Federal Court of Appeal — Cour d'appel fédérale

Date: 20171228

Docket: A-81-17

Citation: 2017 FCA 252

CORAM: **NADON J.A.**
STRATAS J.A.
WEBB J.A.

BETWEEN:

FRANK WILLIAMS

Appellant

and

CANADA (MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS)

Respondent

Heard at Toronto, Ontario, on September 22, 2017.

Judgment delivered at Ottawa, Ontario, on December 28, 2017.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: NADON J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Mr. Williams appeals from the order dated February 24, 2017 of the Federal Court (*per* McDonald J.): 2017 FC 234. The Federal Court dismissed a summary judgment motion brought by Mr. Williams in an action he has started.

[2] In his action, Mr. Williams seeks the return of certain United States currency that a border services officer seized from him at a customs reporting station. Part of the currency has been declared forfeited.

[3] Whether Mr. Williams succeeds depends solely on a legal question: was the seizure and forfeiture of his currency authorized by law? Mr. Williams says no. The respondent Minister says yes. The Federal Court agreed with the Minister. Mr. Williams now appeals.

[4] For the reasons that follow, I would allow the appeal and grant summary judgment in Mr. Williams' favour.

[5] The border services officer had no legal power under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the "Act") to seize any of the currency. The respondent Minister has pointed to no other legal authority to justify the seizure. Thus, Mr. Williams is entitled to the return of all of his currency.

A. The nature of the motion in the Federal Court

[6] Mr. Williams' motion for summary judgment was brought under Rule 215(2)(b) of the *Federal Court Rules*, SOR/98-106. In his notice of motion, Mr. Williams specifically sought the determination of a question of law concerning the authority of the border services officer and then judgment in the action in his favour on the basis that no genuine issue for trial remained.

[7] The parties did not file any affidavits in the summary judgment motion. Thus, the only facts the Federal Court could have relied upon in determining Mr. Williams' motion are those that the Minister pleaded to or admitted to in his statement of defence.

[8] Given this, the thrust of Mr. Williams' motion is clear: judgment must be granted in his favour because, on the facts the Minister pleaded or admitted, the border services officer had no legal authority to seize his currency.

B. The facts for the purposes of the summary judgment motion

[9] On July 3, 2015, Mr. Williams travelled eastbound for Canada on the Blue Water Bridge. The bridge connects Port Huron, Michigan, United States and Sarnia, Ontario, Canada. At the Canada Border Services Agency reporting station, Mr. Williams told the border services officer that "he made a wrong turn and did not intend to enter Canada." See statement of defence, paras. 5 and 6.

[10] The border services officer then "proceeded with the standard line of questioning, including whether or not [Mr. Williams] was in possession of currency or monetary instruments equal to or greater than $10,000.00 CAD": statement of defence, para. 6. Mr. Williams replied, falsely, that he was not.

[11] The border services officer then referred Mr. Williams to secondary inspection. There, Mr. Williams was asked about a large bulge in the front pocket of his shorts. Mr. Williams

replied that he was carrying approximately $6,000.00. When asked to produce the currency for inspection, Mr. Williams "admitted that he may, in fact, be in possession of upwards of $10,000.00 as he was holding $2,500.00 for one of his passengers." See statement of defence, para. 7.

[12] In fact, Mr. Williams was carrying $10,758.00 USD, then the equivalent of $13,518.50 CAD: statement of defence, para. 8. When asked why he had not reported the currency, Mr. Williams stated that "he was confused when initially questioned because he had not intended to come to Canada and that he had actually forgotten that he had it in his pocket": statement of defence, para. 9.

[13] Soon afterward, Mr. Williams' currency "was seized as forfeit," purportedly under the authority of section 18(1) of the Act: statement of defence, para. 10. As a result of a later administrative decision, the Minister decided that $2,020.00 USD should be returned to Mr. Williams because it was proven to be legitimate in origin: statement of defence, paras. 11-13. The rest, $8,738.00 USD, remained seized as forfeit.

[14] Upon receipt of the Minister's decision, Mr. Williams brought an action in the Federal Court seeking the return of the $8,738.00 USD. This is how an aggrieved person can obtain review of the Minister's decision: Act, section 30. Mr. Williams also seeks pre-judgment interest running from the date of seizure on the full amount originally seized from him, as none of it has been returned to him.

C. The Act

[15] The Act creates a regime for the regulation of currency and monetary instruments imported or exported by cross-border travellers. Under the Act, any amount of currency and monetary instruments may be imported or exported.

[16] But there is a reporting requirement in subsection 12(1) of the Act. Under this subsection, cross-border travellers must report “the importation or exportation of [domestic and foreign] currency or monetary instruments” equal or greater than a reporting threshold. The reporting threshold is $10,000.00 CAD: *Cross-border Currency and Monetary Instruments Reporting Regulations,* SOR/2002-412, s. 2(1).

[17] Thus, the objective of the Act is not to prevent cross-border flows of large amounts of currency and monetary instruments, but rather to keep track of the cross-border flows. This objective is meant to fulfil certain larger purposes, including, broadly speaking, the detection and prevention of money laundering, terrorist financing and organized crime. These are explicitly set out in section 3 of the Act:

3. The object of this Act is	**3.** La présente loi a pour objet :
(*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	*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

(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 ensuring compliance with Parts 1 and 1.1 and 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;

(*c*) to assist in fulfilling Canada's international commitments to

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 du contrôle d'application des parties 1 et 1.1 et de l'examen de renseignements, notamment ceux portés à son attention au titre 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

participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity; and	la lutte contre le crime transnational, particulièrement le recyclage des produits de la criminalité, et la lutte contre les activités terroristes;
(*d*) to enhance Canada's capacity to take targeted measures to protect its financial system and to facilitate Canada's efforts to mitigate the risk that its financial system could be used as a vehicle for money laundering and the financing of terrorist activities.	*d*) de renforcer la capacité du Canada de prendre des mesures ciblées pour protéger son système financier et de faciliter les efforts qu'il déploie pour réduire le risque que ce système puisse servir de véhicule pour le recyclage des produits de la criminalité et le financement des activités terroristes.

[18] In order to advance these larger purposes, reports under subsection 12(1) are sent to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC): subsection 12(5) of the Act. The *Customs Act* also allows information obtained through these reports to be shared widely in certain circumstances: see, *e.g.*, paragraphs 107(4)(*c*) and 107(5)(*k*) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

[19] In support of this regime, the Act provides for the temporary retention of imported or exported currency and monetary instruments (section 14), the interception of mail (sections 17 and 21) and for searches of persons (section 15) and conveyances (section 16).

[20] The Act also provides that where a border services officer has reasonable grounds to believe that a person has not reported under subsection 12(1) of the Act the importation or exportation of currency or monetary instruments exceeding the reporting threshold, the currency or monetary instruments may be "seize[d] as forfeit" (section 18). In this case, the parties are

agreed that if in fact Mr. Williams was not under an obligation to report his currency under subsection 12(1) of the Act, the border services officer had no reasonable grounds to seize the currency.

[21] Considering the basic facts of this case and this legislative regime as explained thus far, one might conclude that the seizure of currency from Mr. Williams was authorized by law. He carried currency in excess of $10,000.00 CAD across the border and did not report it. On its face, subsection 12(1) requires that a report be made in circumstances such as these. And, as mentioned, section 18 allows for the currency to be seized where a report is not made when it should have been made.

[22] But that conclusion would be too hasty. For there is another section in the Act that Mr. Williams says relieves him from making a report under subsection 12(1). It is section 13.

[23] Section 13 allows a person who is required to report currency to "decide not to proceed further with importing or exporting" the currency "at any time" before the currency is retained under section 14 or forfeited under section 18. The parties agree that to trigger section 13 a person must not only make the decision not to proceed further with the importation or exportation but must state the decision to the border services officer.

[24] If, as here, a person triggers section 13 immediately upon arrival in Canada—*i.e.*, in effect states that he is not importing anything into Canada—does the person have to make a report under subsection 12(1) of the Act?

[25] The answer to this legal question determines the outcome of this case:

- If the answer is yes—*i.e.*, even though Mr. Williams triggered section 13, he still had to make a report under subsection 12(1) of the Act—then Mr. Williams' failure to comply with subsection 12(1) of the Act is sufficient legal authority for the forfeiture of the currency under section 18 of the Act. As mentioned, section 18 allows for the currency to be seized where an officer has reasonable grounds to believe that a report that should have been made under the Act is not made. Thus, the currency was properly seized.

- If the answer is no—*i.e.*, Mr. Williams triggered section 13 and so he did not need to make a report under subsection 12(1) of the Act—then Mr. Williams did not offend subsection 12(1) of the Act. This changes everything: the prerequisite for section 18—which authorizes seizure only when there is a reasonable belief that a report is required and not made—is not present. Thus, there is no legal authority for the seizure of Mr. Williams' currency under section 18 of the Act and so Mr. Williams should get his currency back.

D. Mr. Williams' position

[26] Immediately upon arriving in Canada, Mr. Williams announced he was accidentally in Canada and later, consistent with this, stated that did not intend to be in Canada. This is the expression of a decision not to enter Canada and, thus, not to import anything into Canada.

Section 13 allows him to announce this "at any time" before the currency is retained or forfeited. Mr. Williams says that this includes the time before a report is made under subsection 12(1) of the Act. He emphasizes the words "at any time."

[27] Thus, according to Mr. Williams, the trigger for making a report under subsection 12(1)—the "importation or exportation" of currency over $10,000.00 CAD—was not present. According to Mr. Williams, he was not obligated to report that he was importing currency because he had already expressed his decision not to import the currency under section 13.

E. The Federal Court's decision

[28] The Federal Court rejected Mr. Williams' submissions. It adopted those of the Minister. In this Court, the Minister adopts the reasoning of the Federal Court.

[29] The Federal Court held (at para. 14) that the obligation to report to the officer "the importation…of currency" over $10,000.00 CAD in subsection 12(1) of the Act "is the first step in the importation of currency".

[30] In the Federal Court's view, the decision "not to proceed further with importing or exporting" the currency can only be taken after the report under subsection 12(1) of the Act has been made. Only after the report can a person "choose to 'opt out' of the importation pursuant to section 13" (at para. 16).

[31] According to the Federal Court, the fact that Mr. Williams did not intend to enter Canada "is irrelevant to his obligation to report and to answer truthfully the questions" asked by the border services officer under subsection 12(1) of the Act (at para. 18). In its view, interpreting section 13 in the manner suggested by Mr. Williams is inconsistent with the reporting obligations imposed by subsection 12(1) of the Act. In effect, the obligation to report under subsection 12(1) takes primacy over section 13.

[32] Therefore, according to the Federal Court, the border services officer in this case—who had a belief on reasonable grounds that Mr. Williams did not make the required report under subsection 12(1)—had the power under section 18 of the Act "to seize as forfeit the currency."

[33] In reaching its decision, the Federal Court did not analyze the role of the words "at any time" in section 13. The effect of its decision is to interpret "at any time" to mean "any time after a report has been made under subsection 12(1) of the Act"; as a result, a decision not to import under section 13 does not displace the reporting requirement imposed by subsection 12(1) of the Act.

F. Analysis

(1) Was section 13 of the Act triggered by Mr. Williams?

[34] The Federal Court proceeded on the basis that Mr. Williams had triggered section 13. In my view, on this issue, the Federal Court did not commit any reversible error.

[35] Most cross-border travellers are not knowledgeable about the law. Section 13 does not require them to use a particular, exact series of words to trigger section 13. Thus, the substance, not the form, of what the traveller says must be examined.

[36] The Minister's statement of defence concedes that immediately upon arrival in Canada and before the border services officer asked Mr. Williams any questions, Mr. Williams told the border services officer that he arrived in Canada accidentally. Later, in secondary inspection, but before his currency was seized as forfeit under section 18, Mr. Williams stated that he did not intend to enter Canada, thereby confirming his earlier statement. His words can only as construed as meaning that he was going straight back to the United States.

[37] Mr. Williams was carrying his currency on his person. One cannot import into Canada something on one's person unless one enters Canada. In the circumstances of this case, Mr. Williams' statement that he did not intend to enter Canada is in substance a statement that he did not intend to import anything on his person into Canada. If he was going straight back to the United States, he was not importing anything into Canada.

[38] Viewed in these circumstances, Mr. Williams did the objective act required to trigger section 13, the communication of a decision not to import. I conclude that Mr. Williams triggered section 13.

[39] In light of the foregoing, the Federal Court was entitled in these circumstances to proceed on the basis that Mr. Williams triggered section 13. So shall we.

[40] Thus, the legal question posed earlier now must be answered: if, as here, a person triggers section 13 immediately upon arrival in Canada—*i.e.*, in effect states that he is not importing anything into Canada—does the person have to make a report under subsection 12(1) of the Act? To answer this, we must interpret the relevant provisions of the Act.

(2) Interpreting the relevant provisions of the Act

[41] We are to interpret the relevant provisions of the Act in accordance with their text, context and purpose: *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193 and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559.

[42] In this analysis, "[w]hen the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process": *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at para. 10.

[43] Nevertheless, a court must consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading": *ATCO Gas and Pipelines Ltd v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 at para. 48.

[44] Also relevant to the process of legislative interpretation is that the seizure authorized under the Act operates in a way similar to absolute liability provisions found in a number of regulatory statutes. As I shall explain below, under this legislative regime the acts and omissions of travellers, not their intentions, are alone relevant. This Court has held that provisions such as

these can operate in draconian ways and, thus, call for careful scrutiny: *Doyon v. Canada*, 2009 FCA 152, 312 D.L.R. (4th) 142; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175 at paras. 18-19, citing *Canada v. Kabul Farms Inc*., 2016 FCA 143 and *Canada v. Guindon*, 2013 FCA 153, 360 D.L.R. (4th) 515 at paras. 54-55.

[45] I wish to offer some additional guidance concerning legislative interpretation. For clarity, none of this guidance should be construed as a comment on how the Federal Court interpreted the Act.

[46] Legislative interpretation can be tricky. One must be on guard not to introduce extraneous considerations into the proper, objective analysis of the text, context and purpose of legislation.

[47] Personal evaluations of the moral conduct of the parties, good or bad, should play no role in the analysis. In the case before us, we have a cross-border traveller who falsely declared to a border services officer how much currency he was carrying. In cases like this, some might let their reaction to the facts skew their interpretation of the legislation. That would be wrong.

[48] Also wrong would be to permit personal policies or political preferences to play a part in our interpretation of the legislation: for example, to aim for a result we personally prefer, to fasten onto what we like and ignore what we don’t, or to draw upon what we think is best for Canadian society. Common to these practices is an analytical focus on what we want the legislation to mean rather than on what the legislation authentically means.

[49] In our legal system, the starting point is that only elected legislators—not unelected judges—have the "exclusive" power to express their personal policies or political preferences in binding legislation: see the opening words of ss. 91 and 92 of the *Constitution Act, 1867*. These words enshrine a principle won four centuries ago at the cost of much bloodshed: for a recent restatement and discussion of the principle, see *R (Miller) v Secretary of State for Exiting the European Union*, [2017] UKSC 5, [2017] 2 W.L.R. 583 at paras. 40-46. The only exception is where legislation expressly delegates the power to legislate: see *Hodge v. The Queen* (1883), 9 App. Cas. 117, 9 C.R.A.C. 13 (J.C.P.C.) (regulations made by delegatees) and *In Re Gray* (1918), 57 S.C.R. 150, 42 D.L.R. 1 (orders akin to legislation made by delegatees). But even then the delegation often must meet strict requirements of a constitutional nature: see, *e.g.*, *Eurig Estate (Re)*, [1998] 2 S.C.R. 565, 165 D.L.R. (4th) 1, *Ontario Home Builders' Association v. York Region Board of Education*, [1996] 2 S.C.R. 929, 137 D.L.R. (4th) 449 and *Ontario Public School Boards' Assn. v. Ontario (Attorney General)* (1997), 151 D.L.R. (4th) 346 at pp. 362-365, 45 C.R.R. (2d) 341 at pp. 356-359 (Ont. Gen. Div.) (discussion of Henry VIII clauses).

[50] Absent a successful argument that legislation is inconsistent with the Constitution, judges—like everyone else—are bound by the legislation. They must take it as it is. They must not insert into it the meaning they want. They must discern and apply its authentic meaning, nothing else.

[51] How do we go about this? As the authorities suggest, we are to investigate the text, context and purpose of the legislation as objectively and fairly as we can. On this, especially when investigating the purpose, we have assistance: the *Interpretation Act*, R.S.C. 1985, c. I-2,

canons of statutory construction known to both legislative drafters and courts, and other legitimate aids to interpretation such as—in certain circumstances and with appropriate caution—extraneous, contemporaneous materials (*e.g.*, regulatory impact or official explanatory statements), legislative debates, and legislative history.

[52] A frequently used tool in the interpretive process is to assess the likely effects or results of rival interpretations to see which accords most harmoniously with text, context and purpose. This is appropriate. The judge is assessing effects or results not to identify an outcome that accords with personal policies or political preferences. Rather the judge is assessing them against the standard, accepted markers of text, context and purpose in order to discern the authentic meaning of the legislation. For example, if the effect of one interpretation offends the legislative purpose but the effect of another interpretation does not, the latter may be preferable to the former.

[53] With these thoughts front of mind, I turn first to the purposes of the Act. While the Act's primary objectives, as set out in section 3, are to detect and prevent money laundering, terrorist financing and organized crime, both parties agree that section 13 is aimed at a different objective, namely to "[ensure] that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves": subsection 3(*b*) of the Act. Section 13, as interpreted by Mr. Williams, is consistent with this purpose. A person who has expressed his or her intention not to import currency into Canada need not make a report under subsection 12(1). The information that would have otherwise been disclosed in a report and shared with other agencies remains private.

[54] On the Minister's view of the matter, it is difficult to see what role section 13 plays.

[55] Parliament did not legislate section 13 into existence for no reason. An accepted canon of construction is that legislators do not legislate in vain. So what is behind section 13? What does expression of the decision not to import under section 13 give to a cross-border traveller?

[56] Section 13 can only mean that once a person expresses a decision not to import, that person need not report under the Act. This advances the purpose of protecting "the privacy of persons with respect to personal information about themselves" (subsection 3(*b*) of the Act). Once a person makes a currency report under subsection 12(1) of the Act, the person's privacy interests evaporate. All reports "shall" be sent to the FINTRAC who can then, in certain circumstances and for certain purposes, share that information with local police forces, the Canada Revenue Agency, provincial securities regulators, the Canada Border Services Agency, the Communications Security Establishment, Canadian Security and Intelligence Services, and even foreign governments—and the *Customs Act* also allows information obtained through a currency report to be shared widely across government institutions in certain circumstances, including FINTRAC: see, *e.g.*, sections 12(5), 55(3), 55.1, 56 and 56.1 of the Act and paragraphs 107(4)(*c*) and 107(5)(*k*) of the *Customs Act*.

[57] In response to questioning by the Court, the Minister was unable to identify a plausible role for section 13. In all of the Minister's proposed interpretations of section 13, the cross-border traveller must make a truthful report before section 13 could be invoked. But once a report is made, the horse has long left the barn. If section 13 does not eliminate the requirement

to report and prevent all these privacy-diminishing consequences, it has no practical use. Allowing a person under section 13 not to give a report averts these consequences and furthers an important purpose under subsection 3(*b*) of the Act—"ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves."

[58] Now to a consideration of context. The Act sits alongside the *Customs Act*. The Act does not displace or modify any of the provisions of the *Customs Act*. The *Customs Act* contains provisions that require individuals presenting themselves to a border services officer at a border station to answer questions, provide truthful information and cooperate fully with authorized searches: *e.g.*, sections 11(1), 98, 99, 153.1. The purposes for making full and candid disclosure at a border under the *Customs Act* include those under the Act and extend to others.

[59] These and other obligations under the *Customs Act* apply regardless of whether section 13 of the Act applies. Specifically, a statement by a person that she is turning around and going back immediately to the United States and not importing anything into Canada does not relieve that person from answering all questions honestly and cooperating fully under the *Customs Act*.

[60] The *Customs Act* sets out sanctions for contraventions of a number of its provisions, sanctions that are separate and apart from those set out under the Act: Part VI of the *Customs Act*.

[61] When the Act and the *Customs Act* are reviewed, one can see that violations of the *Customs Act* do not constitute a ground for forfeiture of currency under section 18 of the Act. Of course, contraventions of the *Customs Act* can result in serious sanctions. But those sanctions are under the *Customs Act*. And those sanctions under the *Customs Act* do not include seizure under section 18 of the Act.

[62] In interpreting the Act, some mindful of the anti-money-laundering and anti-terrorism purposes of the Act might be reluctant to hold that section 13 relieves people from disclosing necessary information. But that would be taking an unduly narrow view of the statutory landscape. People are not relieved from disclosing necessary information. Obligations under the *Customs Act* remain. Failure to abide by them can result in serious sanctions.

[63] The practical effect is that even if Mr. Williams' invocation of section 13 of the Act is effective to relieve him of making a report under subsection 12(1) of the Act, the broad obligations imposed on him by the *Customs Act* remain. If the border services officer asks questions about currency, those obligations include answering those questions honestly.

[64] This interpretation is consistent with another provision in the Act, subsection 14(3). This provides that currency or monetary instruments retained but not yet seized by a border services officer must be given back to the person if "the officer is satisfied that the currency or monetary instruments have been reported under subsection 12(1) [of the Act]" or if "the importer or exporter…advises the officer that they have decided not to proceed further with importing or exporting them." The "or" is disjunctive. Thus, even if a report has not been made under

subsection 12(1) of the Act, subsection 14(3) requires border services officers to return any retained currency or monetary instruments once the traveller advises the border services officer that the currency or monetary instruments are not being imported—in other words, using the circumstances of Mr. Williams, the person is turning around and going back to the United States. Subsection 14(3) represents a slight extension of section 13, which allows a person to express a decision not to import currency or monetary instruments only until the currency or monetary instruments are retained. Nevertheless subsection 14(3) confirms the interpretation that a failure to report is not cause for the forfeiture of currency or monetary instruments as long as a proper and timely decision not to import or export is expressed.

[65] Looking now at the text of section 13, the words “at any time” before the currency is retained under section 14 or forfeited under section 18 are, in the words of *Canada Trustco*, “precise and unequivocal.” There is no reason consistent with the purpose of the Act to read them down, especially in light of the broad disclosure obligations under the *Customs Act*. In fact, even if section 13 did not contain the words “at any time”, it may have been necessary to read those words into section 13 to give meaning to it: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at pp. 211-214.

[66] Again, looking at the text, the obligation under subsection 12(1) is to report “the importation…of currency” over $10,000.00 CAD. Mr. Williams, having declared he was not intending to enter Canada, was not importing anything. As he was not importing anything, he had no report of importation to make under subsection 12(1).

[67] The Minister submits that Mr. Williams' subjective intention not to import the currency is irrelevant: *Azouz v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1222; *Zeid v. Canada (Public Safety and Emergency Preparedness)*, 2008 FC 539; *Hoang v. Canada (Minister of National Revenue)*, 2006 FC 182. I agree only insofar as the Minister suggests that a decision not to import must be expressed to the border services officer and that it is no defence for a traveller to argue that he or she did not intend to contravene the reporting requirement or had no knowledge they were in contravention. The cases cited stand only for these two propositions and neither justifies the seizure of Mr. Williams' currency.

[68] Section 13 as I have interpreted it does not rely on a subjective intention not to import. To trigger section 13, as the parties agree, a person must express the decision. In substance, Mr. Williams expressed to the border services officer his decision not to import. By doing that act, he triggered section 13.

[69] In this Court, Mr. Williams is not making any submissions about his intention. Rather he is submitting that because of his act of expressing his decision not to import, he cannot be taken in law to be importing currency. Arriving in Canada by accident, in substance he expressed his decision to turn around and go back to the United States right away. Thus, under subsection 12(1), he had no obligation to report "the importation or exportation of currency." And thus, there was no basis for the seizure of his currency under section 18.

[70] The Minister also points to subsection 12(4) of the Act which requires travellers to "answer truthfully any questions asked by the officer in the performance of the officer's duties

and functions" under Part 2 of the Act and adds that Mr. Williams did fail to answer truthfully the officer's question about how much currency he was carrying, a question that falls under Part 2 of the Act. But this is of no moment. The forfeiture of the currency under section 18 is available only on the basis of reasonable grounds to believe subsection 12(1) is infringed, not subsection 12(4). The text of section 13 does not make it contingent on the cross-border traveller making a report or making an accurate report; again, it says it can be invoked "at any time" before the currency is retained under section 14 or forfeited under section 18. And, as previously mentioned, recourses may exist under the Act and the *Customs Act* for Mr. Williams' failure to answer questions truthfully, such as the obligation under subsection 12(4) of the Act: see, *e.g.*, subsection 74(1) of the Act and sections 11(1), 153, 153.1, 160, 160.1 and 161 of the *Customs Act*. But none of those recourses permit the forfeiture of the unreported currency under section 18 of the Act.

[71] To reiterate, this interpretation of section 13 does not turn it into something like a "get out of jail free" card for money launderers, terrorist financiers and other transnational criminals. The Act and section 13 occupy a small corner in the broader universe of obligations created by the *Customs Act* and the powerful investigatory and enforcement mechanisms that accompany it. Backed by the threat of significant financial and custodial consequences, border services officers wield wide-ranging powers under the *Customs Act* to question travellers without cause, search travellers and their possessions, seize those possessions, compel truthful responses, arrest travellers committing offences under the *Criminal Code*, R.S.C., 1985, c. C-46, and share information widely to protect the interests of Canadians and their institutions of government: see *e.g.*, sections 11(1), 98, 99, 107, 110, 153, 153.1, 160, 160.1, 161, 163.5 of the *Customs Act*.

These powers and penalties loom large over every cross-border traveller, including Mr. Williams.

[72] Section 13 performs a very limited function at the border: it protects a privacy interest—the amount of currency or monetary instruments in one's possession—for individuals who are not importing currency or monetary instruments. It does not immunize travellers engaging in unlawful activities.

[73] For the foregoing reasons, the seizure and forfeiture of Mr. Williams' currency was not authorized by law.

[74] It is not necessary to consider Mr. Williams' alternative submissions under the *Canadian Bill of Rights* or the *Charter*.

[75] Nothing in these reasons affects any recourse under the *Customs Ac*t that may exist against Mr. Williams on the facts of this case.

G. Proposed disposition

[76] For the foregoing reasons, I would allow the appeal, set aside the order of the Federal Court, grant Mr. Williams' motion for summary judgment with costs of the action and costs here and below on the motion. Pre-judgment interest should run from the date of seizure until the

return of the currency and should be calculated on the basis that the cause of action arose in Ontario in accordance with subsection 36(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

"David Stratas"
J.A.

"I agree.
M. Nadon J.A."

"I agree.
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-81-17

APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE McDONALD DATED FEBRUARY 24, 2017, DOCKET NO. T-944-16

STYLE OF CAUSE:	FRANK WILLIAMS v. CANADA (MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS)
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 22, 2017
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	NADON J.A. WEBB J.A.
DATED:	DECEMBER 28, 2017

APPEARANCES:

Leo Salloum	FOR THE APPELLANT
Jacob Pollice	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Grill Barristers Toronto, Ontario	FOR THE APPELLANT
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT