Federal Court Cour fédérale

Date: 20180228

Docket: T-113-16

Citation: 2018 FC 229

Ottawa, Ontario, February 28, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

RYAN FLARO, GABRIELLE BERGERON AND MAURICE FLARO

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

JUDGMENT AND REASONS

[1] In the underlying action, the Plaintiffs claim that the Defendant is wrongfully with holding cash of approximately $180,000.00 which was seized along with tobacco products and firearms pursuant to a warrant issued under the *Criminal Code,* R.S.C., 985 c. C-46 and the *Excise Act, 2001* S.C. 2002, c.22 [the *Act*]. By motion, both the Plaintiffs and the Defendant seek to have this matter summarily determined, albeit on different grounds.

[2] For the reasons that follow, I have allowed the Defendant's summary judgment motion against the Plaintiffs. I have concluded that the provisions of the *Act* apply to the seized cash, and that the Plaintiffs failed to take the available steps under the *Act* to object to the seizure.

I. Relevant Background

[3] The relevant factual background is largely undisputed.

[4] The Plaintiffs are a family who reside together in the residence where the seizure of the funds at issue took place.

[5] On July 6, 2010, a truck leaving the Plaintiffs' residence was stopped by the RCMP and was found to be carrying contraband tobacco.

[6] On July 7, 2010, the RCMP executed a search warrant at the Plaintiffs' residence. According to the search warrant, it was issued under s.487 of the *Criminal Code,* and the information upon which the RCMP obtained the search warrant stated that the RCMP had reasonable grounds to believe there were offences under the *Act*. In the course of executing the search warrant, the RCMP seized $181,183.00 in cash [the Seized Funds] along with other items.

[7] The Plaintiffs were charged with various offences under the *Act* and the *Criminal Code*.

[8] Following the seizure, pursuant to s.489.1 of the *Criminal Code*, the RCMP prepared a "Report to a Justice" which itemized the Seized Funds as well as the other items seized.

[9] On July 9, 2010, the RCMP forwarded to the Plaintiffs, by registered mail, a Notice titled "Canada Revenue Agency RCMP Seizure Report Excise Act, 2001" [Seizure Report]. The Seizure Report notes that the funds were seized pursuant to s.260 of the *Act* for violation of s. 32(1) of the *Act*.

[10] On the front page of the Seizure Report is a section titled: "Right to Request a Minister's Decision". This section outlines the procedure and the timelines under the *Act* to request a review of the seizure by the Minister of National Revenue [Minister].

[11] On July 12, 2010, the RCMP received confirmation that the Plaintiffs received the Seizure Report by registered mail.

[12] On January 20, 2014, the criminal charges against the Plaintiffs were dropped. The items seized pursuant to the search warrant were returned to the Plaintiffs. The Seized Funds were not returned.

[13] On March 24, 2014, a lawyer acting on behalf of the Plaintiffs wrote to the Canada Revenue Agency [CRA], seeking the return of the Seized Funds.

[14] On April 25, 2014, the CRA responded that the Plaintiffs' request for the Seized Funds, pursuant to s.272 of the *Act* was out of time.

[15] In the action filed in this matter, the Plaintiffs seek a declaration that the Defendant is unlawfully detaining the Seized Funds. They seek restitution and/or damages in the amount of the Seized Funds.

II. Plaintiffs' Motion

[16] The Plaintiffs seek summary judgment pursuant to Rule 215 of the *Federal Courts Rules,* SOR/98-106 [the Rules]. Alternatively, they seek order for a summary trial pursuant to Rule 213; or, an order for determination of a preliminary question of law pursuant to Rule 220; or, a declaration that the Defendant is unlawfully detaining the sum of $181,183.00; or, an order for restitution/damages.

[17] The Motion relief sought by the Plaintiffs' centres on whether the *Criminal Code* or the *Act* applies to the Seized Funds.

III. Defendant's Motion

[18] The Defendant by motion seeks an order striking the Plaintiffs' statement of claim as disclosing no reasonable cause of action pursuant to Rule 221, and an order summarily dismissing the Statement of Claim pursuant to Rules 213 and 215 as being outside the Court's jurisdiction. Alternatively, the Defendant seeks an order striking the Statement of Claim as being statute barred pursuant to the Ontario *Limitations Act* 2002, SO 2002, c 24 Sched B and s.39 of the *Federal Courts Act.*

[19] The Defendant argues that the provisions of the *Act* are a full answer to the Plaintiffs' claim to the Seized Funds.

IV. Relevant Statutory Provisions

[20] The relevant provisions of the *Act* and the *Criminal Code* are outlined in Annex A.

V. Issues

[21] The following issues will be addressed:

A. Is summary judgment appropriate?

B. Does the *Excise Act* apply to the Seized Funds?

C. Do the *Criminal Code* provisions apply?

D. Do the provisions of the *Excise Act* oust the Court's jurisdiction?

VI. Analysis

A. *Is summary judgment appropriate?*

[22] As indicated above, both parties seek summary judgment on different grounds. Alternatively, the Defendant seeks an order to strike the Plaintiffs' Statement of Claim as disclosing no reasonable cause of action.

[23] In my view, this is an appropriate case for determination by summary judgment rather than by way of a motion to strike. On a motion to strike the test is whether it is "plain and

obvious" that the claim discloses no reasonable cause of action (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980). On a motion to strike for want of jurisdiction, it must be "plain and obvious" and "beyond doubt" that the Court lacks jurisdiction (*Sokolowska v Canada*, 2005 FCA 29 at paras 14-15; *Hodgson v Ermineskin Indian Band* No. 942, [2000] FCJ No 313). The motion to strike is a "tool to be used with care" and in a case where jurisdiction is an issue there must be "no scintilla of a cause of action that this Court has jurisdiction to hear" (*Beima v Canada*, 2015 FC 1367 at paras 29-30 [*Beima*]).

[24] In this case the motion to strike is not the appropriate mechanism because it is not "plain and obvious" that the Court does not have jurisdiction. Further it is not clearly apparent that the Plaintiffs do not have a "scintilla" of a cause of action, nor is it "plain and obvious" that the pleadings should be struck without a full assessment of the legal question.

[25] There is no significant dispute between the parties on the relevant facts, and there are no credibility issues raised. These factors weigh in favor of being able to determine this matter by summary judgment.

[26] The sole legal issue is which statute applies to the Seized Funds. It is not clear that the Plaintiffs' or Defendant's proposed interpretation of the statute is correct. In other words, the Plaintiffs have failed to show that there is no genuine issue with the Defendant's defence and its proposed interpretation of the legislation at issue.

[27] Therefore, the only genuine issue with respect to the Plaintiffs' motion is the question of statutory interpretation, which the Court is empowered to determine on a motion for summary judgment pursuant to Rule 215(2)(b) of the Rules (*Canada (Citizenship and Immigration) v Zakaria*), 2014 FC 864 at paras 17-20).

[28] Here, there are similarities with *Pinder v Canada*, 2015 FC 1376 at para 68, aff'd at 2016 FCA 317 [*Pinder*] where the Court states:

> I am satisfied that the first issue addressed by the Defendants raises a genuine issue for trial, involving statutory interpretation. However, in light of the Plaintiff's response to the Defendants' arguments and the Plaintiff's own Motion for summary judgment and summary trial, this issue can be determined in the disposition of these motions, since the Plaintiffs raise the same issue, of interpretation and scope, albeit from a different perspective.

[29] As in *Pinder*, the issue of jurisdiction is tied to the Plaintiffs' motion on the merits. Both the Plaintiffs' and the Defendant's motions involve issues of statutory interpretation. Therefore, like in *Pinder*, both parties are viewing the same issue from different perspectives.

[30] The test for summary judgment is whether there is "no genuine issue for trial" (*Manitoba v Canada*, 2015 FCA 57 at para 15 [*Manitoba*]). This general test was confirmed by the Supreme Court of Canada in *Hryniak v Mauldin*, 2014 SCC 7 at para 49:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits of a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[31] Under the Rules, there is no genuine issue for trial where “there is no legal basis” to the claim on the law or evidence presented (*Manitoba*, at para 15; *Burns Bog Conservation Society v Canada*, 2014 FCA 170 at paras 35-36).

[32] As both parties here seek a determination on the merits, summary judgment is “the just, most expeditious and least expensive determination” of this matter within the meaning of Rule 3 of the Rules.

B. *Does the Excise Act apply to the Seized Funds?*

[33] The Plaintiffs argue that the Seized Funds were not seized under the *Act*. They argue that s. 260(1) of the *Act,* which authorizes inspections, and s. 260(2)(f) , which authorizes seizures, do not apply because there was never a finding of a contravention of s. 32 of the *Act*. Therefore they argue that without a finding of contravention, there cannot be a forfeiture of the Seized Funds under s.267 of the *Act*.

[34] They argue that the Defendant chose to proceed with the seizure under the *Criminal Code,* evidenced by the search warrant obtained pursuant to s. 487 of the *Criminal Code.* Further they point out that the report regarding the seized items including the Seized Funds was prepared pursuant to s.489.1 of the *Criminal Code.* Therefore they argue that s.490 of the *Criminal Code* applies, and once the criminal charges against the Plaintiffs were dropped, the Seized Funds should have been returned to them by operation of s.490 of the *Criminal Code*.

[35] The Plaintiffs argue that the RCMP cannot act simultaneously under the *Criminal Code* and the *Act* with respect to the Seized Funds. They argue that there is a distinction between their actions under the *Criminal Code* and their actions under a regulatory statue like the *Act*. They rely upon *R. v Jarvis*, 2002 SCC 73 [*Jarvis*] in support of this argument.

[36] The task for this Court, in considering the provisions of the *Act*, and determining if they apply to the Seized Funds, is to interpret the provisions of the *Act* in accordance with the modern approach of statutory interpretation, by considering the text, context, and purpose of the *Act* (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27). In this task, the *Act* needs to be considered as an organic whole, with all parts working in cooperation towards a logical goal and in support of its overall purpose (*R. v L.T.H.*, 2008 SCC 49).

[37] Pursuant to s. 260(1) of the *Act*, an officer (which includes an RCMP officer under s.2 of the *Act*), is permitted to inspect a person's property in order to "determine…compliance with this Act." Pursuant to s. 260(2)(f), the officer is entitled to "seize anything by means of or in relation to which the officer reasonably believes this Act has been contravened." The operative language for a seizure under the *Act* is a "reasonable belief" that a contravention has occurred. Once seizure occurs, the item is forfeited under s.267. Based upon these provisions, proof of a contravention under s.32(1) is not necessary before a seizure is permitted.

[38] The wording of the *Act* is clear, therefore applying the ordinary meaning to the words used in the *Act* will play a dominant role in the Court's interpretative role (*Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54 at para 10). Section 267 of the *Act* speaks to "the time of

contravention” as being when an officer has reasonable belief of a contravention. Further the context of the *Act* in providing a process for Ministerial review of the seizure supports this interpretation.

[39] Further, s. 275(5) provides that if a Minister decides to return a “seized thing” it “ceases to be forfeit.” This supports the position that forfeiture occurs, before there has been a Ministerial review, based on an officer’s reasonable belief.

[40] With respect to the overall objective of the *Act*, courts have long affirmed the legitimacy of seizure and forfeiture activities to secure Crown revenue in the public interest, as being in keeping with the purpose of legislation such as the *Act* (*Canada v CC Havanos Corp. Ltd.*, 2004 FCA 110 at paras 11-14).

[41] The Plaintiffs’ argument that there must be a finding of a contravention under the *Act* before a legal forfeiture occurs is not consistent with the wording of the *Act* or the overall objective of the *Act.* Further, such an interpretation would undermine the purpose of the *Act* to provide a comprehensive scheme in support of the goal of revenue collection. It would also render meaningless the entire process of Ministerial review provided for in the *Act*.

[42] A similar statute was analyzed in *Zolotow v Canada (Attorney General)*, 2011 FC 816, aff’d at 2012 FCA 164 [*Zolotow*] where the Court was considered the seizure-forfeiture provisions under the *Customs Act.* The Court affirmed that, under the *Customs Act*, a seizure occurs when “goods are seized by an officer who believes on reasonable grounds that the

Customs Act or its regulations have been contravened" (*Zolotow*, at para 19). Similarly, the Court held that if it were otherwise, "it would render a Ministerial review meaningless."

[43] Similar reasoning applies here. If there must be a finding of a contravention before a seizure occurs, then the provisions of the *Act* which allow the Minister to determine if a contravention was or was not justified under the *Act* would be meaningless.

[44] The Plaintiffs' reliance on *Jarvis* is misplaced in light of this analysis. *Jarvis* held that where the predominant purpose of a particular inquiry is the determination of penal liability, regulatory officials must relinquish the use of regulatory powers. The Plaintiffs here argue that since the RCMP used the *Act* inspection provisions to conduct a search for penal purposes that the RCMP was seeking penal liability and therefore the *Act* cannot apply to these circumstances.

[45] In determining whether a matter is penal, one must look to all the relevant circumstances (*Jarvis*, at para 94). In this case, the real question is whether the evidence obtained under the RCMP's inspection could be used to support a penal investigation, either under the *Act* or the *Criminal Code*. This is how the question was put in *R. v Ling*, 2002 SCC 74 at para 5 [*Ling*] in respect of tax matters: "Evidence gathered by the CCRA….in proper exercise of its audit function, may be used in a subsequent investigation or prosecution under s.239(1)." In that case, s.239(1) carried penal consequences.

[46] In this case, the Seized Funds were seized pursuant to a search warrant for the predominant purpose of verifying compliance with the *Act.* This was identified as the

foundational basis upon which the warrant was obtained and was confirmed with the Notices of Seizure. Therefore there is no discrepancy between the terms upon which the warrant was issued and the grounds upon which the Seized Funds were held. The original purpose of the warrant was to determine compliance with the *Act*, and it was only on a reasonable belief of a violation of the *Act* that an officer had grounds to seize according to the *Act*.

[47] Further, the relevance of an investigation crossing into the penal context is the imposition of greater requirements under the *Charter of Rights and Freedoms* [the *Charter*] (*Jarvis*, at para 2; *Ling*, at para 5). For example, evidence improperly obtained under regulatory powers when the predominant purpose is penal (involving search and seizure powers) may be excluded under s.24(2) of the *Charter.* Here, the Plaintiffs do not seek the exclusion of evidence and no *Charter* arguments are made.

[48] Instead, the Plaintiffs essentially seek to impugn the propriety of reliance by the RCMP on the *Act* under authority of a *Criminal Code* warrant. They seek to attack the original warrant. The Court cannot consider the validity of the original warrant in this proceeding.

[49] Accordingly in the circumstances, I am satisfied that the *Act* applies in this case, and the Plaintiffs' proposed interpretation would undermine the text, context, and purpose of the *Act* (*Williams v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at para 52).

C. *Do the Criminal Code provisions apply?*

[50] The Plaintiffs argue that because the Defendant proceeded on the basis of a *Criminal Code* warrant, it was obligated to return the Seized Funds to the Plaintiffs when the criminal charges against them were dropped. Having concluded that the *Act* applies to the Seized Funds, I must now consider if the relevant provisions of the *Criminal Code* and the *Act* are in conflict.

[51] In considering these two statutes, in addition to considering the text, context and purpose, the Court must also adopt an approach which promotes the harmonization of two statutes. The Supreme Court explained this in *R. v Ulybel Enterprises Ltd.*, 2001 SCC 56 at paras 28-30 [*Ulybel*] as follows:

> … in considering the "entire context" of s. 72(1) and the intent of Parliament, it is important to keep in mind the principles for harmonizing different statutes. Professor Ruth Sullivan expressed these principles as follows, in *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 288:
>
>> The meaning of words in legislation depends not only on their immediate context but also on a larger context which includes the Act as a whole and the statute book as a whole. The presumptions of coherence and consistency apply not only to Acts dealing with the same subject but also, albeit with lesser force, to the entire body of statute law produced by a legislature. . . . Therefore, other things being equal, interpretations that minimize the possibility of conflict or incoherence among different enactments are preferred.

[52] Based on the principle in *Ulybel*, two related statutes should not be interpreted so as to cancel each other out, but they should be interpreted to interact coherently (*Point-Claire (City) v*

Quebec (Labour Court), [1997] 1 SCR 1015; see also Ruth Sullivan*, Sullivan on the Construction of Statutes*, 6th ed, 2014 at 416).

[53] Accordingly in this case, an interpretation which ensures a coherent and consistent approach between the *Criminal Code* and the *Act* should prevail. It would not promote a harmonious interpretation of the statutes to find that a warrant under the *Criminal Code* automatically transforms a seizure-forfeiture under the *Act* into a matter for the *Criminal Code.* This would render the processes outlined in the *Act* inapplicable in any situation where there is a related *Criminal Code* investigation.

[54] Furthermore, contrary to the position taken by the Plaintiffs, it is well-established that a warrant under the *Criminal Code* is still valid even if a seizure occurs under another statute. In *R. v Multiform Manufacturing Co.*, [1990] 2 SCR 624 at 631 [*Multiform*], the Supreme Court of Canada confirmed that, because the *Criminal Code* search warrant provisions (now s.487) indicate that they apply to the *Criminal Code* or "any Act of Parliament", a search warrant under the *Criminal Code* could authorize the RCMP to search and seize material under the *Bankruptcy Act,* even where the *Bankruptcy Act* had relevant inspection provisions, like the *Act* here.

[55] Accordingly here, the fact that the RCMP exercised a warrant under the *Criminal Code* does not mean that the seizure could not be authorized under the *Act*. Section 487 of the *Criminal Code* specifically provides that a warrant to enforce any Act of Parliament may be issued to an officer. The warrant obtained in this case was issued on the reasonable belief that the Plaintiffs

had contravened s.32 of the *Act*. The warrant issued in respect of this reasonable belief was under s.487 of the *Criminal Code*. According to *Multiform*, this is proper.

[56] Further the provisions of the *Act* and the *Criminal Code* support this view. Although the Plaintiffs argue that the RCMP did not have a warrant under the *Act* to enter their dwelling, s. 260(4)(a) of the *Act* provides that a judge may issue *a warrant* authorizing an officer to enter a dwelling house if there are reasonable grounds to believe that the house is a place referred to in s.260(2)(a). Section 260(2)(a) provides that an officer may enter any place if there is a reasonable belief that there are items in the place “to which this Act applies.” As noted above, the information upon which the warrant was obtained in this case disclosed a reasonable belief with respect to the Plaintiffs’ dwelling. Therefore, the process followed here met the requirements of ss. 260(2)(a) and 260(4)(a).

[57] Importantly, these provisions *do not stipulate* that the warrant must be issued under the *Act* warrant provisions. Rather, these provisions speak of a “warrant.” Here, where the warrant discloses the reasonable belief under the *Act*, it authorizes the officer to enter the dwelling house. This interpretation is in keeping with the Supreme Court’s holding in *Multiform*.

[58] Additionally, section 489.1 of the *Criminal Code* provides that, on a filing of a report under that provision, the “thing” seized is to be dealt with according to s.490, which generally provides that any seized items are preserved until the end of a proceeding or investigation. However, s.490 is expressly subject to any Act of Parliament, which makes it subject to the

inspection, seizure, and forfeiture proceedings in the *Excise Act*. Accordingly, in this case, the provisions of the *Act* prevail.

[59] Based upon this analysis, I agree with the Defendant's position that the *Act* applies to the Seized Funds and the *Criminal Code* warrant does not change this conclusion.

D. *Do the provisions of the Excise Act oust the Court's jurisdiction?*

[60] Given my finding that the *Act* applies to the Seized Funds, the next consideration is whether the provisions of the *Act,* which provide a process for objections to seizures, operates so as to oust the jurisdiction of this Court to consider the Plaintiffs' claim in this case.

[61] The evidence shows that the Plaintiffs received the Seizure Report which identified how they could file an objection to the seizure of the funds at issue. The Defendant filed evidence confirming that the Seizure Report was forwarded by registered mail to the Plaintiffs and the Plaintiffs do not dispute receiving the Seizure Report.

[62] The Seizure Report, titled "RCMP Seizure Report Excise Act, 2001" states as follows:

> If you wish to file an objection to this seizure and request a decision of the Minister of National Revenue, you must give notice in writing to the officer who seized the thing. This request must be filed within ninety days after the date of the seizure.
>
> If you are past the ninety days for requesting a decision of the Minister, the Minister may, in exceptional circumstances, extend this time limit up to an additional year pursuant to section 272. In this respect, you must apply in writing to the Minister, outlining the reasons why your request for a decision was not filed within the ninety days set out in subsection 271.

[63] As indicated on the Seizure Report itself, the time frame for the Plaintiffs to object to the seizure was within 90 days of the seizure (being 2010-07-06). There is also the ability to request an extension of the objection time of up to one year in exceptional circumstances. In any event, the Plaintiffs did not avail themselves of the objection provisions within either the 90 day or 1 year timeframe.

[64] The question then is whether the existence of these objection provisions in the *Act* ousts this Court's ability to consider the Plaintiffs' claim for return of the Seized Funds outside of those provisions.

[65] Here in this action, the Plaintiffs rely upon s.17 of the *Federal Courts Act*. However s. 17(1) contains the language "[E]xcept as otherwise provided in this Act or any other Act of Parliament" and confirms that Parliament has the ability through statutory language to oust the jurisdiction of the Court over certain matters.

[66] It is accepted that Parliament can also oust the jurisdiction of the courts in favour of an administrative decision-maker or tribunal (*Bron v Canada (Attorney General),* 2010 ONCA 71 at para 29; *Regina Police Assn. Inc. v Regina (City) Board of Police Commissioners*, 2000 SCC 14 at para 34 [*Regina Police*]).

[67] In determining whether Parliament intended another forum to resolve disputes, the Supreme Court in *Regina Police*, at para 39 said:

> "[T]he key question in each case is whether the essential character of a dispute…arises either expressly or inferentially from a

> statutory scheme. In determining this question, a liberal interpretation of the legislation is required to ensure that a scheme is not offended by the conferral of jurisdiction on a forum not intended by the legislature.

[68] Although *Regina Police* related to labour arbitration, the need to determine the essential character of the dispute applies here nonetheless.

[69] Various provisions of the *Act* demonstrate that it is intended to provide a complete statutory code for the return of seized funds under the statute. The starting point is s.269 of the *Act*, which provides that a forfeiture under s.267 of the *Act* is not subject to review or "to be restrained, prohibited, removed, set aside, or otherwise dealt with except to the extent and in the manner provided under this Act."

[70] This explicit language is tied to the multi-step statutory procedure outlined in the *Act*. Under that procedure, an individual who seeks to set aside a forfeiture must file a request to the Minister. The Minister then has the power to confirm the seizure.

[71] Taken together, s.269 and the Ministerial review provisions stand strongly against judicial interference.

[72] This conclusion is supported by *Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61 at paras 28 and 29 [*C.B. Powell*] where the Federal Court of Appeal held that an aggrieved party must exhaust the administrative process before seeking judicial review. Justice Stratas wrote that:

> [28] Under the Act, Parliament has established an administrative process of adjudications and appeals in this area. This administrative process consists of initial CBSA decisions or deemed assessments under section 58, further determinations by CBSA officials under section 59, additional determinations by the President of the CBSA under section 60 and appeals to the CITT under subsection 67(1). The courts are no part of this. Allowing the courts to become involved in this administrative process before it is completed would inject an alien element into Parliament's design.
>
> [29] In addition to designing an administrative process without courts, Parliament, for good measure, has gone further and has forbidden any judicial interference. At every stage of this administrative process, in subsections 58(3), 59(6) and 62, Parliament has specified that the only permissible reviews, re-determinations or appeals are found in the administrative process described in the Act….(emphasis added).

[73] In *C.B. Powell*, the Court declined to exercise jurisdiction because of the statutory provisions which "forbid judicial interference." In both the *Customs Act* provisions in *C.B. Powell* and the *Act* here, almost identical language is used by Parliament; namely, decisions under both statutes are not "subject to be restrained, prohibited, removed, set aside or otherwise dealt with." In *C.B. Powell*, that was enough for the Court to determine that the applicants, before seeking judicial review, should exhaust the administrative regime set up by Parliament. In *C.B. Powell*, the applicants did not directly challenge the jurisdiction of the Court. In this case, where the Defendant directly challenges the jurisdiction of the Court, the same considerations apply.

[74] Furthermore, the wording of s. 276(1) of the *Act* outlines the narrow conditions under which judicial review is permitted. Under that provision, subject to time limits, an applicant may

appeal the Minister's decision under the *Act* "by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant."

[75] Section 276(1) coupled with the ouster language and the statutory process of review expressly provide when recourse to the Federal Court is permitted. The statutory interpretation maxim of *expressio unius est exclusio alterius* (implied exclusion) applies here: that is, by including this limited right of appeal, and the ouster clause, the Court can conclude that Parliament did not intend aggrieved individuals under the *Act* to bypass Ministerial review by bringing a civil action in the Federal Court. While the implied exclusion rule cannot be the sole basis for interpreting a statute (*Green v Law Society of Manitoba*, 2017 SCC 20 at para 37), here, the rule is consistent with a purposive interpretation of the *Act* and Parliament's intent in establishing a statutory code for Ministerial review in light of the nature of forfeiture statutes outlined above.

[76] On these facts, these Plaintiffs seek the same remedy that they may have received had they followed the statutory process for review by the Minister. Considering that they failed to take recourse under those provisions, it would undermine Parliament's intent to now allow the Plaintiffs to wait out the time-limits in the *Act* and seek the same remedy in the Federal Court they should have sought from the Minister.

[77] For these reasons, I find that the *Act* is a full answer to the Plaintiffs' claim and by failing to take steps under the *Act* to object to the seizure within the timeframes outlined there is no genuine issue for trial respecting the Plaintiffs' claim.

[78] Accordingly I am granting the Defendant's motion for summary judgment.

VII. Other Relief Requested

[79] Given my findings above, it is not necessary that I address the other relief claimed by the parties.

VIII. Conclusion and Costs

[80] In the circumstances I am satisfied that there is no genuine issue for trial. I therefore grant summary judgment in favour of the Defendant and dismiss the Plaintiffs' action with costs payable by the Plaintiffs to the Defendant in the agreed upon amount of $3,000.00.

JUDGMENT in T-113-16

THIS COURT'S JUDGMENT is that:

1. The Plaintiffs' Motion for summary judgment against the Defendant is dismissed;
2. The Defendant's Motion for summary judgment against the Plaintiffs is granted;
3. The Plaintiffs' action is hereby dismissed; and
4. The Defendant shall have costs in the amount of $3,000.00.

"Ann Marie McDonald"

Judge

ANNEX A

Excise Act, 2001:

Unlawful possession or sale of tobacco products	**Possession ou vente illégale de produits du tabac**
32 (1) No person shall sell, offer for sale or have in their possession a tobacco product unless it is stamped.	**32 (1)** Il est interdit de vendre, d’offrir en vente ou d’avoir en sa possession des produits du tabac qui ne sont pas estampillés.
[…]	[…]
By whom	**Inspection**
260 (1) An officer may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a person in order to determine whether that or any other person is in compliance with this Act.	**260 (1)** Le préposé peut, à toute heure convenable, pour l’exécution ou le contrôle d’application de la présente loi, inspecter, vérifier ou examiner les registres, les procédés, les biens ou les locaux d’une personne afin de déterminer si celle-ci ou toute autre personne agit en conformité avec la présente loi.
Powers of officer	**Pouvoirs du préposé**
(2) For the purposes of an inspection, audit or examination, the officer may	**(2)** Afin d’effectuer une inspection, une vérification ou un examen, le préposé peut :
(a) subject to subsection (3), enter any place in which the officer reasonably believes the person keeps records or carries on any activity to which this Act applies;	**a)** sous réserve du paragraphe (3), pénétrer dans tout lieu où il croit, pour des motifs raisonnables, que la personne tient des registres ou exerce une activité auxquels s’applique la présente loi;
(b) stop a conveyance or direct that it be moved to a place where the inspection	**b)** procéder à l’immobilisation d’un moyen de transport ou le

or examination may be performed;

faire conduire en tout lieu où il peut effectuer l'inspection ou l'examen;

(c) require any individual to be present during the inspection, audit or examination and require that individual to answer all proper questions and to give to the officer all reasonable assistance;

c) exiger de toute personne de l'accompagner pendant l'inspection, la vérification ou l'examen, de répondre à toutes les questions pertinentes et de lui prêter toute l'assistance raisonnable;

(d) open or cause to be opened any receptacle that the officer reasonably believes contains anything to which this Act applies;

d) ouvrir ou faire ouvrir tout contenant où il croit, pour des motifs raisonnables, que se trouvent des choses auxquelles s'applique la présente loi;

(e) take samples of anything free of charge; and

e) prélever, sans compensation, des échantillons;

(f) seize anything by means of or in relation to which the officer reasonably believes this Act has been contravened.

f) saisir toute chose dont il a des motifs raisonnables de croire qu'elle a servi ou donné lieu à une contravention à la présente loi.

Prior authorization

(3) If any place referred to in paragraph (2)(a) is a dwelling-house, the officer may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).

Autorisation préalable

(3) Si le lieu mentionné à l'alinéa (2)a) est une maison d'habitation, le préposé ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisé par un mandat décerné en application du paragraphe (4).

Warrant to enter dwelling-house

(4) A judge may issue a warrant authorizing an officer

Mandat d'entrée

(4) Sur requête ex parte du ministre, le juge saisi peut

to enter a dwelling-house subject to the conditions specified in the warrant if, on ex parte application by the Minister, a judge is satisfied by information on oath that

décerner un mandat qui autorise le préposé à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur la foi d'une dénonciation faite sous serment, que les éléments suivants sont réunies :

(a) there are reasonable grounds to believe that the dwelling-house is a place referred to in paragraph (2)(a);

a) il existe des motifs raisonnables de croire que la maison d'habitation est un lieu visé à l'alinéa (2)a);

(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; and

b) il est nécessaire d'y pénétrer pour l'exécution ou le contrôle d'application de la présente loi;

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

c) un refus d'y pénétrer a été opposé, ou il est raisonnable de croire qu'un tel refus sera opposé.

Orders if entry not authorized

Ordonnance en cas de refus

(5) If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

(5) Dans la mesure où un refus de pénétrer dans une maison d'habitation a été opposé ou pourrait l'être et où des registres ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'exécution ou le contrôle d'application de la présente loi peut, à la fois :

(a) order the occupant of

a) ordonner à l'occupant de

the dwelling-house to provide an officer with reasonable access to any record or property that is or should be kept in the dwelling-house; and

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

la maison d’habitation de permettre au préposé d’avoir raisonnablement accès à tous registres ou biens qui y sont gardés ou devraient l’être;

b) rendre toute autre ordonnance indiquée en l’espèce pour l’application de la présente loi.

Definition of dwelling-house

(6) In this section, dwelling-house means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

Définition de maison d’habitation

(6) Au présent article, maison d’habitation s’entend de tout ou partie d’un bâtiment ou d’une construction tenu ou occupé comme résidence permanente ou temporaire, y compris :

a) un bâtiment qui se trouve dans la même enceinte qu’une maison d’habitation et qui y est relié par une baie de porte ou par un passage couvert et clos;

b) une unité conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée.

[…]

Forfeiture from time of contravention

267 Subject to the reviews and appeals provided for under this Act, anything by means of or in relation to which a contravention under this Act was committed is forfeit to Her Majesty from the time of the

[…]

Confiscation d’office à compter de l’infraction

267 Sous réserve des révisions, réexamens, appels et recours prévus par la présente loi, toute chose ayant servi ou donné lieu à une contravention à la présente loi est confisquée au profit de Sa Majesté à compter

contravention.

de la contravention.

[…]

[…]

Review of forfeiture

269 The forfeiture of a thing under section 267 or any security held as forfeit instead of the thing is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided under this Act.

Conditions de révision

269 La confiscation d'une chose en vertu de l'article 267, ou celle des garanties qui en tiennent lieu, est définitive et n'est susceptible de révision, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues par la présente loi.

[…]

[…]

Request for Minister's decision

271 (1) Any person on whom a penalty is imposed under section 254 or from whom a thing is seized under section 260 may request that the Minister review the imposition of the penalty or the seizure and make a decision under section 273.

Demande de révision

271 (1) La personne à qui une pénalité a été imposée en vertu de l'article 254 ou à qui une chose a été saisie en vertu de l'article 260 peut demander que le ministre examine l'imposition de la pénalité ou la saisie et prenne la décision prévue à l'article 273.

Time limit for making request

(2) A request must be made within 90 days after

(a) the date of the service or sending of the notice of the imposed penalty; or

(b) in the case of a thing, the date on which the seizure of the thing was

Délai

(2) La demande doit être présentée dans les quatre-vingt-dix jours suivant, selon le cas :

a) la date de signification ou d'envoi de l'avis de pénalité;

b) dans le cas d'une chose, la date à laquelle sa saisie a été portée à la connaissance

brought to the notice of the person from whom the thing was seized.

du saisi.

How request made

(3) A request must be made in writing

(a) if the request is in respect of a penalty imposed, to the office of the Agency from which the notice of the imposed penalty is issued; or

(b) if the request is in respect of a seizure of a thing, to the officer who seized the thing.

Modalités

(3) La demande doit être présentée par écrit :

a) si elle a trait à une pénalité imposée, au bureau de l’Agence ayant délivré l’avis de pénalité;

b) si elle a trait à une saisie, au préposé ayant effectué la saisie.

Burden of proof

(4) The burden of proving that a request was made lies on the person claiming that it was made.

Charge de la preuve

(4) Il incombe à la personne qui prétend que la demande a été présentée de le prouver.

Commissioner to provide reasons

(5) On receipt of a request, the Commissioner shall without delay provide to the person making the request written reasons for the seizure or the imposition of the penalty.

Motifs

(5) Sur réception de la demande, le commissaire fournit sans délai par écrit à la personne ayant présenté la demande les motifs de l’imposition de la pénalité ou de la saisie.

Evidence

(6) The person making a request may submit any evidence that the person wishes the Minister to consider for the purposes of making the decision within 30 days after the date on which the written

Preuve

(6) La personne ayant présenté la demande dispose de trente jours à compter de l’envoi des motifs pour produire tous éléments de preuve dont elle souhaite que le ministre tienne compte dans sa décision.

reasons were sent.

Form of evidence

(7) Evidence may be given by affidavit sworn before a commissioner for taking oaths or any other person authorized to take affidavits.

Forme de la preuve

(7) Les éléments de preuve peuvent être produits par déclaration sous serment devant un commissaire aux serments ou toute autre personne autorisée à recevoir les serments.

Extension of time by Minister

272 (1) If no request for a decision under section 271 is made within the time limited by that section, a person may make a written application to the Minister to extend the time for making a request.

Prorogation de délai

272 (1) Si aucune demande de décision visée à l'article 271 n'est faite dans le délai imparti à cet article, une personne peut demander au ministre, par écrit, de proroger ce délai.

Conditions — grant of application

(2) The Minister may extend the time for making a request under section 271 if an application under subsection (1) is made within one year after the time limit for a request and the Minister is satisfied that

> **(a)** the applicant had a bona fide intention to make the request before the expiration of the time limit but was unable to do so and was unable to instruct another person to do so on the applicant's behalf;
>
> **(b)** the application was made as soon as circumstances permitted it

Conditions

(2) Le ministre peut proroger le délai pour présenter une demande en vertu de l'article 271 si une demande en ce sens lui est présentée dans l'année suivant l'expiration du délai et s'il est convaincu de ce qui suit :

> **a)** le demandeur avait véritablement l'intention de présenter la demande avant l'expiration du délai imparti, mais n'a pu ni agir ni mandater quelqu'un pour agir en son nom;
>
> **b)** la demande a été présentée dès que les circonstances l'ont permis;

to be made; and

(c) having regard to any reasons provided by the applicant and to the circumstances of the case, it would be just and equitable to extend the time.

c) compte tenu des raisons fournies par le demandeur et des circonstances en l'espèce, il est juste et équitable de proroger le délai.

Notification of decision

(3) The Minister shall notify the applicant of the Minister's decision regarding the application by registered or certified mail.

Avis de décision

(3) Le ministre informe le demandeur de sa décision par courrier recommandé ou certifié.

If application granted

(4) If the Minister decides to extend the time, the request under section 271 is deemed to have been made on the day of the decision of the Minister regarding the application.

Acceptation

(4) Si le ministre décide de proroger le délai, la demande prévue à l'article 271 est réputée avoir été présentée le jour où le ministre prend une décision concernant la prorogation de délai.

Decision final

(5) A decision of the Minister under this section is final and binding and, despite any other Act of Parliament, no appeal lies from it.

Caractère définitif

(5) Malgré toute disposition à l'effet contraire dans une autre loi fédérale, la décision du ministre est définitive et sans appel.

Decision of the Minister

273 (1) As soon after the receipt of a request under section 271 as is reasonably possible, the Minister shall review the circumstances giving rise to the imposition of the penalty or the seizure and decide whether the contravention on which the penalty or the seizure is based occurred and what action is to

Décision du ministre

273 (1) Dans les meilleurs délais possibles après la réception de la demande visée à l'article 271, le ministre examine les circonstances ayant donné lieu à l'imposition de la pénalité ou à la saisie, décide si la contravention qui fonde l'imposition de la pénalité ou la saisie a eu lieu et décide des mesures à prendre

be taken under section 274 or 275.	en vertu des articles 274 ou 275.
Notification of decision	**Avis de la décision**
(2) The Minister shall notify the person who requested the decision of the decision by registered or certified mail.	**(2)** Le ministre informe le demandeur de sa décision par courrier recommandé ou certifié.
Judicial review	**Contrôle judiciaire**
(3) The Minister's decision is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided under subsection 276(1).	**(3)** La décision du ministre n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 276(1).
If no contravention occurred	**Cas de non-contravention**
274 (1) Subject to this or any other Act of Parliament, if the Minister decides under subsection 273(1) that the contravention on which a penalty or seizure is based did not occur, the Minister shall without delay	**274 (1)** Sous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale, le ministre, s'il décide, en vertu du paragraphe 273(1), que la contravention qui fonde une pénalité ou une saisie n'a pas eu lieu :
(a) in the case of a penalty, cancel the penalty and authorize the return of any money paid on account of it and any interest that was paid in respect of it; or	**a)** dans le cas d'une pénalité, annule la pénalité sans délai et autorise sans délai la restitution des sommes versées au titre de la pénalité et des intérêts afférents;
(b) in the case of a seizure, authorize the release of the seized thing or the return of any security taken in respect of it.	**b)** dans le cas d'une saisie, autorise sans délai la levée de garde des choses saisies ou la restitution des garanties qui en tenaient lieu.
Interest on money returned	**Intérêts sur sommes**

restituées

(2) If any money is authorized to be returned to a person, there shall be paid to the person, in addition to the money returned, interest at the prescribed rate computed for the period beginning on the day after the money was paid and ending on the day on which the money is returned.

(2) Il est versé aux bénéficiaires de sommes dont la restitution est autorisée, en plus des sommes restituées, des intérêts au taux réglementaire, calculés sur ces sommes pour la période commençant le lendemain du versement des sommes et se terminant le jour de leur restitution.

[…]

[…]

If contravention occurred — seizure

(2) If the Minister decides under subsection 273(1) that the contravention on which a seizure is based did occur, the Minister may, subject to any terms and conditions that the Minister may determine,

(a) confirm the seizure;

(b) return the seized thing on receipt by the Minister of an amount of money equal

(i) to the value of the thing at the time of the seizure, as determined by the Minister, or

(ii) to a lesser amount satisfactory to the Minister;

(c) return any portion of any security taken in respect of the thing; or

(d) if the Minister considers

Cas de contravention — saisie

(2) Le ministre, s'il décide, en vertu du paragraphe 273(1), que la contravention qui fonde une saisie a eu lieu, peut, aux conditions qu'il fixe :

a) soit confirmer la saisie;

b) soit restituer la chose saisie sur réception d'une somme d'argent égale :

(i) à la valeur de la chose au moment de sa saisie, déterminée par lui,

(ii) à une somme inférieure qu'il estime acceptable;

c) soit restituer toute partie des garanties reçues;

d) soit, si nulle garantie n'a

that insufficient security was taken or if no security was received, demand any amount of money that the Minister considers sufficient in the circumstances, and the amount is payable immediately.	été donnée ou s'il estime cette garantie insuffisante, réclamer la somme d'argent qu'il juge suffisante dans les circonstances, laquelle somme est aussitôt exigible.
[…]	[…]
Forfeiture ceases	**Fin de la confiscation**
(5) If the Minister returns a seized thing or security taken in respect of a seized thing under subsection (2), the thing or the security ceases to be forfeit.	**(5)** La confiscation cesse lorsque le ministre restitue la chose saisie ou toute partie des garanties reçues en vertu du paragraphe (2).
Federal Court	**Cour fédérale**
276 (1) A person who requests a decision of the Minister under section 271 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.	**276 (1)** Toute personne qui a demandé que soit prise une décision prévue à l'article 271 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.
Ordinary action	**Action ordinaire**
(2) The Federal Courts Act and the rules made under it that are applicable to ordinary actions apply to actions instituted under subsection (1), except as varied by special rules made in respect of those actions.	**(2)** La Loi sur les Cours fédérales et les règles prises en vertu de celle-ci qui sont applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), sous réserve des adaptations occasionnées par les règles particulières à ces actions.

Criminal Code:

Information for search warrant	**Dénonciation pour mandat de perquisition**
487 (1) A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place	**487 (1)** Un juge de paix qui est convaincu, à la suite d'une dénonciation faite sous serment selon la formule 1, qu'il existe des motifs raisonnables de croire que, dans un bâtiment, contenant ou lieu, se trouve, selon le cas :
(a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,	**a)** une chose à l'égard de laquelle une infraction à la présente loi, ou à toute autre loi fédérale, a été commise ou est présumée avoir été commise;
(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,	**b)** une chose dont on a des motifs raisonnables de croire qu'elle fournira une preuve touchant la commission d'une infraction ou révélera l'endroit où se trouve la personne qui est présumée avoir commis une infraction à la présente loi, ou à toute autre loi fédérale;
(c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or	**c)** une chose dont on a des motifs raisonnables de croire qu'elle est destinée à servir aux fins de la perpétration d'une infraction contre la personne, pour laquelle un individu peut être arrêté sans mandat;
(c.1) any offence-related property,	**c.1)** un bien infractionnel,
may at any time issue a	peut à tout moment décerner un mandat

warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

autorisant un agent de la paix ou, dans le cas d’un fonctionnaire public nommé ou désigné pour l’application ou l’exécution d’une loi fédérale ou provinciale et chargé notamment de faire observer la présente loi ou toute autre loi fédérale, celui qui y est nommé :

(d) to search the building, receptacle or place for any such thing and to seize it, and

d) d’une part, à faire une perquisition dans ce bâtiment, contenant ou lieu, pour rechercher cette chose et la saisir;

(e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.

e) d’autre part, sous réserve de toute autre loi fédérale, dans les plus brefs délais possible, à transporter la chose devant le juge de paix ou un autre juge de paix de la même circonscription territoriale ou en faire rapport, en conformité avec l’article 489.1.

Restitution of property or report by peace officer

489.1 (1) Subject to this or any other Act of Parliament, where a peace officer has seized anything under a warrant issued under this Act or under section 487.11 or 489 or otherwise in the execution of duties under this or any other Act of Parliament, the peace officer shall, as soon as is practicable,

Remise des biens ou rapports

489.1 (1) Sous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale, l’agent de la paix qui a saisi des biens en vertu d’un mandat décerné sous le régime de la présente loi, en vertu des articles 487.11 ou 489 ou autrement dans l’exercice des fonctions que lui confère la présente loi ou une autre loi fédérale doit, dans les plus brefs délais possible :

(**a**) where the peace officer is satisfied,

(**i**) that there is no dispute as to who is lawfully entitled to possession of the thing seized, and

(**ii**) that the continued detention of the thing seized is not required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding,

return the thing seized, on being issued a receipt therefor, to the person lawfully entitled to its possession and report to the justice who issued the warrant or some other justice for the same territorial division or, if no warrant was issued, a justice having jurisdiction in respect of the matter, that he has done so; or

(**b**) where the peace officer is not satisfied as described in subparagraphs (a)(i) and (ii),

(**i**) bring the thing seized before the justice referred to in paragraph (a), or

(**ii**) report to the justice that he has seized the thing and is detaining it or causing it to be detained

to be dealt with by the justice in accordance with

a) lorsqu’il est convaincu :

(i) d’une part, qu’il n’y a aucune contestation quant à la possession légitime des biens saisis,

(ii) d’autre part, que la détention des biens saisis n’est pas nécessaire pour les fins d’une enquête, d’une enquête préliminaire, d’un procès ou d’autres procédures,

remettre les biens saisis, et en exiger un reçu, à la personne qui a droit à la possession légitime de ceux-ci et en faire rapport au juge de paix qui a décerné le mandat ou à un autre juge de paix de la même circonscription territoriale ou, en l’absence de mandat, à un juge de paix qui a compétence dans les circonstances;

b) s’il n’est pas convaincu de l’existence des circonstances visées aux sous-alinéas a)(i) et (ii) :

(i) soit emmener les biens saisis devant le juge de paix visé à l’alinéa a),

(ii) soit faire rapport au juge de paix qu’il a saisi les biens et qu’il les détient ou veille à ce qu’ils le soient,

pour qu’il en soit disposé

subsection 490(1).

selon que le juge de paix l'ordonne en conformité avec le paragraphe 490(1).

[…]

[…]

Detention of things seized

Détention des choses saisies

490 (1) Subject to this or any other Act of Parliament, where, pursuant to paragraph 489.1(1)(b) or subsection 489.1(2), anything that has been seized is brought before a justice or a report in respect of anything seized is made to a justice, the justice shall,

490 (1) Sous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale, lorsque, en vertu de l'alinéa 489.1(1)b) ou du paragraphe 489.1(2), des choses qui ont été saisies sont apportées devant un juge de paix ou lorsqu'un rapport à l'égard de choses saisies est fait à un juge de paix, celui-ci doit :

(a) where the lawful owner or person who is lawfully entitled to possession of the thing seized is known, order it to be returned to that owner or person, unless the prosecutor, or the peace officer or other person having custody of the thing seized, satisfies the justice that the detention of the thing seized is required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding; or

a) lorsque le propriétaire légitime ou la personne qui a droit à la possession légitime des choses saisies est connu, ordonner qu'elles lui soient remises à moins que le poursuivant, l'agent de la paix ou toute personne qui en a la garde ne le convainque que leur détention est nécessaire aux fins d'une enquête, d'une enquête préliminaire, d'un procès ou de toute autre procédure;

(b) where the prosecutor, or the peace officer or other person having custody of the thing seized, satisfies the justice that the thing seized should be detained for a reason set out in paragraph (a), detain the thing seized or order that it be detained, taking

b) lorsque le poursuivant, l'agent de la paix ou la personne qui en a la garde convainc le juge de paix que la chose saisie devrait être détenue pour un motif énoncé à l'alinéa a), détenir cette chose ou en ordonner la détention, en prenant raisonnablement soin d'en

reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a preliminary inquiry, trial or other proceeding.

assurer la conservation jusqu'à la conclusion de toute enquête ou jusqu'à ce que sa production soit requise aux fins d'une enquête préliminaire, d'un procès ou de toute autre procédure.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-113-16
STYLE OF CAUSE:	RYAN FLARO, GABRIELLE BERGERON AND MAURICE FLARO v HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	DECEMBER 14, 2017
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	FEBRUARY 28, 2018

APPEARANCES:

Mr. Gordon Campbell	FOR THE PLAINTIFFS
Ms. Zoe Oxaal	FOR THE DEFENDANT

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