35] Section 30 of the *PCMLTFA* allows the person who requested a decision of the Minister pursuant to section 25 to appeal that decision by way of an action in the Federal Court.

[36] The scope of a statutory appeal brought pursuant to section 30 of the *PCMLTFA* is, however, limited to a review of the Section 27 Decision with respect to whether subsection 12(1) of the *PCMLTFA* was contravened. A person who wishes to challenge a Section 29 Decision must do so by means of a judicial review application pursuant to section 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7: see *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186 at para. 18; aff'g 2006 FC 50 at para. 38.

[37] In the case at bar, it is common ground that the plaintiff is only disputing the Minister's Section 27 Decision. The plaintiff has not sought judicial review of the Section 29 Decision rendered in her case and she accepts that it cannot be challenged in the context of this statutory appeal.

III. Analysis

[38] I need not say much about the evidence and the testimony given by the plaintiff at the hearing with respect to her ignorance of the cross-border currency reporting obligation, since I agree with the defendant that the subjective state of mind of the plaintiff has no bearing on the question of whether subsection 12(1) of the *PCMLTFA* has been contravened or the validity of the seizure. I shall, nevertheless, venture the following comments.

[39] The plaintiff's contention that she was unaware of her obligation to report the currency in her possession when she crossed the border is not borne out by the evidence; indeed, the uncontradicted affidavit evidence of several Custom officials shows that her attitude bordered on wilful blindness.

[40] First of all, it is difficult to believe, as the plaintiff would have it, that the money she was carrying was her "savings" and that she takes it with her whenever she leaves her house. Why, if that is the case, would she have precisely \$10,000.00 in her money belt and \$2,500.00 (all in \$50.00 notes) in her purse? Why would a large proportion of her "savings" be in American dollars? Why would she split her "savings" in three different locations, that is, in her purse, in a money belt on her abdomen and in an envelope on her chest? That story, in and of itself, stretches the imagination.

[41] I also note that there were inconsistencies between her story and her son's as to the length of their planned trip to the United States, their purposes in going there and to whom the money belonged.

[42] More importantly, the plaintiff has not shown on a balance of probabilities that she did not know of her obligation to report currency in excess of \$10,000.00 or that she did not hear the Custom officer asking if they had any currency or monetary instruments valued at over \$10,000.00 at the Custom booth.

[43] When cross-examined by counsel for the defendant, the plaintiff acknowledged that she travelled to the Middle East on six or seven occasions since arriving in Canada in 1973, and that she also went to the United States five or six times during that same period of time. While it may have been the first time she went abroad since the coming into force of the *PCMLTFA* in January 2003, she testified that she knows she has to answer questions asked by Custom officials truthfully. She may in fact have learned the hard way since it appears Mrs. Zeid had her jewellery seized upon returning from the Middle East in 1986, as a result of not reporting it to Custom officials at Pearson Airport.

[44] The exhibits attached to the partial agreed statement of facts show that the sign posted at the Canadian border crossing advising travellers entering or leaving Canada with more than \$10,000.00 that they have to report it is quite visible and is located right beside the booth where the Custom

official proceeds to the primary check while travellers remain in their car. I find it hard to believe that the plaintiff would not have seen it.

[45] Mrs. Zeid pretends she was not paying attention when the Custom official asked questions to her son. Again, this claim is most difficult to believe, especially after having just been refused entry to the United States. How could she not be interested by what was going on? In any event, she must have heard what the Custom official was saying as she handed her driving license to her son when asked for identification of the passenger. How could she then not hear the Custom official asking if any of them had purchased anything from the Canadian duty free store, if either of them had any commercial or business goods, or if either of them had any currency or monetary instruments valued at over \$10,000.00? This affidavit evidence given by the Custom official was not challenged by way of cross-examination.

[46] Moreover, two Custom Officers reported that, when asked why she didn't declare the money, Mrs. Zeid stated she wasn't asked the question but her son was asked, as he was driving. How could she have answered that question if she had not heard what was going on? I find that Mrs. Zeid has not shown, on a balance of probabilities, that her failure to report the currency was not deliberate.

[47] Mrs. Zeid and her son were then directed to report to the office. It was then decided to frisk both of them for the safety of the officials. When her purse was searched for possible weapons, \$2,500.00 was found in the side pocket. At that point, Mrs. Zeid was asked if she had any other money in the vehicle, in her purse or on her before the search was continued, to which she stated

“No”. This is the affidavit evidence of three Custom officials who were present in the interview room where all this happened, and as already mentioned they were not cross-examined by the plaintiff. Indeed, she signed the partial agreed statement of facts, paragraph 8 of which (paragraph 11 of these reasons) confirms this version of the events.

[48] At the hearing, however, she purported to change her version of what happened while being examined by her counsel. She testified that she never answered “No” when asked by a Custom official whether she had any other money on her, and that she only answered in the negative to the question whether she had any other money in the vehicle. Needless to say, this denial flatly contradicts the partial agreed statement of facts that she signed, and at that stage her lawyer, clearly surprised by her statement, could do no better than putting an end to his examination.

[49] In light of all the evidence before the Court, and of the less than truthful manner in which the plaintiff testified before the Court, I am drawn to the inescapable conclusion that Mrs. Zeid either knew of the reporting requirement or, at the very least, did everything possible to avoid having to answer the Customs official’s questions. There is no doubt in my mind that wilful blindness can not be countenanced and is as reprehensible as an outright lie.

[50] That being said, I agree with the defendant that the lack of any intention to circumvent the reporting requirement or to deceive Customs officials is not relevant to the determination of whether or not the obligation to report has been contravened. The obligation found in section 12 of the

PCMLTFA is not qualified by any reference to the knowledge or subjective state of mind of the traveller.

[51] As has been recognized by the jurisprudence of this Court, it is evident that Parliament intended that the seizure, review and appeal mechanisms in the *PCMLTFA* mirror and complement those found in the *Customs Act*, R.S.C. 1985, c. 1. This can be seen by the striking similarity between the relevant provisions of the two statutes, as spelled out by Justice Layden-Stevenson in *Dokaj supra* at para. 40.

[52] Furthermore, it is also noteworthy that Parliament entrusted the administration and enforcement of the cross-border currency reporting regime in the *PCMLTFA* to the same Customs officials who were already entrusted and experienced with the administration and enforcement of the goods reporting regime in the *Customs Act*. Accordingly, it is entirely appropriate to seek guidance for the interpretation of the provisions of the *PCMLTFA* at issue from the jurisprudence that has interpreted the analogous provisions in the *Customs Act*.

[53] That jurisprudence makes it abundantly clear that a traveller's subjective intention when failing to report is irrelevant. It has been unequivocally held that such intention is not required since the system is one of voluntary reporting and because strict liability attaches to those who fail to report.

[54] Perhaps the clearest statement of this principle is that penned by Mr. Justice Pinard in *He v. Canada* (2000), 182 F.T.R. 85, where he stated at para. 8:

In seizure proceedings such as those at bar, the onus is on the plaintiffs to establish, on a balance of probabilities, that the seizures were unlawful. The issue for the Court is simply whether the goods...were, in fact and law, liable to forfeiture. The Act creates a voluntary reporting legislative framework in which importers must accurately declare all goods, must accurately account for the quantity and value of the goods, and must pay the duty and taxes attracted by all goods imported. (...) Therefore, the Act is contravened when an incorrect declaration is made by or on behalf of an importer. Furthermore, the source of that error is irrelevant. The importer is liable for having failed to meet the obligation to accurately account for the goods which, from the time of the contravention, are forfeit to the Crown. A lack of intention on the part of the importer to evade duty and taxes is irrelevant in a seizure proceeding. Neither the lack of intent to mislead Customs, nor the presence of an inadvertent error in reporting goods, affects the validity of a seizure.

[55] There is all the more reason to come to that conclusion in the context of the *PCMLTFA*, the objectives of which are of the utmost importance. The reporting regime is a key tool to combat money laundering and the financing of terrorist activities. Lack of knowledge would not only be difficult to verify, but it could easily undermine the policy underlying the *PCMLTFA*. If the *PCMLTFA* is to be effective, severe sanctions must be visited upon all those who fail to report in accordance with section 12, irrespective of their circumstances.

[56] This is indeed the conclusion reached by my colleagues in the only two cases that have dealt with this issue so far. In *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)* (2006 FC 50; aff'd on a different point at 2007 FCA 186), Justice Harrington rejected Mr. Tourki's argument that his lack of awareness of the obligation to declare would warrant overturning the

Minister's decision that he had contravened subsection 12(1). Similarly, Justice Kelen recognized the irrelevance of the traveller's subjective intention when failing to report cross-border currency, further to a motion for summary judgment brought by the Minister in respect of a section 30 *PCMLTFA* statutory appeal: *Hoang v. Canada (Minister of National Revenue)*, 2006 FC 182. I strongly agree with their reasoning and conclusion.

[57] For all of the foregoing reasons, I am therefore of the view that this appeal must be dismissed, with costs. In light of the plaintiff's admission that she did not report the Currency to Canadian Customs officials on August 28, 2005, either when she exported it to the United States or when she imported it back into Canada, there is no doubt that the defendant was correct to decide that subsection 12(1) of the *PCMLTFA* had been contravened in the case at bar.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is dismissed, with costs.

"Yves de Montigny"

Judge

SCHEDULE A

RELEVANT PROVISIONS

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

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.

(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;

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.

23. Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada

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

(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;

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.

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

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.

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 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

du Canada à compter de la contravention au paragraphe 12(1) qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

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.

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 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

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, 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

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.

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

29. (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :

a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;

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

c) 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

(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.

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.

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412

2. (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is \$10,000.

(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on

(a) the official conversion rate of the Bank of Canada as published in the Bank of Canada's *Daily Memorandum of Exchange Rates* that is in effect at the time of importation or exportation; or

(b) if no official conversion rate is set out in that publication for that currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the

2. (1) Pour l'application du paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 \$.

(2) La valeur de 10 000 \$ est exprimée en dollars canadiens ou en son équivalent en devises selon :

a) le taux de conversion officiel de la Banque du Canada publié dans son *Bulletin quotidien des taux de change* en vigueur à la date de l'importation ou de l'exportation;

b) dans le cas où la devise ne figure pas dans ce bulletin, le taux de conversion que le déclarant utiliserait dans le cours normal de ses activités à cette date.

importation or exportation.

3. Subject to subsections 4(3) and (3.1) and section 8, a report with respect to the importation or exportation of currency or monetary instruments shall

(a) be made in writing;

(b) contain the information referred to

(i) in Schedule 1, in the case of a report made by the person described in paragraph 12(3)(a) of the Act, if that person is not transporting on behalf of an entity or other person,

(ii) in Schedule 2, in the case of a report made by the person described in paragraph 12(3)(a) of the Act, if that person is transporting on behalf of an entity or other person,

(iii) in Schedule 2, in the case of a report made by the person or entity described in paragraph 12(3)(b), (c) or (e) of the Act, and

(iv) in Schedule 3, in the case of a report made by the person described in paragraph 12(3)(d) of the Act;

(c) contain a declaration that the statements made in the report are

3. Sous réserve des paragraphes 4(3) et (3.1) et de l'article 8, la déclaration de l'importation ou de l'exportation d'espèces ou d'effets doit :

a) être faite par écrit;

b) comporter les renseignements prévus à :

(i) à l'annexe 1, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour son propre compte,

(ii) à l'annexe 2, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour le compte d'une entité ou d'une autre personne,

(iii) à l'annexe 2, dans le cas d'une déclaration faite par la personne ou l'entité visée aux alinéas 12(3)b), c) ou e) de la Loi,

(iv) à l'annexe 3, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)d) de la Loi;

c) porter une mention selon laquelle les renseignements fournis sont véridiques, exacts et complets;

true, accurate and complete; and

(d) be signed and dated by the person or entity described in paragraph 12(3)(a), (b), (c), (d) or (e) of the Act, as applicable.

d) être signée et datée par la personne ou l'entité visée aux alinéas 12(3)a), b), c), d) ou e) de la Loi, selon le cas.

4. (1) Subject to subsections (2) to (5) and section 9, a report with respect to currency or monetary instruments transported by a person arriving in Canada shall be submitted without delay by the person at the customs office located at the place of importation or, if it is not open for business at the time of importation, at the nearest customs office that is open for business at that time.

(2) A report with respect to currency or monetary instruments transported by a person arriving in Canada on board a commercial passenger conveyance who has as their destination another place in Canada at which there is a customs office may be submitted without delay by the person at that customs office or, if it is not open for business at the time of importation, at the nearest customs office that is open for business at that time, on condition that

(a) the person does not disembark from the conveyance at the place of arrival in Canada and the currency or monetary instruments are not removed from the conveyance at that place, other than to be transferred under customs control directly to a commercial passenger conveyance for departure to the other place in Canada or directly to a holding area designated as such for the purposes of the

4. (1) Sous réserve des paragraphes (2) à (5) et de l'article 9, la déclaration relative à des espèces ou effets transportés par une personne arrivant au Canada doit être présentée sans délai par cette personne au bureau de douane situé au lieu de l'importation ou, si ce bureau est fermé au moment de l'importation, au bureau de douane le plus proche qui est ouvert.

(2) La déclaration relative à des espèces ou effets transportés par une personne arrivant au Canada à bord d'un moyen de transport commercial de passagers et ayant pour destination un autre lieu au Canada où se trouve un bureau de douane peut être présentée sans délai par cette personne à ce bureau de douane ou, si ce bureau est fermé au moment de l'importation, au bureau de douane le plus proche qui est ouvert, pourvu que :

a) la personne ne quitte pas le moyen de transport au lieu de son arrivée au Canada et les espèces ou effets n'en soient pas enlevés, sauf pour effectuer une correspondance directe, sous contrôle douanier, avec un moyen de transport commercial de passagers à destination de l'autre lieu au Canada ou pour être directement acheminés, sous contrôle douanier, vers une zone d'attente désignée comme telle pour l'application du *Règlement sur l'obligation de se présenter à un*

*Presentation of Persons
(Customs) Regulations; and*

bureau de douane;

(b) if the person and currency or monetary instruments are transferred under customs control directly to a designated holding area, the person does not leave and the currency or monetary instruments are not removed from that area, other than to board or to be loaded on board a commercial passenger conveyance for departure to the other place in Canada.

b) dans le cas où la personne et les espèces ou effets sont directement acheminés sous contrôle douanier vers une zone d'attente désignée, la personne ne quitte pas cette zone et les espèces ou effets n'en soient pas enlevés, sauf pour monter ou être chargés à bord d'un moyen de transport commercial de passagers à destination de l'autre lieu au Canada.

(3) A report with respect to currency or monetary instruments transported by a person arriving in Canada on board a non-commercial passenger conveyance at a customs office where, under the *Customs Act*, customs reporting may be done by radio or telephone may be submitted by radio or telephone to an officer by that person or the person in charge of the conveyance at that location, on condition that

(3) La déclaration relative à des espèces ou effets transportés par une personne arrivant au Canada, à bord d'un moyen de transport non commercial de passagers, à un bureau de douane où elle peut, aux termes de la *Loi sur les douanes*, faire une déclaration douanière par radio ou par téléphone peut être transmise sans délai par radio ou par téléphone à un agent à ce lieu par cette personne ou par celle qui est responsable du moyen de transport, pourvu que :

(a) when the person informs the officer of their arrival for the purposes of section 11 of the *Customs Act*, they provide the information referred to in Schedule 1, 2 or 3, as applicable; and

a) au moment où la personne signale son arrivée à l'agent en application de l'article 11 de la *Loi sur les douanes*, elle fournisse tous les renseignements prévus aux annexes 1, 2 ou 3, selon le cas;

(b) on the officer's request, they present themselves and make available for examination the currency or monetary instruments at the time and place specified by the officer.

b) à la demande de l'agent, elle se présente avec les espèces ou effets — aux fins d'inspection — au moment et au lieu précisés par celui-ci.

(3.1) A report with respect to currency or monetary instruments

(3.1) La déclaration de l'importation des espèces ou effets transportés par une personne arrivant au Canada, à bord

transported by a person arriving in Canada on board a non-commercial passenger conveyance, at a customs office where the person is authorized in accordance with the *Presentation of Persons (2003) Regulations* to present in an alternative manner, may be submitted to an officer by telephone, by that person or the person in charge of the conveyance before arriving in Canada, on condition that

(a) when the person informs the officer of their arrival for the purposes of section 11 of the *Customs Act*, they provide the information referred to in Schedule 1, 2 or 3, as applicable; and

(b) on the officer's request, they present themselves and make available for examination the currency or monetary instruments on arrival in Canada at the time and place specified by the officer.

(4) A report with respect to currency or monetary instruments transported by a freight train crew member arriving in Canada on board the freight train shall be submitted without delay by the crew member at the customs office specified by the officer when the crew member presents himself or herself in accordance with section 11 of the *Customs Act*.

(5) A report with respect to currency or monetary instruments that are transported by courier into Canada on board an aircraft and that have as their destination another place in Canada at which there is a customs office, shall be submitted at the customs office

d'un moyen de transport non commercial de passagers, à un bureau de douane où elle est autorisée, aux termes du *Règlement de 2003 sur l'obligation de se présenter à un bureau de douane*, à se présenter selon un mode substitutif peut être transmise à un agent par téléphone par cette personne ou par celle qui est responsable du moyen de transport, avant son arrivée au Canada, pourvu que :

a) au moment où la personne signale son arrivée à l'agent en application de l'article 11 de la *Loi sur les douanes*, elle fournisse tous les renseignements prévus aux annexes 1, 2 ou 3, selon le cas;

b) à la demande de l'agent, elle se présente avec les espèces ou effets — aux fins d'inspection — au moment et au lieu précisés par celui-ci.

(4) La déclaration relative à des espèces ou effets transportés par un membre de l'équipage d'un train de marchandises arrivant au Canada à bord de ce train doit être présentée sans délai par cette personne au bureau de douane que lui indique l'agent au moment où elle lui signale son arrivée en application de l'article 11 de la *Loi sur les douanes*.

(5) La déclaration relative à des espèces ou effets qui sont transportés par un messenger arrivant au Canada à bord d'un aéronef et qui ont pour destination un autre lieu au Canada où se trouve un bureau de douane doit être présentée au

located at the airport of destination shown on the air waybill, on condition that

(a) the currency or monetary instruments are not removed from the aircraft at the place of arrival, other than to be transferred under customs control directly to a holding area designated as such for the purposes of the *Presentation of Persons (Customs) Regulations*; and

(b) if the currency or monetary instruments are transferred under customs control directly to a designated holding area, they are not removed from that area, other than to be loaded on board an aircraft for departure to the other place in Canada.

11. A report with respect to currency or monetary instruments transported by a person departing from Canada shall be submitted without delay by the person at the customs office located at the place of exportation or, if it is not open for business at the time of exportation, at the nearest customs office that is open for business at that time.

bureau de douane situé à l'aéroport de destination indiqué sur le connaissement aérien, pourvu que :

a) les espèces ou effets ne soient pas enlevés de l'aéronef au lieu de son arrivée au Canada, sauf pour être directement acheminés sous contrôle douanier vers une zone d'attente désignée comme telle pour l'application du *Règlement sur l'obligation de se présenter à un bureau de douane*;

b) dans le cas où les espèces ou effets sont directement acheminés sous contrôle douanier vers une zone d'attente désignée, ils ne soient pas enlevés de cette zone, sauf pour être chargés à bord d'un aéronef à destination de l'autre lieu au Canada.

11. La déclaration relative à des espèces ou effets transportés par une personne quittant le Canada doit être présentée sans délai par cette personne au bureau de douane situé au lieu de l'exportation ou, si ce bureau est fermé au moment de l'exportation, au bureau de douane le plus proche qui est ouvert.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1101-06

STYLE OF CAUSE: Khetam Thaiher Zeid
v.
MPSEP

PLACE OF HEARING: Manitoba, Winnipeg

DATE OF HEARING: April 9, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** de MONTIGNY J.

DATED: April 25, 2008

APPEARANCES:

John L. Sinclair

FOR THE PLAINTIFF

Jan Brongers

FOR THE DEFENDANT

SOLICITORS OF RECORD:

John L. Sinclair
Sinclair & Associates
Barristers and Solicitors
231-1120 Grant Avenue
Winnipeg, Manitoba R3M 2A6

FOR THE PLAINTIFF

John H. Sims
Deputy Attorney General of Canada

FOR THE DEFENDANT