

**Date: 20090625**

**Docket: T-652-08**

**Citation: 2009 FC 663**

**Ottawa, Ontario, June 25, 2009**

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

**BETWEEN:**

**YVES BELLEFEUILLE**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS and  
THE CANADA BORDER SERVICES AGENCY**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Yves Bellefeuille (the applicant), under section 18.1 of the *Federal Courts Act*, R.S. 1985, c. F-7. The question asked by the applicant is whether the respondents can restrict his right to leave Canada if he does not show certain documents or does not respond to their questions.

**Factual background**

[2] The applicant is a Canadian citizen, a resident of Ottawa, who frequently travels abroad. On December 25, 2007, he traveled on Air Canada flight 888 leaving from the Ottawa airport to London in the United Kingdom.

[3] Before entering the gateway to board the plane, the applicant met all of the requirements of showing the necessary documents to the air carrier Air Canada, all of the requirements of the Canadian Air Transport Security Authority and the requirements of the *Identity Screening Regulations*, SOR/2007-82.

[4] Four officers from the Canada Border Services Agency were in the gateway going to the plane. One of them made the following requests of the applicant:

- a) he asked him to show his boarding card;
- b) he asked him what his final destination was;
- c) he asked him if he was exporting currency or monetary instruments with a value equal to or greater than ten thousand dollars.

[5] The applicant showed his boarding card, declared that his final destination was Dusseldorf, Germany and declared that he was not exporting currency or monetary instruments with a value equal to or greater than ten thousand dollars. He then boarded the plane without any problem.

[6] On occasion, the respondents conduct controls similar to the one mentioned above.

- [7] With this application for judicial review, the applicant is seeking to obtain
- a. a declaration that his right to leave Canada can only be restricted by a rule of law, within reasonable limits as can be demonstrably justified in a free and democratic society;
  - b. a declaration that the respondents cannot restrict his right to leave Canada on the ground that he has not shown his boarding card on board or has not disclosed his final destination;
  - c. a declaration that the applicant is not required to issue a statement to the respondents, under subsection 12(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (hereafter the Act), if he is not exporting currency or monetary instruments with a value equal to or greater than the prescribed amount and the costs of the application.

### **Issues**

- [8] The issues in this case are the following:
- a) Is this application moot?
  - b) In accordance with subsection 16(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, can the respondents force passengers leaving Canada on board an airplane to show certain documents and answer their questions?

### **Relevant legislation**

[9] The relevant legislation can be found at the end of this document in Annex A.

### **Applicant's arguments**

[10] The applicant is claiming that the right to leave one's country is a fundamental right recognized by the major international human rights documents (such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and *Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms*). In Canada, the right to leave one's country is guaranteed by subsection 6(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, section 1 (the Charter) and, in accordance with section 1 of the Charter, this right can be restricted only by a rule of law.

[11] A directive or guidelines, even if issued by a department or government agency, do not constitute a rule of law that can restrict a Charter right. An action that is not prescribed by law can never be justified under section 1, regardless of whether it seems reasonable or justifiable (*Thomsen v. The Queen*, [1988] 1 S.C.R. 640 at paragraph 18).

[12] There is no rule of law that gives the respondents the authority or obligation to control the identity or the destination of a Canadian citizen, or of any other natural person, who is leaving Canada. In Canada, there is no control of natural persons when they leave the country, which is not the case when it comes to rules relating to the exportation of goods or financial instruments. The

above-mentioned control to which the applicant was subjected constitutes an infringement or denial of his rights protected by subsection 6(1) of the Charter and was not authorized by any rule of law.

The applicant is therefore seeking the above-mentioned remedies.

[13] The applicant believes it is advisable to know his legal obligations in the event that the respondents conduct a similar control against him in the future. The applicant would therefore like to have the Court establish that the respondents cannot restrict his right to leave Canada on the ground that he did not show them his boarding card or did not divulge his final destination.

[14] The applicant also would like the Court to establish that he is not required to make a report to the respondents, under subsection 12(1) of the Act, if he is not exporting currency or monetary instruments with a value equal to or greater than the prescribed amount.

[15] The applicant maintains that the only rule of law that restricts the right of an individual to leave Canada is the requirement to have a passport, and this is not a requirement for leaving Canada strictly speaking, but rather a requirement for being admitted into another country and proving a person's right to re-enter Canada. In Canada, there is no control of persons leaving the country (*Khadr v. Canada (Attorney General of Canada)*, 2006 FC 727, [2007] 2 F.C.R. 218 at paragraphs 62 to 70).

[16] The applicant notes that a police officer or government official can ask questions, but there is no general obligation to answer these questions. If a person declines to answer the questions, the

police officer or official must allow the person to continue on his or her way, unless the person is arrested under legal authority (*R. v. Esposito* (1985), 53 O.R. (2d) 356, 24 C.R.R. 102 (C.A. Ont.) at page 362).

[17] The only legal provisions that limit the general right to silence, in the case of a Canadian citizen leaving Canada, are those relating to the exportation of items from Canada, namely, the exportation of currency and financial instruments such as the restrictions cited by the respondents indicated in sections 12, 15, 16 and 17 of the Act.

[18] These provisions rely on the requirement to declare “the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount”, that is, \$10,000. These provisions do not impose any general requirement to answer questions and do not impose any requirement if a person is not exporting \$10,000 or more. Furthermore, these provisions do not in any case give the authority to restrict the right of a person to leave Canada (see subsection 12(1) of the Act and section 2 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412).

[19] The respondents refer to the guidelines and procedures but do not mention a general law that requires a person to answer questions or an authority that restricts the right of a person to leave Canada.

[20] The applicant concedes that certain provisions of the Act impose a requirement to answer questions in certain circumstances. For example, if a person is importing or exporting \$10,000 or more and if that person makes a report, subsection 12(4) of the Act provides a requirement to “answer truthfully any questions that the officer asks with respect to the information required”. It should be noted that this requirement only exists in specific situations and does not apply to questions on subjects covered in the Act. Parliament did not impose a requirement to answer questions in other circumstances.

[21] The *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), provides other examples of a positive obligation to “answer truthfully any questions that the officer asks” in the context of entering and exiting the country. In the absence of such positive obligation, a person is not required to answer questions (see the *Customs Act* at subsections 11(1) and 11.4(1), section 13, subsections 22(1), 40(1) and 40(3)).

[22] Parliament is seeking to require any person who is importing or exporting \$10,000 or more to make a report. This is not a duty to divulge in all cases the amount being imported or exported, or to divulge whether the amount being imported or exported is less than or greater than \$10,000. The obligation intended by Parliament is clear and the applicant believes that there is no basis for extending it.

**Respondents' arguments**

[23] Every person is required to declare to the Canada Border Services Agency (the Agency) the exportation of currency or monetary instruments with a value equal to or greater than \$10,000 before leaving the country. To enforce this statute, officers have the authority to conduct verifications in airports, during which they ask passengers if they are exporting currency or monetary instruments. In this proceeding, the applicant answered the questions that the Agency officers asked of him and he boarded his flight as planned. However, he is asking this Court to provide him with a legal opinion based on a hypothetical refusal to answer the questions. He affirms that the Agency cannot require him to answer its questions and that it cannot restrict his right to leave the country if he refuses to answer them.

[24] First, the respondents maintain that this Court should not exercise its discretion in such a way as to hear a moot application that is based on assumptions. Second, even if it is well established that a practice can be the subject of an application for judicial review, it is incumbent on the applicant to prove that the impugned practice exists. Nevertheless, the applicant in this proceeding did not provide any evidence that the Agency forces passengers to answer questions, or that it restricts the right of any person to leave the country. This application should therefore be dismissed with costs.

[25] The respondents note that the Canadian Parliament adopted the Act in the context of the Cross-Border Currency Reporting Program. This Act is an integral part of the fight against money laundering and allows Canada to fulfill its international commitments with respect to participating

in the fight against international crime. The Agency is responsible for administering and enforcing Part 2 of the Act. Among other things, the purpose of the Act is “requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments” (paragraph 3(a)(ii) of the Act). This purpose is implemented in Part 2 of the Act, which establishes a system under which travellers must declare to the officer any importation or exportation of currency or financial instruments with a value equal to or greater than \$10,000 (subsection 12(1) of the Act).

[26] An officer can search any person who is about to leave Canada if the officer suspects on reasonable grounds that the person has secreted on or about his or her person currency or monetary instruments with a value equal to or greater than \$10,000. The Act also authorizes officers to board a conveyance to continue with this same verification. An officer can also search, without reason, a traveller’s baggage to the same end (sections 15 and 16 of the Act).

[27] The respondents specify that the Agency has been conducting verifications on international flights since 2003 and the verifications have mainly concentrated on high risk flights on which the Agency has received information from its intelligence division. These verifications can include searching the conveyance, baggage and cargo. Because of these verifications, the respondents submit that the Agency was able to have 76% of the proceeds of crime that were seized from air passengers in 2007 forfeited.

[28] According to the applicant, the purpose of this dispute is to determine whether he is required to answer questions asked by the officers and whether his refusal to answer could restrict his right to leave the country. The evidence nevertheless does not indicate that he was required to answer any question whatsoever, or that the Agency would have restricted his right to leave Canada if he had refused to answer the questions. This application is only a request for a legal opinion made to the Court.

[29] The Supreme Court has established criteria for determining whether a matter is moot in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. Generally, courts refuse to rule on questions that do not have the effect of resolving some controversy which affects, or may affect, the rights of parties.

[30] The applicant does not state having been required to answer the Agency's questions or prevented from leaving the country. The applicant would like to know what the outcome would have been if he had decided not to answer the Agency's questions, which constitutes a theoretical discussion.

[31] In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, the Supreme Court of Canada confirmed the three *Borowski* factors to consider when a court decides that it must exercise discretion to hear a moot appeal:

- a) the presence of an adversarial context;
- b) the concern for judicial economy; and

- c) the need for the Court to be sensitive to its role as the adjudicative branch in our political framework.

[32] First, the respondents maintain that there is no adversarial context. The trip on December 25, 2007, continued without a problem and a decision by the Court would not have any effect on the facts that gave rise to this moot dispute. The applicant accepts the theoretical aspect in his affidavit when he mentions that it is [TRANSLATION] “possible that [he] will be the subject of, in the future, a verification similar to that which took place on December 25, 2007,” and that he [TRANSLATION] “therefore would like the Court to rule on [his] rights and obligations”.

[33] The second applicable factor requires the courts to consider whether it is necessary to spend scarce judicial resources to resolve a moot issue given the circumstances of a case. In the case at bar, there is no evidence that the Agency requires an individual to answer its questions on penalty of preventing the individual from leaving the country. This question is entirely hypothetical and it is not necessary to spend scarce judicial resources to respond to it.

[34] Furthermore, there is nothing to suggest that the questions raised by the applicant will be evasive of review in the future. A traveller who is denied the right to leave the country for having refused to answer a question could pursue recourse in the Federal Court. The respondents note that it is not an issue capable of repetition yet evasive of review.

[35] The last criterion requires the courts to be sensitive to their role as the adjudicative branch in our political framework. The applicant is requesting a legal opinion on a hypothetical government action. If the Court responds to this question, this would constitute a departure from its traditional role. The Court should therefore not exercise its discretion **and** rule on this matter.

[36] It is clear that the right to leave the country is not affected by the verification process undertaken by the Agency. Even if an officer discovers large quantities of undeclared currency concealed on a person, the officer could then seize it as forfeit. If the right to leave the country is not affected by a seizure of undeclared currency, it is even less so by a refusal to respond to some questions (section 18 of the Act).

[37] It is apparent in *Krause v. Canada*, [1999] 2 F.C. 476 (C.A.), that a practice or policy can, even if it is not a “decision or order” within the meaning of the *Federal Courts Act*, be the subject of a judicial review procedure. However, the applicant must prove that this practice exists. In this case, the applicant did not provide any evidence that the Agency requires individuals to answer its questions, or that it prevents people who refuse to answer its questions from leaving the country. The application must therefore be dismissed with costs.

### **Analysis**

[38] Before addressing the main question raised by the applicant, it is necessary to examine the argument submitted by the respondents that the Court should not hear this litigation because it is moot. The general rule is that courts will only hear cases that will have the effect of resolving a live

controversy which will or may actually affect the rights of the parties to the litigation, except when the courts decide, in the exercise of their discretion, that it is nevertheless in the interest of justice that the theoretical discussion be heard (see *Borowski*, above, at page 353).

[39] I am of the opinion that this appeal is moot and do not believe that I should depart from the general principle that courts do not hear cases that are moot. The fact that the issue in this case may recur does not warrant a decision by the Court (*Kozarov v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 185, 384 N.R. 160 at paragraph 4).

[40] In *Borowski*, above, at pages 358-363, Justice Sopinka listed the criteria regulating the exercise of the discretion of courts to hear moot cases. The requirement of an adversarial context is a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome. I agree with the respondents that this adversarial context does not exist in this proceeding.

[41] As to the concern for conserving scarce judicial resources, this Court has noted many times that such an expenditure is warranted in cases that raise important issues but are evasive of review (*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46). Furthermore, concern for judicial economy is partially answered if the Court's decision will have some practical effect on the rights of the parties, notwithstanding that it will not have the effect of determining the controversy which gave rise to the proceeding.

[42] An expenditure of judicial resources is considered warranted in cases that, although moot, are of a recurring nature but brief duration. It can also be decided to not apply the mootness doctrine strictly in order to ensure that an important question which might independently evade review be heard by the court. However, in *Borowski* at paragraph 36 the Court wrote the following:

It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved.

[43] Similarly, the deployment of judicial resources is justified in hypothetical cases that raise an issue with a resolution that is in public interest. Judicial resources must be weighed against the social cost of continued uncertainty in the law (*Borowski* at page 361). The facts of this case do not warrant that the Court departs from the general principle that it is not required to rule on theoretical discussions (*Borowski*, page 357).

[44] The need for courts to exercise some flexibility in the application of the mootness doctrine requires more than a consideration of the importance of the subject matter. In this case, the applicant is asking the Court for a legal opinion on the constitutionality of subsections 12(1) and 16(2) of the Act as well as an opinion on the right of the respondents to restrict his right to leave Canada. As these questions are ancillary to the primary issue, and this is considered by the Court as moot, it is not necessary to respond to these questions (*Borowski*, page 357).

[45] The applicant maintains that paragraph 10 of his affidavit is sufficient *prima facie* factual evidence warranting the Court's ruling on the constitutionality of subsections 12(1) and 16(2) of the

Act. However, with respect, the Court notes that the paragraph in question does not establish any fact but constitutes, instead, a finding.

[46] In *Kamel v. Canada (Attorney General)*, 2008 FC 338, [2009] 1 F.C.R. 59, paragraph 134, Justice Noël in citing the Supreme Court was of the view that specific facts must be cited if the courts are to be asked to consider Charter issues.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. The applicant must pay a lump sum of \$1,000 including disbursements as costs.

“Michel Beaudry”

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Judge

Certified true translation  
Janine Anderson, Translator

## Annex A

### Relevant Legislation

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, (U.K.), 1982, c. 11, section 1 at paragraph 6(1):

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

(a) to move to and take up residence in any province; and

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

(b) to pursue the gaining of a livelihood in any province.

b) de gagner leur vie dans toute province.

(3) The rights specified in subsection (2) are subject to

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

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

**3. The object of this Act is**

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

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

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

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

(b) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

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

**3. La présente loi a pour objet :**

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

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

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

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

b) de combattre le crime organisé en fournissant aux responsables de l'application de la loi les renseignements leur permettant de priver les criminels du produit de leurs activités illicites, tout en assurant la mise en place des garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

c) d'aider le Canada à remplir ses engagements internationaux dans la lutte contre le crime transnational, particulièrement le recyclage des

laundering, and the fight against terrorist activity.

**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.

(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,

produits de la criminalité, et la lutte contre les activités terroristes.

**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 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

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 under subsection (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

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.

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

**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

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 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

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 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.

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 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

(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 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

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;

(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.

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 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.

*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.** (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) 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 importation or exportation.

(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.

*Customs Act, R.S.C. 1985, c. 1 (2nd Supp.):*

**11.** (1) Subject to this section, every person arriving in Canada shall, except in such circumstances and subject to such conditions as may be prescribed, enter Canada only at a customs office designated for that purpose that is open for business and without delay present himself or herself to an officer and answer truthfully any questions asked by the officer in the performance of his or her duties under this or any other Act of Parliament.

**11.4** (1) Subject to subsection (2), every person leaving a customs controlled area, other than for the purpose of boarding a flight with a destination outside Canada, shall

(a) present himself or herself in the prescribed manner to an officer and identify himself or herself;

(b) report in the prescribed manner and make available to the officer any goods that he or she

**11.** (1) Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions prévues par règlement, toute personne arrivant au Canada ne peut y entrer qu'à un bureau de douane, doté des attributions prévues à cet effet, qui est ouvert, et doit se présenter sans délai devant un agent. Elle est tenue de répondre véridiquement aux questions que lui pose l'agent dans l'exercice des fonctions que lui confère la présente loi ou une autre loi fédérale.

**11.4** (1) Sous réserve du paragraphe (2), toute personne qui quitte une zone de contrôle des douanes, à une fin autre que pour embarquer sur un vol à destination de l'étranger, doit :

a) se présenter à un agent de la manière réglementaire et s'identifier;

b) déclarer à l'agent de la manière réglementaire les marchandises acquises par tout moyen dans

has acquired through any means while in the customs controlled area; and

(c) answer truthfully any questions asked by an officer in the performance of his or her duties under this or any other Act of Parliament.

**13.** Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall

(a) answer truthfully any question asked by an officer with respect to the goods; and

(b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.

**22.** (1) Subject to subsection (2), the following persons shall keep the prescribed records at their place of business in Canada or at any other place that the Minister may designate, for the prescribed period and in the prescribed manner, and shall on the request of an officer make them available to the officer, within the time specified by the officer, and answer truthfully any questions asked by the officer about those records:

(a) a person who transports or causes to be transported goods into Canada; or

(b) a person who transports or causes to be transported within Canada goods that have been imported but have not been released.

**40.** (1) Every person who imports goods or causes goods to be imported for sale or for any industrial, occupational, commercial, institutional or other like use or any other use that may be prescribed shall keep at the person's

la zone de contrôle des douanes et lui en donner accès;

c) répondre véridiquement aux questions que lui pose l'agent dans l'exercice des fonctions que lui confère la présente loi ou une autre loi fédérale.

**13.** La personne qui déclare, dans le cadre de l'article 12, des marchandises à l'intérieur ou à l'extérieur du Canada, ou qu'un agent intercepte en vertu de l'article 99.1 doit :

a) répondre véridiquement aux questions que lui pose l'agent sur les marchandises;

b) à la demande de l'agent, lui présenter les marchandises et les déballer, ainsi que décharger les moyens de transport et en ouvrir les parties, ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

**22.** (1) Sous réserve du paragraphe (2), est tenue de conserver en son établissement au Canada ou en un autre lieu désigné par le ministre, pendant le délai et selon les modalités réglementaires, les documents déterminés par règlement et, à la demande de l'agent et dans le délai qu'il précise, de les lui communiquer et de répondre véridiquement aux questions qu'il lui pose à leur sujet, toute personne qui :

a) soit transporte ou fait transporter des marchandises à destination du Canada;

b) soit fait office de transitaire.

**40.** (1) Toute personne qui importe ou fait importer des marchandises en vue de leur vente ou d'usages industriels, professionnels, commerciaux ou collectifs, ou à d'autres fins analogues ou prévues par règlement, est tenue de

place of business in Canada or at any other place that may be designated by the Minister any records in respect of those goods in any manner and for any period of time that may be prescribed and shall, where an officer so requests, make them available to the officer, within the time specified by the officer, and answer truthfully any questions asked by the officer in respect of the records.

(2) If, in the opinion of the Minister, a person has not kept records in accordance with subsection (1), the Minister may request that person to comply with that subsection in respect of the records.

(3) The following persons shall keep at their place of business or at any other place that may be designated by the Minister the prescribed records with respect to the prescribed goods, in the manner and for the period that may be prescribed, and shall, where an officer requests, make them available to the officer, within the time specified by the officer, and answer truthfully any questions asked by the officer in respect of the records:

(a) a person who is granted a licence under section 24;

(b) a person who receives goods authorized for delivery to the person's place of business in the circumstances set out in paragraph 32(2)(b);

(c) a person who is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods;

(d) a person who is granted a certificate under section 90 of the Customs Tariff; and

(e) a person who is granted a licence under section 91 of that Act.

conserver en son établissement au Canada ou en un autre lieu désigné par le ministre, selon les modalités et pendant le délai réglementaires, les documents réglementaires relatifs aux marchandises et, à la demande de l'agent et dans le délai qu'il précise, de lui communiquer ces documents et de répondre véridiquement aux questions qu'il lui pose à leur sujet.

(2) Le ministre peut demander à la personne qui, selon lui, a manqué à ses obligations prévues au paragraphe (1) quant à la conservation de documents de se conformer à ce paragraphe quant aux documents.

(3) Est tenu de conserver en son établissement ou en un autre lieu désigné par le ministre, selon les modalités et pendant le délai réglementaires, les documents réglementaires relatifs aux marchandises réglementaires et, à la demande de l'agent et dans le délai qu'il précise, de lui communiquer ces documents et de répondre véridiquement aux questions qu'il lui pose à leur sujet quiconque :

a) est titulaire de l'agrément octroyé en application de l'article 24;

b) reçoit des marchandises dont la livraison à son établissement est autorisée dans les circonstances visées à l'alinéa 32(2)b);

c) est autorisé en vertu de l'alinéa 32(6)a) ou du paragraphe 32(7) à effectuer une déclaration en détail ou provisoire de marchandises;

d) est titulaire du certificat délivré en application de l'article 90 du Tarif des douanes;

e) est titulaire de l'agrément délivré en application de l'article 91 de cette loi.

(4) Where, in the opinion of the Minister, a person has not kept records in respect of goods in accordance with subsection (3), the Minister may request that person to comply with that subsection in respect of the goods.

(4) Le ministre peut demander à la personne qui, selon lui, a manqué à ses obligations prévues au paragraphe (3) quant à la conservation de documents de se conformer à ce paragraphe.

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

**DOCKET:** T-652-08

**STYLE OF CAUSE:** **YVES BELLEFEUILLE v.  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS AND THE CANADA  
BORDER SERVICES AGENCY**

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** June 23, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BEAUDRY J.

**DATED:** June 25, 2009

**APPEARANCES:**

Yves Bellefeuille (representing himself)	FOR THE APPLICANT
Alexandre Kaufman	FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

n/a	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENTS