

Federal Court

Cour fédérale

Date: 20100427

Docket: T-554-08

Citation: 2010 FC 453

Ottawa, Ontario, April 27, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

FRANK KHATTAB

Plaintiff

and

MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

Defendant

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The action at bar is an appeal by the plaintiff under section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act), in relation to a ministerial decision upholding the contravention of subsection 12(1) and the penalty that was paid pursuant to subsection 18(2) of the said Act.

**Facts**

[2] The parties filed a statement of agreed facts and admissions (Tab 6, trial record). I quote the document in full:

[TRANSLATION]

- a. The plaintiff is a businessman and immigration consultant who has financial interests, clients and family in the Middle East.
- b. The plaintiff's daughter, Sahar Khattab, is a manager who was 23 years old during the period in question.
- c. On April 7, 2007, the plaintiff and his daughter went to the Middle East on a trip that would take them to Lebanon, Egypt, Dubai and Jordan.
- d. The purpose of this trip was partly for business and partly to visit family.
- e. On May 11, 2007, two days prior to their return to Canada, the plaintiff's daughter underwent surgery on her nose in Lebanon that required her to take medication to alleviate her headaches and pain.
- f. Given her physical and mental state, the plaintiff's daughter gave her father the balance of the money that she had been given by her aunt and uncle, which totalled approximately US\$8,200, or less than 10,000 Canadian dollars.
- g. On May 13, 2007, the plaintiff and his daughter landed at Pierre-Elliott Trudeau Airport from Lebanon, after about 15 hours of travel.
- h. They were directed to a secondary counter to have their customs declaration cards checked as a result of a "watch for" concerning the plaintiff.
- i. In fact, about two years before, the plaintiff had been subject to a seizure under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (hereinafter the Act) for a failure to report contrary to subsection 12(1) of the Act, under circumstances which will be presented at the hearing.

- j. The customs declaration card signed by the plaintiff and his daughter indicated “NO” in the following box: “I am / we are bringing into Canada currency and monetary instruments totalling CAN\$ 10,000.00 or more”.
- k. A customs officer asked the plaintiff and his daughter questions about the amounts of money in their possession.
- l. They answered the customs officer’s questions.
- m. The customs officer’s version of the facts regarding the questions posed and answers received was documented by the customs officer in his narrative reports (Tabs 9 and 17 in the trial record) and in the defendant’s amended defence (Tab 2 in the trial record).
- n. The plaintiff’s version of the facts was expressed in the written submissions made by the plaintiff’s representatives during the adjudication process, as well as in the Statement and in the Response (Tabs 1, 3, 18,15 and 21).
- o. The parties are unable to agree on a version of the customs officer’s questions and of the answers given by the plaintiff and his daughter. The evidence will therefore be adduced at the hearing.
- p. The plaintiff admits to having in his possession and in his baggage the amount of 18,309.21 Canadian dollars upon his arrival in Canada.
- q. He nonetheless claims that, of that amount of 18,309.21 Canadian dollars, about 9,000.00 Canadian dollars belonged to his daughter.
- r. The customs officer, after having checked through the baggage belonging to the plaintiff and his daughter and after having found CAN\$18,309.21 in the plaintiff’s

possession, determined that the plaintiff had contravened subsection 12(1) of the Act and seized this money in accordance with subsection 18(1) of the Act (Tab 10).

- s. The customs officer, not having reasonable grounds to suspect that these monies were proceeds of crime or that they were destined for use in the financing of terrorist activities, returned the money to the plaintiff on payment of a \$2,500.00 penalty, pursuant to subsection 18(2) of the Act (Tab 14).
- t. The plaintiff requested a decision of the Minister, who, on February 19, 2007, rendered a decision under section 27 of the Act in which he determined that the plaintiff had contravened subsection 12(1) of the Act (Tabs 15 and 8).
- u. In the same letter, the Minister rendered a decision under section 29 of the Act in which he declared that the amount of \$2,500.00 should remain forfeited (Tab 8).
- v. The plaintiff filed an action pursuant to section 30 of the Act on April 8, 2008, challenging the ministerial decision that subsection 12(1) had been contravened with regard to the money seized as forfeit by the customs officer (Tab 1).

[3] The Court heard three witnesses at the hearing and has no intention of repeating the facts which are already admitted. The Court will point out only those facts relevant to the disposition of this case:

- a. The plaintiff, Frank Khattab:
  - i. Admits that since the incident in 2005, every time he returns to Canada, he is taken aside, checked, and has his money counted by customs officers.

- ii. During his trip to the Middle East, his brother and sister each gave his daughter \$5,000 as a gift for her engagement.
- iii. His daughter underwent surgery on her nose the day before leaving for Canada, which required stitches and medication.
- iv. When they showed up at the primary immigration counter with their declaration, he was holding everything, namely, their passports and baggage (two handbags, two regular suitcases and three or four plastic bags).
- v. Both of them were very tired from having had to get up early to fly from Beirut to Paris and then from Paris to Montréal.
- vi. Each reported having less than \$10,000 to the officer.
- vii. At the secondary counter, the inspection lasted three and a half hours; the officer refused to allow his daughter to sit down and, after twice asking to go to the bathroom, she was finally allowed to do so, accompanied by another woman.
- viii. His daughter was wearing oversized (running) clothes without pockets.
- ix. The plaintiff stated that he was not nervous, but that he felt bad because of his daughter's condition. He denied that he avoided making eye contact with the customs officer.
- x. On cross-examination: he admitted to having \$5,000 in a bag in one of his suitcases and the rest of the money in his pockets. He did not recall the exact amount.

b. Sahar Khattab:

- i. She confirmed every aspect of her father's testimony and added that when she arrived in Montréal, she was tired, dazed and not at her best.
  - ii. When she and her father showed up at the primary and secondary counters, he was holding everything. When asked about the money by the customs officer, her father reported to the officer that they had less than \$10,000 each.
  - iii. She did not like the way they were treated by the customs officer.
- c. Yannick Hémond:
- i. At the time of these incidents, he had been working for the Agency for about a year and a half.
  - ii. He repeated, without having them on hand, what he had written in the two reports at Tabs 9 and 17 of the trial record. The only difference was with regard to the total amount of the currency he found and counted, namely, 19,776 Canadian dollars instead of the 18,309.21 Canadian dollars as indicated in paragraph 18 of the statement of agreed facts and admissions.
  - iii. This difference arises from the fact that, at the time of the search, the Lebanese pounds were not assessed at their fair value.
  - iv. The most important elements of his testimony centre on: how long he took to question the plaintiff and his daughter, proceed with the search and issue a seizure receipt for \$2,500 (from 4:50 p.m. until 6:55 p.m.); the customs officer asked the plaintiff and his daughter if they had more than \$10,000 in their possession; they answered no; the two had nine bags, namely, four large

suitcases and five travel bags; they had reported two cartons of cigarettes each whereas the officer found eight, and three packs of Cuban cigarillos.

- v. It was only when the officer explained that he had to seize the money that the plaintiff then indicated to him that half of the money belonged to his daughter and that he wanted to change the declaration.
- vi. The officer stated that there were no bathrooms in his section and that there were no chairs near the area where he questioned the plaintiff and his daughter.
- vii. On cross-examination, he admitted to having seen a bandage on the young woman's nose but only saw the medical report afterwards. The conversation with the plaintiff was conducted in English.

### **Legislation**

[4] The relevant excerpts from the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17* and the *Cross-Border Currency and Monetary Instruments Reporting Regulations, SOR/2002-421* are reproduced in Annex I of this judgment.

### **The law**

[5] The Act and the Regulations are clear about the importation or exportation of currency. They set out when a report must be made and to whom, who is obliged to do so and why, when and how they are required to do so. Penalties are provided for violations. The relevant excerpts are found in sections 12 and 18 of the Act, as well as sections 2, 3 and 11 of the Regulations.

[6] All persons entering or leaving Canada who have in their actual possession or in their baggage currency or monetary instruments equal to or greater than \$10,000 must make a written report. They are required to answer truthfully any questions the officer asks with respect to the information in the report.

[7] Reporting is voluntary. The reporting requirement is the cornerstone of the system established for monitoring cross-border movements (*Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186, [2008] 1 F.C.R. 331).

[8] The 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 (*Zeid v. Canada (Minister of Public Security and Emergency Preparedness)*, 2008 FC 539).

[9] In the case at bar, the Court, referring to the statement of agreed facts and admissions, can conclude that the plaintiff's appeal must be dismissed without even addressing the issue of the witnesses' credibility.

[10] The plaintiff, accompanied by his daughter, arrived at Pierre-Elliott Trudeau Airport from Lebanon on May 13, 2007.



[11] He admitted that he and his daughter signed a written report and checked “NO” in the box marked “I am/ we are bringing into Canada currency and monetary instruments totalling CAN\$10,000.00 or more” (paragraph 10).

[12] When asked by the customs officer if they had currency in the amount of 10,000 Canadian dollars or more in their possession, he and his daughter answered “no” (paragraph 5).

[13] The plaintiff admitted to having the sum of 18,309.21 Canadian dollars in his possession and in his baggage upon his arrival in Canada (paragraph 16).

[14] The Act specifically provides that it is actual possession that counts. Ownership of the currency or monetary instruments is irrelevant.

[15] By signing his written report where he had checked “NO” in the box marked “I am/ we are bringing into Canada currency and monetary instruments totalling CAN \$10,000.00 or more”, the plaintiff contravened subsection 12(1) of the Act, because he did in fact have more than 10,000 Canadian dollars in his possession.

[16] I believe that the plaintiff and his daughter acted in good faith and that they probably had every intention of explaining to the customs officers who the seized currency belonged to. However, given that the plaintiff had previously had property seized two years earlier and that he knew full well that he would be searched when he arrived in Canada on May 13, 2007, it is, to say the least,

puzzling and problematic that he would choose to make his written report in the way indicated above.

[17] As for the moment when the plaintiff made the oral statement to the customs officer that a sum of US\$8,200 belonged to his daughter, the Court prefers the officer's testimony. The officer provided much more detail and his testimony was corroborated by his two written reports. One of the reports was written immediately following the search of the plaintiff and the issuing of the receipt. That statement, according to the officer, was made after the plaintiff had been informed by the officer that the money was to be seized. It was only then that the plaintiff decided that he wanted to change his written report.

**JUDGMENT**

**THE COURT ORDERS** that the action be dismissed. The plaintiff shall pay the defendant the sum of \$3,000 in costs plus disbursements.

“Michel Beaudry”

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Judge

Certified true translation

Sebastian Desbarats, Translator

## ANNEX I

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

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

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

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

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

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

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

(d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or

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

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

(3) Le déclarant est, selon le cas :

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

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

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

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

departing from Canada, by the person in charge of the conveyance; and

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

(4) If a report is made in respect of currency or monetary instruments, the person arriving in or departing from Canada with the currency or monetary instruments shall

(a) answer truthfully any questions that the officer asks with respect to the information required to be contained in the report; and  
(b) on request of an officer, present the currency or monetary instruments that they are carrying or transporting, unload any conveyance or part of a conveyance or baggage and open or unpack any package or container that the officer wishes to examine.

(5) Officers shall send the reports they receive under subsection (1) to the Centre.

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

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

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary

exportés par courrier;

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

(4) Une fois la déclaration faite, la personne qui entre au Canada ou quitte le pays avec les espèces ou effets doit :

a) répondre véridiquement aux questions que lui pose l'agent à l'égard des renseignements à déclarer en application du paragraphe (1);  
b) à la demande de l'agent, lui présenter les espèces ou effets qu'elle transporte, décharger les moyens de transport et en ouvrir les parties et ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

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

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

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

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

instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

27. (1) Within 90 days after the expiry of the period referred to in subsection 26(2), the Minister shall decide whether subsection 12(1) was contravened.

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

30. (1) A person who requests a decision of the Minister under section 27 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

quatre-vingt-dix jours suivant la saisie, demander au ministre de décider s'il y a eu contravention au paragraphe 12(1) en donnant un avis écrit à l'agent qui les a saisis ou à un agent du bureau de douane le plus proche du lieu de la saisie.

27. (1) Dans les quatre-vingt-dix jours qui suivent l'expiration du délai mentionné au paragraphe 26(2), le ministre décide s'il y a eu contravention au paragraphe 12(1).

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).

30. (1) La personne qui a demandé que soit rendue une décision en vertu de l'article 27 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

(2) The Federal Courts Act and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

(2) La Loi sur les Cours fédérales et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

*Cross-Border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412.*

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

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

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

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

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

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

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

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

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

**DOCKET:** IMM-554-08

**STYLE OF CAUSE:** FRANK KHATTAB  
and THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** April 19, 2010

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

**DATED:** April 27, 2010

**APPEARANCES:**

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