Federal Court Cour fédérale

Date: 20210429

Docket: T-783-20

Citation: 2021 FC 378

Ottawa, Ontario, April 29, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

PAUL ABOU NASSAR

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] On October 28, 2019, the applicant, who was about to depart Canada on a flight from Trudeau International Airport, did not declare that he was carrying currency with a value of $10,000 or more, something he was required to do by subsection 12(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 ("*PCMLTFA*"). When this omission came to light after he was questioned by a Canada Border Services Agency ("CBSA")

officer, the applicant agreed to pay a $250.00 penalty immediately pursuant to the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412. The balance of the funds were returned to him and he continued on his way.

[2] A month later, the applicant learned that, because of this enforcement action, his membership in the NEXUS trusted traveller program had been cancelled. He requested a review of this decision.

[3] In a decision dated May 27, 2020, a Senior Program Advisor with CBSA's Recourse Directorate, exercising authority delegated by the Minister of Public Safety and Emergency Preparedness ("the Minister"), concluded that the applicant had contravened the *PCMLTFA*. The Senior Program Advisor also upheld the cancellation of the applicant's NEXUS membership. The Senior Program Advisor determined, however, that some mitigation was warranted so he reduced the period during which the applicant was ineligible to re-apply for a NEXUS membership from six years to two years from the date of the enforcement action.

[4] The applicant now applies under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of the decision upholding the cancellation of his NEXUS membership. He contends that the decision should be set aside because it was made in breach of the requirements of procedural fairness and because it is unreasonable.

[5] As I explain in the reasons that follow, while I do not agree that the requirements of procedural fairness were breached, I do agree that the decision is unreasonable. This application

must therefore be allowed, the decision set aside, and the matter remitted for reconsideration by a different decision maker.

II. BACKGROUND

A. *Section 12 of the* PCMLTFA *and Related Regulations*

[6] The pertinent statutory and regulatory provisions are set out in the Annex to these reasons.

[7] In material part, section 12 of the *PCMLTFA* requires individuals who are entering or leaving Canada to report currency or monetary instruments in their actual possession or carried in their luggage when its value equals or exceeds the amount prescribed by regulation. Subsection 2(1) of the *Cross-border Currency and Monetary Instruments Reporting Regulations* sets this amount at $10,000. The regulations also specify the manner in which such reports are to be made when one is entering or leaving Canada as well as the available penalties for failing to make a required report.

B. *The Events of October 28, 2019*

[8] The applicant was in the departures area of Trudeau International Airport, waiting to board a flight to Vienna, when he was approached by a CBSA officer. The officer, who was assigned to the CBSA's Cross-Border Currency Reporting team, asked the applicant how much currency he had in his possession. According to the officer, the applicant replied that he had $6,000.00 USD. The officer asked the applicant to accompany him to a place where the

currency could be counted. The applicant agreed. Once there, the applicant removed a quantity of US currency from his pocket. When the currency was counted, it was found to amount to $7,736.00 USD. At the exchange rate at the time, this was equivalent to $10,100.12 CAD.

[9] The officer asked the applicant whether he had any other currency with him. The applicant replied that he did not. The officer then asked to look in the applicant's carry-on bag. While there is a dispute between the officer's account and the applicant's as to who actually looked in the bag, there is no dispute that an envelope containing €1450.00 was found in an inside zippered pocket. At the exchange rate at the time, this was equivalent to $2,100.61 CAD. The applicant also had $85.00 in Canadian currency. In total, the value of the currency in the applicant's possession was $12,285.73.

[10] Being in possession of currency with this total value, the applicant was required to report the funds to the CBSA in a prescribed manner. Because he had not done so, the officer seized the funds under subsection 18(1) of the *PCMLTFA*. However, as provided for by subsection 18(2) of the same Act, in the absence of any grounds to suspect that the funds were the proceeds of crime or would be used to finance terrorist activities, and after the applicant agreed to pay the applicable penalty of $250.00, the officer returned the balance of the funds to him. The officer also informed the applicant of his right to file an objection to the enforcement action with the CBSA Recourse Directorate. This is provided for by section 25 of the *PCMLTFA*.

[11] At the time, the applicant was a member of the NEXUS trusted traveller program. The officer seized the applicant's NEXUS card.

C. *The NEXUS Trusted Traveler Program*

[12] The NEXUS program is a joint Canada-United States program for pre-approved, low-risk travellers entering Canada or the United States at designated air, land and marine ports of entry. Among other things, membership in the program allows travellers to enter either country quickly and easily by using automated self-serve kiosks in airports and dedicated lanes at land border crossings.

[13] Canada's part of the program is governed by the *Presentation of Persons (2003) Regulations*, SOR/2003-323. These regulations were enacted pursuant to section 11.1 of the *Customs Act*, RSC 1985, c 1 (2nd Supp), which authorizes the Minister to "issue to any person an authorization to present himself or herself in an alternative manner." Membership in the NEXUS program is one such authorization. The regulations state the requirements one must meet to become a NEXUS member. For present purposes, the only material requirement is that one must be "of good character" to be eligible for NEXUS membership. See *Presentation of Persons (2003) Regulations*, paragraph 6.1(a), which incorporates, *inter alia*, the requirements set out in paragraph 5(1)(b) of the same Regulations.

[14] Under subsection 11.1(2) of the *Customs Act*, the Minister also has the authority, "subject to the regulations, to amend, suspend, renew, cancel or reinstate an authorization." Subsection 22(1) of the *Presentation of Persons (2003) Regulations* provides that the Minister

may suspend or cancel an authorization if, among other things, the person "no longer meets the requirements for issuance of the authorization."

D. *The Cancellation of the Applicant's NEXUS Membership*

[15] On November 22, 2019, the CBSA issued a form letter to the applicant informing him that his NEXUS membership had been cancelled. The letter stated that the reason for cancellation was that the applicant no longer satisfied the "eligibility criteria" of the program because he had "contravened customs and/or immigration program legislation." Specific reference was made to the enforcement action on October 28, 2019. While not stated explicitly in the letter, there is no issue that the requirement the applicant had been found to no longer satisfy was that he be of good character.

[16] The letter also indicated that the applicant could submit a request for a review of this decision to the CBSA Recourse Directorate. The right to seek a review is provided for by section 23 of the *Presentation of Persons (2003) Regulations*.

E. *The Applicant's Request for Review*

[17] On December 5, 2019, the applicant submitted a request for review to the Recourse Directorate using an online portal. In summary, he provided the following information in support of his request to have his NEXUS membership reinstated:

- He is a well-established businessman in Montreal whose businesses employ over 1500 individuals.

- He travels frequently for business meetings, conferences and exhibitions.

- On October 28, 2019, he was on his way to China for a business trip.

- He did not declare the funds in his possession on October 28, 2019, because he believed he had less than $9,000.00 CAD, "which is the legal limit for not reporting."

- In addition to the funds he knew he was carrying, there was an envelope in the applicant's carry-on bag which contained Euros and US dollars equivalent to $3,000.00 CAD. These were funds from a previous trip which the applicant had forgotten to remove from his bag when he returned home. He did not realize the funds were still in his bag on October 28, 2019. The applicant stated: "I attest that this was an honest mistake and oversight on my end and no hiding of information was intended."

[18] By letter dated December 18, 2019, a Senior Appeals Officer with the Recourse Directorate acknowledged receipt of the applicant's request. The letter indicated that the CBSA was treating the applicant's submission as both a request for a decision under section 25 of the *PCMLTFA* with respect to whether he had contravened subsection 12(1) of that Act, and as a request for a review under section 23 of the *Presentation of Persons (2003) Regulations* of the decision to cancel his NEXUS membership. Separate file numbers were given to each matter.

[19] The letter summarized the seizing officer's account of the events on October 28, 2019, as well as the applicant's submissions. The letter explained that under Canadian law, the applicant was required to report the currency in his possession because its value equalled or exceeded $10,000.00. Failure to do so "could result in seizure, penalties and/or prosecution." The letter

went on to explain that "when travelling abroad, it is ultimately your responsibility to be aware of CBSA reporting requirements and to comply with them."

[20] Further, the letter explained that the $250.00 penalty assessed by the seizing officer was the lowest available for contravening subsection 12(1) of the *PCMLTFA*. The letter stated that the decision to proceed in this fashion "was based on the fact that although the currency was not reported, you did not attempt to conceal the said currency found in your handbag and messenger bag. Furthermore, the officer [who seized the funds] did not suspect that the currency was the proceeds of crime and/or link[ed] to terrorist activity and/or money laundering."

[21] The letter also explained why the applicant's NEXUS membership had been cancelled as follows:

> Regarding the decision to cancel your membership in the NEXUS program, Section 22(1)(a) of the *Presentation of Persons (2003) Regulations* states that the Minister may cancel an authorization if the person no longer meets the requirements for the issuance of the authorization. One of the eligibility requirements set out in paragraph 5(1)(b) of those same Regulations is that applicants must be of good character. When defining the term "good character" for the purposes of the CBSA's trusted traveller programs, applicants are assessed as to whether they may pose a risk to the integrity of the programs. In doing so, an evaluation takes place of factors such as whether there has been a serious infraction of the laws of Canada and the U.S. and, in particular, the laws administered by the CBSA, which undermines the confidence of the CBSA that the applicant will comply with all the program requirements. As such, a violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and its Regulations, would justify the cancellation of a NEXUS membership.
>
> Under the current policies, a NEXUS member who has an enforcement action on file (a seizure) is ineligible to the NEXUS program for 6 years beginning at the date of the enforcement action.

[22] The letter then went on to explain the penalties and other consequences associated with a contravention of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, including ineligibility for NEXUS membership for six years from the date of the enforcement action. After describing how individuals in possession of currency exceeding the prescribed amount are required to report this fact to the CBSA before leaving Canada, the officer added the following: "Further, I note that case law holds that proof of intention is not required since the system is one of voluntary reporting and because strict liability attaches to those who fail to report."

[23] By letter dated January 2, 2020, the Recourse Directorate provided the applicant with a copy of the seizing officer's Narrative Report concerning the events on October 28, 2019. The letter explained that the report was being provided as it "may assist you in responding more adequately to the allegations made by the enforcement agency." The applicant was given 30 days to provide any additional information or documentation he believed would assist in making a decision on his appeal.

[24] On January 17, 2020, the applicant provided further submissions in support of his appeal using the online portal. It is unclear from the record whether he had received the December 18, 2019, letter at this point or not. The letter had been sent to him by registered mail but was returned to the Recourse Directorate as "Unclaimed". It was resent to the applicant by regular mail under a covering letter dated January 15, 2020.

[25] In his further submissions, the applicant reiterated the points summarized above in paragraph 17 and added the following:

- The currency in the envelope in his carry-on bag was “a bit over” $2,000 CAD in value. (This was consistent with the officer’s report of the value of the Euros in the envelope.)

- The other cash the applicant had with him had been withdrawn from his personal HSBC account.

- It was only after the events on October 28, 2019, that the applicant realized he will “always be flagged in the CBSA system and will go through inspection” every time he travels. He stated: “I am a frequent flyer and often travel with my wife and five children. For the past two trips I had to go through a full inspection while my family amongst a one year old and two years old were waiting for me which was very inconvenient.”

[26] In a letter dated January 31, 2020 (received by the Recourse Directorate on February 4, 2020), the applicant provided further additional submissions on his appeal. He also provided some supporting documentation relating to the value of the US cash he had with him. Unlike his previous submissions, which were provided by way of an online portal, the applicant sent these submissions and the enclosures by mail. At this point, the applicant had evidently received the December 18, 2019, letter from the Recourse Directorate because he makes reference to the January 15, 2020, covering letter (as well as the January 2, 2020, letter) in his correspondence.

[27] The applicant stated that he was writing in part to "clarify" his discussion with the CBSA officer on October 28, 2019. He stated the following:

> As mentioned in my request for a review, I truly believed that I was carrying less than $Cad 10,000. I said to the officer that I had an equivalent of $Cad 9,000 and that only while looking in my carry-on bag I then realized that I had an envelope forgotten from a previous trip to Europe containing some Euros. I had forgotten to remove it before going to the airport.

[28] By letter dated February 12, 2020, the Senior Appeals Officer acknowledged receipt of the applicant's letter (with enclosures). In response to information the applicant had provided concerning the value (in Canadian dollars) of the currency discovered in his possession on October 28, 2019 , the Senior Appeals Officer maintained the position that the total value of the currency was $12,285.73. Regarding the applicant's reiterated submission that he had simply forgotten about the currency in his carry-on bag, the Senior Appeals Officer stated the following:

> It was previously explained in the Notice of Circumstances of Seizure letter sent to you registered mail on December 18, 2019 and thereafter resent by regular mail on January 15, 2020, that in the case where undeclared currency is seized at level 1, for which the terms of release are set at $250.00, the decision to proceed with this level, which is the lowest level available, was based on the fact that although the currency was not reported, you did not attempt to conceal the said currency found in your handbag and messenger bag. Furthermore, the officer did not suspect that the currency was the proceeds of crime and/or link[ed] to terrorist activity and/or money laundering. It is incumbent upon travellers to be aware of the amount of currency in their possession.

[29] The Senior Appeals Officer concluded the letter by assuring the applicant that his representations along with the evidence on file will be considered carefully when a decision is made. The applicant would be notified by registered mail as soon as a decision is rendered.

[30] By letter dated February 17, 2020, the applicant submitted further representations in support of his request for a review. He reiterated that he was a businessman and provided information relating to some of his business affairs.

[31] At the end of March 2020, the Recourse Directorate, like virtually every other workplace in Canada, was forced to make adjustments to its practices because of the COVID-19 pandemic. One of these changes was switching to sending correspondence to individuals with outstanding appeals by email rather than registered mail. Accordingly, on March 30, 2020, a voicemail message was left for the applicant requesting his email address.

[32] A note to file indicates that the applicant returned the call the next day (March 31, 2020) and spoke to someone at the Recourse Directorate. (The record does not disclose who made this note to file or the other notes referred to below. Viewing the record as a whole, however, it is a reasonable inference that they were all made by the Senior Appeals Officer who had been corresponding with the applicant. I will proceed on this basis.) The applicant provided the Senior Appeals Officer with his email address. He also told her that he wanted to "explain the events as they happened." The note indicates that the officer explained "the process" to the applicant. The applicant said he understood and would await further instructions via email. There is no other evidence in the record concerning this exchange.

[33] On May 14, 2020, and again on May 21, 2020, the Senior Appeals Officer emailed the applicant forms on which he could indicate his consent to corresponding with the Recourse

Directorate via email. (The second email was necessary because the consent document sent with the first email had omitted one of the file numbers.)

[34] On May 20, 2020, the applicant left a message for the Senior Appeals Officer stating that he had not received any emails from her as yet.

[35] On May 21, 2020, the Senior Appeals Officer returned the applicant's call and left a message for him suggesting that he check his junk email folder as she had sent him two emails. (These would be the emails referred to in paragraph 33, above.)

[36] The applicant must have found the Senior Appeals Officer's emails because, on May 25, 2020, he returned by email the signed agreement indicating his consent to correspond with the Recourse Directorate by email.

[37] The decision denying the applicant's appeals is set out in a letter dated May 27, 2020, from Martin Belanger, Senior Program Advisor, Recourse Directorate. It was sent to the applicant via email. The reasons for the decision are set out below.

[38] According to another note to file, on May 28, 2020, the applicant spoke to the Senior Appeals Officer with whom he had been dealing. He said he had wanted to submit more documentation, which he thought he would have an opportunity to do after receiving the request for his email address and for his consent to communicate with him via email. While not stated

explicitly in the note, it appears that the applicant had just received the decision denying his appeals when he contacted the officer.

[39] The applicant said the additional documentation he had wanted to submit would demonstrate the "legitimacy" of the funds in his possession on October 28, 2019. The officer told the applicant they were aware that the currency was legitimate. The applicant also said he was not aware of all the currency he had with him that day. He added that he travels frequently and is not happy about being pulled over, especially when with his young family. (This is presumably a reference to being referred for secondary inspections.) The applicant told the officer he would be taking the matter to the Federal Court as he wants his name out of the CBSA's system. Finally, the officer noted her opinion that, "even if [the applicant] had submitted more documentation showing the legitimacy [of the funds], it would not have changed anything." It is not clear whether this latter point was communicated to the applicant in the call.

III. DECISION UNDER REVIEW

[40] In the letter dated May 27, 2020, the Senior Program Advisor with the Recourse Directorate informed the applicant of the result of the two Ministerial reviews and provided the reasons for these decisions.

A. *The Contravention of the PCMLTFA*

[41] The Senior Program Advisor concluded under section 27 of the *PCMLTFA* that there had been a contravention of section 12 of that Act. Further, he concluded that the amount of $250.00 received for the return of the funds would be held as forfeit.

[42] The Senior Program Advisor begins by summarizing the circumstances of the incident of October 28, 2019, as recorded in the documentary evidence on file. He also summarizes the applicant's representations as well as the supporting documentation the applicant provided.

[43] The Senior Program Advisor explains why he had decided the matter as he did by setting out key points which I would summarize as follows:

- On October 28, 2019, the applicant had in his possession currency whose value equalled or exceeded the prescribed amount of $10,000.00.

- The applicant had explained that he was someone with an excellent reputation who simply forgot about the currency in his carry-on bag. However, the *PCMLTFA* is contravened when an incorrect declaration is made, even if the error occurred without any intent to mislead or deceive the CBSA. The lack of any intention to circumvent reporting obligations is not relevant to the determination of whether or not the reporting obligation has been contravened.

- The applicant did not declare the currency in his possession, which was a contravention of the Act.

- The prescribed penalty of $250.00 was appropriate. The Senior Program Advisor noted that there was no indication that the funds were concealed, it was "a first instance of non-compliance" on the part of the applicant, and there were no reasons to suspect that the funds were the proceeds of crime. On the other hand, the Senior Program Advisor was not prepared to lower the penalty because its aim is "to encourage compliance during future cross-border movements." The Senior Program Advisor added: "The requirements of the Act are important as they contribute to Canada's efforts in detecting and deterring illicit movements of currency and monetary instruments."

[44] The Senior Program Advisor concludes this part of the decision by explaining how the applicant can challenge these determinations.

B. *The Cancellation of the Applicant's NEXUS Membership*

[45] The Senior Program Advisor also upheld the cancellation of the applicant's NEXUS membership. However, given the circumstances of the applicant's case, he decided to "offer mitigation." Accordingly, the applicant would be permitted to re-apply to the NEXUS program as of October 28, 2021.

[46] After describing the NEXUS program in general terms, the Senior Program Advisor turns to paragraph 22(1)(a) of the *Presentation of Persons (2003) Regulations*, which provides that membership in a program such as NEXUS may be cancelled if a person no longer meets the membership requirements. One of the requirements for eligibility in the NEXUS program is that

one must be of good character. The Senior Program Advisor explains what this means as follows:

> When defining the term "good character" for the purposes of the CBSA's trusted traveller programs, applicants are assessed as to whether they pose a risk to the integrity of the programs. In doing so, an evaluation takes place of factors such as whether there has been an infraction of the laws of Canada and the U.S. and, in particular, the laws administered by the CBSA, which undermines the confidence of the CBSA that the applicant will comply with all the program requirements.

[47] The Senior Program Advisor then simply notes that the applicant has been found to have been in contravention of section 12 of the *PCMLTFA*, adding: "The details of the events have been examined above comprehensively." There is no further analysis of the events of October 28, 2019, or their connection to the issue of the applicant's character.

[48] The Senior Program Advisor next turns to the consequences that follow from this finding. He states that he has decided, pursuant to subsection 11.1(2) of the *Customs Act*, to uphold the cancellation of the applicant's NEXUS membership. However, he has decided to "extend mitigation" to the applicant. The Senior Program Advisor explains these decisions as follows:

> Although it is expected that, as [a] NEXUS member, you will be aware of the reporting requirements and possible consequences of *PCMLTFA* contraventions and the NEXUS program terms and conditions, due to your history of compliance with border legislation, that you admitted that an error was made, that the currency was not concealed, and that membership would facilitate travel in your line of work, I have also decided on a period of ineligibility to NEXUS of 2 years following the *PCMLTFA* seizure action. This ineligibility period is intended to serve as sufficient deterrent to prevent such an occurrence from taking place again in the future, as well as to maintain the integrity of the program and its legislative intent.

> Please note that any future non-compliance may result in the cancellation of your membership for up to 6 years.

[49] I pause here to note that the Senior Program Advisor actually extended a greater degree of mitigation to the applicant than had been recommended in a Case Synopsis and draft reasons for decision that were prepared for the officer's consideration. The author(s) of these documents had recommended that the applicant should not be permitted to reapply for NEXUS membership until April 28, 2024. This recommendation was based on when, with the passage of time and assuming future compliance, the applicant's points total in the Integrated Customs Enforcement System ("ICES") database would be reduced to a certain level. (What that level was expected to be and what would otherwise happen at that point is redacted from the record on this application.) The Case Synopsis and the draft reasons for decision will be discussed further below.

[50] The Senior Program Advisor concludes this part of the decision by explaining how the applicant can challenge these determinations.

IV. STANDARD OF REVIEW

[51] As already noted, the applicant challenges both the process by which the Senior Program Advisor made his decision and the substance of that decision.

[52] With respect to process, there is no dispute in the present case about how a reviewing court should determine whether the requirements of procedural fairness were met. The reviewing court must conduct its own analysis of the process followed by the decision maker and

determine whether it was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31. This is functionally the same as applying the correctness standard of review: see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 34 and 50; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 54; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. That being said, invoking a standard of review is somewhat beside the point (*Canadian Pacific Railway Co* at paras 50-55). This is because, at the end of the day, what matters "is whether or not procedural fairness has been met" (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 at para 35). The burden is on the applicant to demonstrate that it was not.

[53] With respect to the substance of the decision, the parties agree, as do I, that it should be reviewed on a reasonableness standard. In its pre-*Vavilov* jurisprudence, this Court consistently applied a reasonableness standard to decisions relating to the cancellation of NEXUS membership: see, for example, *Sadana v Canada (Public Safety)*, 2013 FC 1005 at para 10, and *Sodhi v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 145 at para 15. Reasonableness is now the presumptive standard of review for administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). There is no basis for derogating from this presumption here.

[54] Reviewing administrative decisions on a reasonableness standard "aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law" (*Vavilov* at para 82).

[55] The requirement that an administrative decision be reasonable follows from the fundamental principle that the exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (*Vavilov* at para 95). Thus, an administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96).

[56] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court should focus on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). The court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). A decision bearing these qualities is entitled to deference from a reviewing court.

[57] The burden is on the applicant to demonstrate that the decision is unreasonable. He must establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. ANALYSIS

A. *Introduction – Clarifying the Scope of this Application*

[58] As set out above, the Recourse Directorate proceeded on the basis that the applicant had sought a decision with respect to whether he contravened the *PCMLTFA* as well as a review of the cancellation of his NEXUS membership. The Senior Program Advisor concluded that the applicant had contravened the *PCMLTFA.* He also upheld the cancellation of the applicant's NEXUS membership. The applicant had the option of challenging both decisions but each had to be challenged by a different route. The finding that he contravened the *PCMLTFA* could only be challenged through an appeal by way of an action in this Court: see section 30 of the *PCMLTFA*. On the other hand, the decision upholding the cancellation of his NEXUS membership could only be challenged by way of an application for judicial review under section 18.1 of the *Federal Courts Act.* Further, to challenge the penalty assessed for the contravention of the *PCMLTFA* would also require an application for judicial review under section 18.1 of the *Federal Courts Act.*

[59] The applicant has only sought judicial review of the decision upholding the cancellation of his NEXUS membership. He did not appeal the finding that he contravened the *PCMLTFA*,

nor did he seek judicial review of the associated penalty. Consequently, this finding must be presumed to be legally and factually sound. As such, it provides important context for the determination upholding the cancellation of the applicant's NEXUS membership. This will be discussed further below.

[60] The applicant himself did not provide an affidavit in support of this application but it is readily apparent from the background summarized above that his concerns relate not only to the cancellation of his NEXUS membership but also his susceptibility to referral to secondary examination whenever he returns to Canada. A number of his complaints on this application relate to the unfairness and the unreasonableness of this latter state of affairs and the failure of the Senior Program Advisor to address them in his decision. These concerns may be genuine but they cannot be allowed to distort the issues properly before the Court.

[61] The applicant has not challenged either the finding that he contravened the *PCMLTFA* or the imposition of the $250.00 penalty but he does purport to seek judicial review "of the additional punishments imposed by the Minister above and beyond the applicable penalty imposed under the Currency Reporting Regulations." According to the applicant, these "additional punishments" are the cancellation of his NEXUS membership and his flagging in the ICES database, which in turn results in referrals for secondary inspection. Without necessarily agreeing with the applicant that the cancellation of his NEXUS membership is a "punishment" for contravening the *PCMLTFA*, there is no question that it was the result of a decision separate and apart from the finding that he contravened the *PCMLTFA.* Consequently, the decision

upholding the cancellation can be challenged in this Court even though no issue is taken with the finding on which it is based – namely, that the applicant contravened the *PCMLTFA*.

[62] On the other hand, the flagging of the applicant for secondary inspection is an automatic, collateral consequence of the enforcement action on October 28, 2019: see *Chen v Canada (Public Safety and Emergency Preparedness),* 2019 FCA 170 at paras 42-45. That action was confirmed by the finding that the applicant contravened the *PCMLTFA.* Since this finding is not being contested, there is no basis upon which the Court could interfere with the flagging that resulted from the original enforcement action. Simply put, in the absence of an appeal under section 30 of the *PCMLTFA*, the issue of the applicant's susceptibility to referral to secondary examination is not before the Court and the applicant's complaints about these referrals are misplaced.

B. *Were the Requirements of Procedural Fairness Breached?*

[63] In *Baker*, the Supreme Court of Canada held that "the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker" (at para 22). Further, the values underlying the duty of fairness "relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair,

impartial, and open process, appropriate to the statutory, institutional, and social context of the decision" (at para 28).

[64] The common law duty of procedural fairness is "flexible and variable" (*Baker* at para 22). Several factors must be considered in determining what is required in the specific context of a given case, including: (1) the nature of the decision being made; (2) the nature of the statutory scheme under which the decision is made; (3) the importance of the decision to the individual(s) affected; (4) the legitimate expectations of the party challenging the decision; and (5) the procedures followed by the decision maker itself and its institutional constraints (*Baker* at paras 21-28).

[65] There is no dispute in the present case that the requirements of procedural fairness entitled the applicant to know the case he had to meet in seeking a review of the cancellation of his NEXUS membership and that he be given a reasonable opportunity to make his case. With respect to the first requirement, there is no suggestion that the applicant did not know the case he had to meet in challenging the decision to cancel his NEXUS membership. The pre-decision correspondence from the Recourse Directorate summarized above fully set out the applicable legal context of the decision as well as the CBSA's understanding of the relevant facts. The applicant contends, however, that he was not given a reasonable opportunity to make his case for why his NEXUS membership should not have been cancelled. This is because he was led to believe that he would have an opportunity to present additional submissions and supporting documentation yet the appeal was decided before he could do so.

[66] There are two fundamental problems with the applicant's position. First, the applicant has not provided any evidence on this application of what additional submissions or supporting documentation he intended to provide before the decision was made. Significantly, he did not provide an affidavit in which he described what he had intended to provide. Second, to the extent that what the applicant had intended to say can be gleaned from the note to file relating to his conversation with the Senior Appeals Officer on May 28, 2020, the matters the applicant raised are immaterial, irrelevant, or had already been articulated in his earlier submissions. Any further information the applicant wished to present concerning the "legitimacy" of the funds in his possession on October 28, 2019, is immaterial because this was not in issue as far as the CBSA was concerned. The applicant's complaints about being referred to secondary examinations are irrelevant to the merits of the decision to cancel his NEXUS membership. And finally, there is no indication in the notes of this conversation that the applicant had anything new to provide in support of his position that he had made an innocent mistake in overlooking the funds in his carry-on bag.

[67] Drawing these two flaws in the applicant's position together, I acknowledge that in an earlier conversation on March 31, 2020, the applicant told the Senior Appeals Officer that he wanted to "explain the events as they happened." At that point, the applicant had already done this three times: in his initial request for a review of the decision submitted on December 5, 2019; in his follow-up submission on January 17, 2020; and in his letter dated January 31, 2020. (The applicant also provided submissions on February 17, 2020, but they addressed other matters.) It is true that the decision was made before the applicant could say anything more in the way of an explanation of "the events as they happened." However, the

applicant has not established that he had anything to say about the crux of his case against the cancellation of his NEXUS membership – that he had made an innocent mistake about the amount of cash he had with him on October 28, 2019 – which he did not have an opportunity to communicate to the CBSA before the decision was made. In short, the applicant has not shown that he had anything new to say about why his NEXUS membership should not have been cancelled. As a result, he has not established that the requirements of procedural fairness were breached when the Recourse Directorate made the decision on the record that was before it.

[68] Finally, in his written submissions the applicant raised a number of objections to the procedure followed in determining that he had contravened the *PCMLTFA*. These were not pursued in oral argument. In any event, in the absence of an appeal under section 30 of the *PCMLTFA*, they are an impermissible collateral attack on that determination and are irrelevant to the issues that are before the Court.

C. *Is the Decision Unreasonable?*

[69] The Senior Program Advisor upheld the cancellation of the applicant's NEXUS membership on the basis that his contravention of the *PCMLTFA* meant that he was not of good character, a requirement for membership in the program. The applicant's principal submission under this heading is that there was no reasonable basis for the decision maker to uphold the cancellation of his NEXUS membership given that he accepted that the applicant made an honest mistake in failing to report the currency. While I see the issue as being more nuanced than this, I nevertheless agree with the applicant that the decision is unreasonable. This is because the

determination that the applicant's contravention of the *PCMLTFA* meant that he was not of good character lacks transparency, intelligibility and justification.

[70] The applicant requests not only that the decision be set aside but also that the matter be returned to the Recourse Directorate with directions to find that he is of good character and to reinstate his NEXUS membership. As will become clear in what follows, I am not satisfied that this is the only reasonable outcome. Consequently, the appropriate remedy is to refer the matter back to the Recourse Directorate so that it may be reconsidered: see *Vavilov* at paras 139-142.

[71] The *Presentation of Persons (2003) Regulations* state that, among other things, to be eligible for membership in a trusted traveller program like NEXUS, one must be "of good character." This term is not defined in the regulations or any related statute. In his decision, the Senior Program Advisor articulates a certain understanding of what being of good character means in this context. To repeat for ease of reference, he states:

> When defining the term "good character" for the purposes of the CBSA's trusted traveller programs, applicants are assessed as to whether they pose a risk to the integrity of the programs. In doing so, an evaluation takes place of factors such as whether there has been an infraction of the laws of Canada and the U.S. and, in particular, the laws administered by the CBSA, which undermines the confidence of the CBSA that the applicant will comply with all the program requirements.

[72] What I take this to mean is that by requiring applicants for membership in a trusted traveller program like NEXUS to be of good character, the *Presentation of Persons (2003) Regulations* aim to screen out those who would pose a risk to the integrity of the program by abusing the privileges extended to them under the program. Simply put, someone must be

trustworthy to be entitled to the privilege of membership in the program. Thus, to accept an applicant into the program, the CBSA (acting on behalf of the Minister) must be confident that the person will comply with all the program requirements, including presumably that they would comply with the laws governing travellers. This is a forward-looking determination, although the person's past behaviour will be an important consideration. One potential reason the CBSA might lack the necessary confidence is if, in the past, the person contravened a law of Canada or the United States, in particular a law that the CBSA itself administers. This is not an automatic disqualification, however. As the Senior Program Advisor explains in the decision, a good character determination involves an evaluation of many factors that relate to whether the CBSA can have the requisite confidence in the person or not. Simply having contravened a law is not sufficient in and of itself to demonstrate that a person is not of good character. The contravention must be such that it "undermines the confidence of the CBSA that the applicant will comply with all the program requirements." While the Senior Program Advisor does not put it exactly this way, I would suggest that this is fundamentally a judgment-call on the part of the CBSA which must be made having regard to all of the circumstances of a given case.

[73] The applicant takes issue with aspects of the Senior Program Advisor's understanding of the good character requirement generally but it is not necessary to address this here. In my view, accepting for the sake of argument that the decision maker's general understanding of the good character requirement is a reasonable one, the fundamental flaw in his decision is that he treats the applicant's having contravened the *PCMLTFA* as a sufficient reason in and of itself to find that the applicant is not of good character. Crucially, apart from noting the fact that the applicant contravened the *PCMLTFA*, there is no explanation for *why* this caused the decision maker to

lose confidence that the applicant would comply with all the requirements of the NEXUS program in the future. Perhaps if the applicant had intentionally failed to disclose the funds or had attempted to conceal the funds or if the funds were linked to money laundering or terrorist financing, no further explanation for why he was not trustworthy would be required. But this is not what the decision maker found. Rather, as articulated in the part of the decision dealing with the contravention of the *PCMLTFA*, the Senior Program Advisor did not dispute that it was an honest mistake on the applicant's part, that the funds were legitimate, or that it was an isolated incident. In these circumstances, some explanation of why one honest mistake caused the decision maker to lose confidence that the applicant would comply with the requirements of the program in the future was required.

[74] The respondent submits that any contravention of the *PCMLTFA* is a serious matter that justifies caution on the part of the CBSA and so there was no need for the Senior Program Advisor to spell this out explicitly in his decision.

[75] I do not agree.

[76] It is indisputable that the objectives of the *PCMLTFA*, including implementing "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," are of the utmost public importance: see section 3 of the *PCMLTFA*; see also *Zeid v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 539 at para 55. Thus, there is a sense in which any contravention of the requirements of that Act (and related

regulations) is a serious matter. Nevertheless, not all such contraventions are of equal gravity; some are more serious than others. The assessment of the seriousness of a given contravention depends on the sorts of circumstances identified by the Senior Program Advisor in his decision, including whether the contravention was intentional or the result of an honest mistake, whether it was an isolated incident or part of a pattern of conduct, and whether there was any discernible connection between the funds in question and money laundering or the financing of terrorist activities. These factors are also relevant to an assessment of the risk of non-compliance in the future.

[77] In the present case, having weighed these factors, the Senior Program Advisor evidently determined that the applicant's contravention fell towards the less serious end of the scale. This assessment is consistent with his view of the circumstances of the contravention as discussed in detail in the first part of the decision. His favourable assessment of these factors was presumably why the Senior Program Advisor decided to "extend mitigation" to the applicant in deciding that he should only have to wait for two years before he could apply for NEXUS membership again. However, having made this determination, it was incumbent on the decision maker to explain why the contravention nevertheless justified cancellation of the applicant's NEXUS membership because it demonstrated that the applicant lacked good character. Specifically, it was incumbent on the decision maker to explain why an isolated, honest mistake by the applicant had caused him to lose confidence that the applicant would comply with the program requirements in the future.

[78] The need for such an explanation in this case is even more apparent when one considers a small but important change the Senior Program Advisor made to the test for determining good character. In his decision, the Senior Program Advisor explained that, to determine whether someone is of good character, "an evaluation takes place of factors such as whether there has been an infraction of the laws of Canada and the U.S. and, in particular, the laws administered by the CBSA, which undermines the confidence of the CBSA that the applicant will comply with all the program requirements." In contrast, as articulated by the Senior Appeals Officer in her letter to the applicant dated December 18, 2019, the determination of whether someone is of good character involves an evaluation of factors "such as whether there has been a *serious* infraction of the laws of Canada and the U.S. and, in particular, the laws administered by the CBSA, which undermines the confidence of the CBSA that the applicant will comply with all the program requirements" [emphasis added]. This is a narrower test for ineligibility than the Senior Program Advisor applied. (The same narrower test is also articulated in the Case Synopsis as well as the draft reasons for decision.) It is not necessary to determine whether the broader test applied by the Senior Program Advisor is reasonable or not. For present purposes, what is important is that its breadth makes it even more important for there to be an explanation for why even a contravention of a law that is not serious demonstrates that a person is not of good character.

[79] The fact that he had made an honest mistake was a central concern raised by the applicant in his submissions to the Recourse Directorate. The Senior Program Advisor engaged fully with this issue in explaining why the circumstances relied on by the applicant did not absolve him of responsibility for having contravened the *PCMLTFA*. However, that analysis does not assist in supporting the reasonableness of the decision to uphold the cancellation of the NEXUS

membership. This is because the circumstances of the contravention (including that it was the result of an honest mistake) take on an entirely different significance with respect to the question of good character than they had with respect to whether a contravention had occurred. While they were irrelevant to whether there was a contravention, they are highly relevant to the assessment of the applicant's character and his trustworthiness generally. The Senior Program Advisor explained clearly why those circumstances did not absolve the applicant of responsibility for contravening the *PCMLTFA* but the link he drew between the contravention and the question of the applicant's character was not supported by any analysis at all. It was entirely conclusory.

[80] The Senior Program Advisor's failure to meaningfully grapple with this issue calls into question whether he was actually alert and sensitive to the matter before him (cf. *Vavilov* at para 128). There could well be a reasonable explanation for why the applicant's conduct caused the decision maker to lose confidence that he would comply with the requirements of the program in the future but it is not my role to speculate as to what it might be. The lack of any explanation on this critical issue leaves the decision lacking transparency, intelligibility and justification.

[81] This is not necessarily the end of the matter. As the Supreme Court of Canada emphasized in *Vavilov*, an administrative decision must be read against the backdrop of the legal and factual context in which it was made. The decision must be read with sensitivity to its institutional setting as well as the history of the proceeding and the record as a whole: see *Vavilov* at paras 91-95. Doing so can help the reviewing court to understand the reasoning

process followed by a decision maker in arriving at his or her conclusion, a key consideration in reasonableness review (cf. *Vavilov* at paras 84-85). Thus, while it is not open to a reviewing court to rewrite an administrative decision maker's reasons in order to cure every deficiency (cf. *Vavilov* at para 96), a court may, within certain limits, consider whether there are ways to fill an inferential gap in order to demonstrate that the decision is not unreasonable despite how it might appear if viewed in isolation. See, generally, *Delta Air Lines v Lukács,* 2018 SCC 2 at paras 22-28, and *Vavilov* at paras 96-98.

[82] Having regard to the legal and factual context of the decision at issue here, two potential ways to fill the critical gap in the Senior Program Advisor's reasoning suggest themselves. One is to consider the Case Synopsis and the draft reasons for decision that were prepared for the decision maker's consideration. The other is to consider that the decision maker may be presumed to have experience and expertise in making assessments like the one at issue here. As I will explain, neither of these considerations is capable of filling the gap in the decision maker's reasoning without exceeding the proper limits of judicial review.

[83] Looking first at the Case Synopsis and the draft reasons for decision, after explaining the good character requirement in largely the same terms as the Senior Program Advisor does in his decision (apart from the difference discussed above), the Case Synopsis continues as follows:

> Upon review of the circumstances of enforcement action 3961-19-2647, it has been confirmed that the claimant committed a contravention of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its Regulations, which is administered by the CBSA. Claimant has been a member [of the NEXUS program] since 2009. While the claimant maintains that when the agent asked him to show the $9,000, he opened the inside zipper of his handbag and only then he realized he also had an envelope

> containing some Euros and USD equivalent to $Cad 3,000 left from his previous trip that he forgot to remove from his bag which he usually keep [*sic*] at home in a safe. He attested that this was an honest mistake and oversight on his end and no hiding of information was intended and requested his NEXUS card be returned.
>
> The circumstances of this non-compliance tends [*sic*] to undermine the CBSA's confidence that the claimant will comply with all program requirements. In order to uphold the integrity of the NEXUS program and the need to ensure domestic and international confidence in the NEXUS program, since enforcement action 3961-19-2647 remains on record, it is my opinion that applying discretion with respect to the cancellation of claimant's NEXUS membership would not be appropriate.
>
> On this basis, it is recommended that the decision to cancel the claimant's NEXUS membership should be upheld. However, I recommend also remitting the NEXUS membership once the ICES points return to [redacted], as of April 28, 2024, which should serve as enough deterrent for future declarations.

[84] The draft reasons for decision (dated May 19, 2020), offers a similar analysis. After describing the circumstances of the October 28 2019, seizure and noting that the applicant maintained that the failure to report the currency was the result of an honest mistake and oversight on his part and that he never intended to hide information, the draft reasons state:

> The non-report of the currency cannot be overlooked when determining good character. The circumstances of this non-compliance tends to undermine CBSA's confidence that you will comply with all program requirements. In order to uphold the integrity of the NEXUS program and the need to ensure domestic and international confidence in the NEXUS program, since the enforcement action 3961-19-2647 remains on record, the cancellation of your NEXUS membership is deemed to be appropriate. However, you may reapply as of April 28, 2024, which should serve as an adequate deterrent for any future declarations.

[85] While the reasoning in these two documents is somewhat more explicit than that of the Senior Program Advisor in his decision, it still does not assist in demonstrating that the decision is reasonable. I say this for two reasons. First, part of the rationale offered for maintaining the cancellation of the applicant's NEXUS membership is that it would undermine confidence in the integrity of the NEXUS program if the applicant retained his membership in the program while the enforcement action remained on his record. However, the Senior Program Advisor did not adopt this rationale in his decision, no doubt because it has nothing to do with the applicant's character. Second, while a link is made between the non-compliance and the issue of the applicant's character, the reasoning in the two documents has the same critical gap as the Senior Program Advisor's decision: there is no explanation for *why* the circumstances of the applicant's non-compliance tend to undermine the CBSA's confidence that, in the future, he will comply with all program requirements.

[86] Before leaving this consideration, I must stress that it should not be presumed that, as a general rule, draft reasons can or should be used to fill gaps in the reasons that were actually delivered by the decision maker. Particularly when, as is the case here, the decision maker has made substantive changes to the draft in the final decision, it would arguably be inappropriate to ground the reasonableness of the decision in reasons the decision maker did not adopt as his or her own. That being said, in the present case, even taking a liberal approach to the draft reasons as part of the context within which the decision was made, they do not support the reasonableness of the decision.

[87] Turning to the second consideration identified above, presumably the Senior Program Advisor as well as other CBSA officials who were part of the decision-making process have experience and expertise in the assessment of good character based on a person's past compliance (or lack thereof) with laws administered by the CBSA (cf. *Vavilov* at para 93). Why, then, could this not provide the missing basis for why the Senior Program Advisor reached the conclusion he did?

[88] There are two problems with this approach. One is that this experience and expertise is not *demonstrated* in the reasons, as *Vavilov* requires. An explanation of the link between the applicant's conduct and the question of his good character would be one way of demonstrating this experience and expertise but this is precisely what is missing from the decision.

[89] The other problem is that even if this experience and expertise suggested that the past behaviour of travellers is a reliable predictor of future behaviour, this still begs the fundamental question. While past behaviour *can* be a reliable predictor of future behaviour, this is not always the case. People can and will change their behaviour in response to any number of different factors. All of the circumstances must be considered when determining how probative past behaviour is for how someone will behave in the future.

[90] In the present case, after everything that has happened as a result of the mistake he made on October 28, 2019, one might expect the applicant to be much more careful in the future. There may still be a reasonable basis for the Senior Program Advisor to lack confidence that, in the future, the applicant would comply with all the requirements of the program but it was

incumbent on him to explain what this was. The Senior Program Advisor had to explain why, despite the fact that it would be reasonable to expect the applicant to be much more careful about complying with the *PCMLTFA* and other laws relating to travellers in the future, he nevertheless lacked confidence that the applicant would do so. He had to provide at least some explanation of how he linked the applicant's past behaviour to his future behaviour through the assessment of his character. There may be an explanation that provides a reasonable basis for the Senior Program Advisor's conclusion but he did not provide it. Once again, it is not the Court's role to speculate as to what it might be.

[91] In summary, one must read the Senior Program Advisor's decision with sensitivity to the legal and institutional context in which it was made and in light of the record. Even doing so, the officer's chain of analysis contains a fundamental gap. There is no explanation for *why* the applicant's contravention of the *PCMLTFA* meant he was no longer of good character as this requirement is understood by the CBSA. This gap in the decision maker's reasoning leaves the decision to uphold the cancellation of the applicant's NEXUS membership lacking in transparency, intelligibility and justification.

VI. CONCLUSION

[92] For these reasons, the application for judicial review of the decision upholding the cancellation of the applicant's membership in the NEXUS trusted traveller program is allowed with costs. The decision is set aside and the matter is remitted for reconsideration by a different decision maker.

JUDGMENT IN T-783-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed with costs.
2. The decision dated May 27, 2020, upholding the cancellation of the applicant's membership in the NEXUS trusted traveller program is set aside and the matter is remitted for reconsideration by a different decision maker.

"John Norris"
Judge

ANNEX

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17 – sections 3, 12(1)(2)(3)(4), 18(1)(2), 25, 28, 29, 30(1)

Object of Act	**Objet de la loi**
Object	**Objet**
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 œuvre des mesures visant à détecter et décourager le recyclage des produits de la criminalité et le financement des activités terroristes et à faciliter les enquêtes et les poursuites relatives aux infractions de recyclage des produits de la criminalité et aux infractions de financement des activités terroristes, notamment :
(i) 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,	**(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) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments, and	**(ii)** établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,
(iii) establishing an agency that is responsible for ensuring compliance with Parts 1 and 1.1 and for dealing with reported and other information;	**(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) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the	**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

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 participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity; and

(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.

[…]

Reporting

Currency and monetary instruments

12 (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

Limitation

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

Who must report

produit de leurs activités illicites, tout en assurant la mise en place des garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

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

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.

[…]

Déclaration

Déclaration

12 (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.

Exception

(2) Une personne ou une entité n'est pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Déclarant

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

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

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

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

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

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

Duty to answer and comply

(4) Every person arriving in or departing from Canada shall

(a) answer truthfully any questions asked by the officer in the performance of the officer's duties and functions under this Part; and

(b) if the person is arriving in or departing from Canada with any currency or monetary instruments in respect of which a report is

(3) Le déclarant est, selon le cas :

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

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

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

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

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

Obligation de répondre et de se conformer

(4) Toute personne qui entre au Canada ou quitte le pays doit :

a) répondre véridiquement aux questions que lui pose un agent dans l'exercice des attributions que lui confère la présente partie;

b) si elle entre au Canada ou quitte le pays avec des espèces ou effets une fois la déclaration faite, à la demande de l'agent,

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

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

[…]

[…]

Seizures

Saisie

Seizure and forfeiture

Saisie et confiscation

18 (1) If an officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments.

18 (1) S'il a des motifs raisonnables de croire qu'il y a eu contravention au paragraphe 12(1), l'agent peut saisir à titre de confiscation les espèces ou effets.

Return of seized currency or monetary instruments

Mainlevée

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities.

(2) Sur réception du paiement de la pénalité réglementaire, l'agent restitue au saisi ou au propriétaire légitime les espèces ou effets saisis sauf s'il soupçonne, pour des motifs raisonnables, qu'il s'agit de produits de la criminalité au sens du paragraphe 462.3(1) du *Code criminel* ou de fonds destinés au financement des activités terroristes.

[…]

[…]

Request for Minister's decision

Demande de révision

25 A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may, within 90 days after the date of the seizure, request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice to the Minister in writing or by any other means satisfactory to the Minister.

25 La personne entre les mains de qui ont été saisis des espèces ou effets en vertu de l'article 18 ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander au ministre au moyen d'un avis écrit ou de toute autre manière que celui-ci juge indiquée de décider s'il y a eu contravention au paragraphe 12(1).

[…]

If there is no contravention

28 If the Minister decides that subsection 12(1) was not contravened, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the penalty that was paid, or the currency or monetary instruments or an amount of money equal to their value at the time of the seizure, as the case may be.

If there is a contravention

29 (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,

(a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (a) or (b) on being informed of it.

Limit on amount paid

(2) The total amount paid under paragraph (1)(a) shall, if the currency or monetary

[…]

Cas sans contravention

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

Cas de contravention

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

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

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

c) soit confirmer la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en est informé, prend les mesures nécessaires à l'application des alinéas a) ou b).

Limitation du montant versé

(2) En cas de vente ou autre forme de disposition des espèces ou effets en vertu de

instruments were sold or otherwise disposed of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the currency or monetary instruments.

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

Appeal to Federal Court

30 (1) A person who makes a request under section 25 for a decision of the Minister 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.

Cour fédérale

30 (1) La personne qui a demandé, en vertu de l'article 25, que soit rendue une décision peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412 – sections 2, 18(a)

Reporting of Importations and Exportations

Minimum Value of Currency or Monetary Instruments

2 (1) For the purposes of subsection 12(1) of the Act, the prescribed amount is $10,000.

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

(a) the exchange rate that is published by the Bank of Canada for that foreign currency and that is in effect at the time of the importation or exportation; or

(b) if no exchange rate is published by the Bank of Canada for that foreign currency, the exchange rate that the person or entity would use in the ordinary course of business at the time of the importation or exportation.

[…]

Penalties

18 For the purposes of subsection 18(2) of the Act, the prescribed amount of the penalty is

(a) $250, in the case of a person or entity who

(i) has not concealed the currency or monetary instruments,

(ii) has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and

Déclaration des importations et exportations

Valeur minimale des espèces ou effets

2 (1) Pour l'application du paragraphe 12(1) de la Loi le montant réglementaire est 10 000 $.

(2) Le montant est exprimé en dollars canadiens ou en son équivalent en devise selon :

a) le taux de change publié par la Banque du Canada pour la devise qui est en vigueur au moment de l'importation ou de l'exportation;

b) dans le cas où aucun taux de change n'est publié par la Banque du Canada pour la devise, le taux de change que la personne ou entité utiliserait dans le cours normal de ses activités au moment de l'importation ou de l'exportation.

[…]

Pénalités

18 Pour l'application du paragraphe 18(2) de la Loi, le montant de la pénalité est de :

a) 250 $, si la personne ou l'entité, à la fois :

(i) n'a pas dissimulé les espèces ou effets,

(ii) a divulgué tous les faits concernant les espèces ou effets au moment de leur découverte,

(iii) has no previous seizures under the Act;

[…]

(iii) n’a fait l’objet d’aucune saisie antérieure en vertu de la Loi;

[…]

Customs Act, RSC 1985, c 1 (2nd Supp) – sections 11.1(1)(2)(3), 11.2(1)(2)

Minister may authorize

11.1 (1) Subject to the regulations, the Minister may issue to any person an authorization to present himself or herself in an alternative manner.

Amendment, etc., of authorization

(2) The Minister may, subject to the regulations, amend, suspend, renew, cancel or reinstate an authorization.

Regulations

(3) The Governor in Council may make regulations

(a) prescribing classes of persons who are, and classes of persons who may be, authorized to present themselves in alternative manners;

(b) respecting alternative manners of presentation;

(c) respecting the requirements and conditions that are to be met before authorizations may be issued;

(d) respecting the terms and conditions of authorizations;

(e) respecting the amendment, suspension, renewal, cancellation or reinstatement of authorizations; and

(f) respecting fees or the manner of determining fees to be paid for authorizations.

[…]

Autorisation du ministre

11.1 (1) Sous réserve des règlements, le ministre peut accorder à quiconque une autorisation lui permettant de se présenter selon un mode substitutif.

Modification, suspension, etc.

(2) Le ministre peut, sous réserve des règlements, modifier, suspendre, renouveler, annuler ou rétablir une autorisation.

Règlements

(3) Le gouverneur en conseil peut prendre des règlements :

a) désignant les catégories de personnes qui sont autorisées à se présenter selon un mode substitutif et les catégories de personnes qui peuvent l'être;

b) prévoyant des modes substitutifs de présentation;

c) prévoyant les exigences et conditions à remplir pour qu'une autorisation puisse être accordée;

d) prévoyant les conditions des autorisations;

e) concernant la modification, la suspension, le renouvellement, l'annulation ou le rétablissement des autorisations;

f) concernant les droits à payer pour une autorisation, ou précisant le mode de détermination de ceux-ci.

[…]

Designation of customs controlled areas

11.2 (1) The Minister may designate an area as a customs controlled area for the purposes of this section and sections 11.3 to 11.5 and 99.2 and 99.3.

Amendment, etc. of designation

(2) The Minister may amend, cancel or reinstate at any time a designation made under this section.

Désignation des zones de contrôle des douanes

11.2 (1) Le ministre peut désigner des zones de contrôle des douanes pour l'application du présent article et des articles 11.3 à 11.5, 99.2 et 99.3.

Modification, suppression, etc.

(2) Le ministre peut modifier, supprimer ou rétablir en tout temps une désignation faite en vertu du présent article.

Presentation of Persons (2003) Regulations, SOR/2003-323 – sections 5, 6.1, 22, 23

Authorizations

CANPASS Air program

5 (1) The Minister may issue an authorization to a person to present themself in an alternative manner described in paragraph 11(a) if the person

(a) is

(i) a citizen or permanent resident of Canada,

(ii) a citizen or permanent resident of the United States, or

(iii) a citizen of another country and the following conditions are met:

(A) the person is a member of a program in that country that allows for an alternative manner of presentation to facilitate or expedite entry into that country, and

(B) Canada has a reciprocal arrangement with that country, entered into under paragraph 13(2)(a) of the *Canada Border Services Agency Act*, in respect of the alternative manner of presentation;

(b) is of good character;

(c) is not inadmissible to Canada under the *Immigration and Refugee Protection Act* or its regulations;

(d) provides their consent in writing to the use by the Minister of biometric data concerning the person for the purposes set out in section 6.3;

Autorisations

Programme CANPASS Air

5 (1) Le ministre peut accorder à la personne qui remplit les conditions ci-après l'autorisation de se présenter selon le mode substitutif prévu à l'alinéa 11a) :

a) selon le cas :

(i) elle est un citoyen ou résident permanent du Canada,

(ii) elle est un citoyen ou résident permanent des États-Unis,

(iii) elle est un citoyen d'un autre pays et les conditions ci-après sont remplies :

(A) elle est membre d'un programme dans ce pays qui autorise la présentation selon un mode substitutif y facilitant ou y accélérant l'entrée,

(B) le Canada a conclu avec ce pays, en vertu de l'alinéa 13(2)a) de la *Loi sur l'Agence des services frontaliers du Canada*, une entente réciproque concernant le mode substitutif de présentation;

b) elle jouit d'une bonne réputation;

c) elle n'est pas interdite de territoire en application de la *Loi sur l'immigration et la protection des réfugiés* ou de ses règlements;

d) elle consent par écrit à l'utilisation par le ministre de toutes données biométriques la concernant aux fins prévues à l'article 6.3;

(e) has provided true, accurate and complete information in respect of their application for the authorization; and

e) elle n’a pas fourni des renseignements faux, inexacts ou incomplets relativement à sa demande d’autorisation;

(f) subject to subsection (2), has resided only in one or more of the following countries during the three-year period before the day on which the application was received and until the day on which the authorization is issued:

f) sous réserve du paragraphe (2), elle a résidé uniquement dans un ou plusieurs des pays ci-après pendant la période de trois ans précédant le jour de la réception de sa demande d’autorisation, et ce, jusqu’au jour de la délivrance de l’autorisation :

(i) Canada or the United States,

(i) le Canada ou les États-Unis,

(ii) if the person is serving as a member of the American armed forces in a foreign country, that foreign country,

(ii) si elle est déployée dans un pays étranger à titre de membre des forces armées des États-Unis, ce pays étranger,

(iii) if the person is a family member of a person who is a member of the Canadian or American armed forces serving in a foreign country, that foreign country, or

(iii) si elle est un membre de la famille d’une personne qui est déployée dans un pays étranger à titre de membre des forces armées du Canada ou des États-Unis, ce pays étranger,

(iv) if the person is a family member of a person who is serving at a Canadian or American diplomatic mission or consular post in a foreign country, that foreign country.

(iv) si elle est un membre de la famille d’une personne qui est affectée à une mission diplomatique ou à un poste consulaire du Canada ou des États-Unis dans un pays étranger, ce pays étranger.

Exception

(2) Paragraph (1)(f) does not apply to

Exception

(2) L’alinéa (1)f) ne s’applique pas aux personnes suivantes :

(a) a citizen of Canada or the United States;

a) tout citoyen du Canada ou des États-Unis;

(b) a person who is not a citizen of Canada or the United States and who meets the conditions set out in subparagraph (1)(a)(iii); and

b) toute personne qui n’est ni un citoyen du Canada ni un citoyen des États-Unis et qui remplit les conditions prévues au sous-alinéa (1)a)(iii);

(c) a child who is under 18 years of age and is a permanent resident of the following country and on behalf of whom an application is made by a person who meets the requirement set out in that paragraph:

c) les enfants de moins de dix-huit ans ci-après au nom de qui une demande est faite par une personne qui remplit la condition prévue à cet alinéa :

(i) Canada and was adopted outside Canada by a citizen or permanent resident of Canada or born outside Canada to a citizen of Canada, or

(ii) the United States and was adopted outside the United States by a citizen or permanent resident of the United States or born outside the United States to a citizen of the United States.

(i) qui est un résident permanent du Canada et qui soit a été adopté à l'extérieur du Canada par un citoyen ou un résident permanent du Canada, soit est né à l'extérieur du Canada d'un citoyen du Canada,

(ii) qui est un résident permanent des États-Unis et qui soit a été adopté à l'extérieur des États-Unis par un citoyen ou un résident permanent des États-Unis, soit est né à l'extérieur des États-Unis d'un citoyen des États-Unis.

[…]

[…]

NEXUS program (air, land and marine)

6.1 The Minister may issue an authorization that is recognized in both Canada and the United States to a person, other than a commercial driver, to present themself in the alternative manners described in paragraph 11(a), subparagraph 11(d)(ii) and paragraph 11(e) if the person

(a) meets the requirements set out in paragraphs 5(1)(a) to (f), subject to subsection 5(2);

[…]

(b) has their eligibility to obtain an American authorization to present themself on arrival in the United States in the alternative manners described in paragraph 11(a), subparagraph 11(d)(ii) and paragraph 11(e) confirmed by the United States Department of Homeland Security; and

(c) provides a copy of their fingerprints and consents in writing to their use by the Minister for the purposes of identifying the person and performing background and criminal record checks on them.

Programme NEXUS (modes aérien, terrestre et maritime)

6.1 Le ministre peut accorder à toute personne qui remplit les conditions ci-après, autre qu'un routier, l'autorisation, reconnue à la fois par le Canada et par les États-Unis, de se présenter à un poste frontalier selon les modes substitutifs prévus à l'alinéa 11a), au sous-alinéa 11d)(ii) et à l'alinéa 11e) :

a) elle remplit les conditions énoncées aux alinéas 5(1)a) à f), sous réserve du paragraphe 5(2);

[…]

b) son admissibilité à une autorisation américaine de se présenter à son arrivée aux États-Unis selon les modes substitutifs prévus à l'alinéa 11a), au sous-alinéa 11d)(ii) et à l'alinéa 11e) a été confirmée par le United States Department of Homeland Security;

c) elle fournit une copie de ses empreintes digitales et consent par écrit à l'utilisation de celles-ci par le ministre pour permettre son identification et vérifier ses antécédents et son casier judiciaire.

[…]

Suspensions and Cancellations of Authorizations

Grounds

22 (1) The Minister may suspend or cancel an authorization if the person

(a) no longer meets the requirements for the issuance of the authorization;

(b) has contravened the Act, the *Customs Tariff*, the *Export and Import Permits Act* or the *Special Import Measures Act*, or any regulations made under any of those Acts; or

(c) has provided information that was not true, accurate or complete for the purposes of obtaining an authorization.

[…]

Notice of suspension or cancellation

(3) Immediately after cancelling or suspending an authorization of a person, the Minister shall send written notice of, and the reasons for, the cancellation or suspension to the person at their latest known address.

Return of authorization

(4) A person whose authorization is cancelled or suspended shall

(a) on receiving a notice under subsection (3), immediately and in accordance with it, return to the Minister the written authorization and any other thing relevant to the authorization that is specified in the notice; or

(b) on being advised of the suspension or cancellation in person by an officer,

[…]

Suspension et annulation de l'autorisation

Motifs

22 (1) Les motifs de suspension ou d'annulation d'une autorisation par le ministre sont les suivants :

a) la personne autorisée ne remplit plus les conditions pour l'obtention de l'autorisation;

b) elle a contrevenu à la *Loi, au Tarif des douanes*, à la *Loi sur les licences d'exportation et d'importation* ou à la *Loi sur les mesures spéciales d'importation*, ou à un règlement pris sous leur régime;

c) elle a fourni des renseignements faux, inexacts ou incomplets en vue d'obtenir une autorisation.

[…]

Avis de suspension ou d'annulation

(3) Le ministre transmet sans délai à la personne autorisée dont il suspend ou annule l'autorisation, à sa dernière adresse connue, un avis écrit et motivé l'informant de la suspension ou de l'annulation.

Remise de l'autorisation écrite

(4) La personne autorisée dont l'autorisation est suspendue ou annulée :

a) soit, sur réception de l'avis, remet sans délai au ministre, conformément à l'avis, l'autorisation et toute chose s'y rattachant qui est indiquée dans celui-ci;

b) soit, si elle en est avisée en personne par un agent, remet sans délai à celui-ci

immediately return to the officer the written authorization and any other thing relevant to it that is specified by the officer.

Effective date of suspension or cancellation

(5) The suspension or cancellation of an authorization becomes effective on the earlier of the day on which an officer advises in person of the suspension or cancellation and 15 days after the day on which notice of the suspension or cancellation is sent.

Review

23 A person whose application for an authorization is rejected or whose authorization is suspended or cancelled may request a review of the decision by sending written notice of their request to the Minister within 30 days after the day on which the application was rejected or the cancellation or suspension becomes effective.

l'autorisation et toute chose s'y rattachant que précise l'agent.

Application de la suspension ou de l'annulation

(5) La suspension ou l'annulation de l'autorisation s'applique quinze jours après l'envoi de l'avis ou, s'il est antérieur, le jour où un agent en avise en personne la personne autorisée.

Révision

23 La personne dont la demande d'autorisation est refusée ou dont l'autorisation est suspendue ou annulée peut demander la révision de la décision en transmettant un avis écrit au ministre dans les trente jours suivant le jour du refus ou celui où s'applique la suspension ou l'annulation.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-783-20
STYLE OF CAUSE:	PAUL ABOU NASSAR v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

HEARING HELD BY VIDEOCONFERENCE ON JANUARY 18, 2021 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	NORRIS J.
DATED:	APRIL 29, 2021

APPEARANCES:

Cyndee Todgham Cherniak	FOR THE APPLICANT
Derek Edwards	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lexsage Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT