

Federal Court



Cour fédérale

Date: 20100913

Docket: T-2026-09

Citation: 2010 FC 911

Vancouver, British Columbia, September 13, 2010

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

SUKHVIR SINGH SIDHU

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of the decision of Kathy Rush, Manager, Adjudications Division, Recourse Directorate, for the Minister of Public Safety and Emergency Preparedness (the Minister's delegate), dated October 26, 2009. The Minister's delegate determined that the Applicant had contravened the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* triggering the seizure of the currency he was carrying. She also determined that he had failed to provide sufficient evidence of lawful origin of the currency seized and hence confirmed the forfeiture of the funds.

[2] The Applicant seeks an Order, pursuant to s. 18.1(3)(b) of the *Federal Courts Act*, quashing the decision and order of the Tribunal, or setting aside the decision and order and referring the matter back to the Tribunal and/or such further and other orders or relief as this Honourable Court deems just.

[3] Having carefully read the records submitted by the parties, as well as their oral and written submissions, I have decided that the conclusion of the Minister's delegate – that there was insufficient evidence regarding the lawful origin of the seized funds – is reasonable. Accordingly, this application ought to be dismissed.

I. Facts

[4] On January 13, 2009, Sukhvir Singh Sidhu attended at the Vancouver International Airport to board a flight destined for Frankfurt, Germany, while in the possession of \$16,940. According to the detailed report of the CBSA officer, the events unfolded as follows. The Applicant did not report to Customs that he was exporting from Canada currency of a value equal to or greater than \$10,000, contrary to s. 12(1) of the *PCMLTFA*. To the contrary, even after his legal obligation was explained to him by a Customs official at the airport, the Applicant stated that he did not need to complete a currency report. In fact, he was asked a second time by a Customs official whether he needed to make a currency report and after confirming that he understood the questions, he once again denied that he needed to make a currency report. When asked how much currency he was carrying, Mr. Sidhu said he was unsure.

[5] In response to the Customs official's request to produce any currency in his possession, the Applicant produced two white envelopes containing large bundles of currency from his pockets, and when asked if this was all of the currency he had, he replied "Yes". The first envelope contained \$4000 in \$100 denominations and the second envelope contained \$2000 in \$100 denominations. The Applicant was then asked if he had a wallet. He confirmed that he did, opened his wallet and produced \$3500. When asked again if that was all of the currency he had, he retrieved a further \$1400 from his wallet. When asked yet again if he was carrying any more currency on his person, he produced a further \$6000 from his back pocket.

[6] At this point the Customs official made the decision to remove the Applicant from his flight for further examination in the secondary examination area. While walking towards that area, the Applicant stated that he was involved in the construction business although he could not provide any details about his construction company, other than that he and his brother built houses from time to time. He said that he had no current employment or occupation as he was unable to work because of a heart condition. He had not worked in the previous five years and received disability payments.

[7] When the Customs official asked the Applicant about the origin of the currency, he stated that it was from "loans". When asked to explain further he stated that it was from "loan sharking". The Customs official then asked the Applicant why he did not report this currency. The Applicant responded that he was not sure that he had to, and that he did not want the hassle.

[8] While in the secondary examination area, the Applicant confirmed to the Customs official that he did not file a tax return in the previous year, and does not report any income other than \$1000 per month he receives as a disability payment. In response to questions about the origin of the currency, the Applicant initially stated that the money was from business loans that he gave his brother. When asked where the principal money came from, he replied “from other loans”. The Applicant also stated that he could not prove how much he earns from his business as he did not have any documents or paperwork to show any transactions or involvement in the business. Through further questioning, he admitted that he loans money to his brother to fix and sell cars, and that he is repaid the loan plus interest. Additionally, he said that he loaned money to an individual named “Dan” but could not provide a last name for “Dan” or identify the name of “Dan’s” business or its office location. Despite further questioning, the Applicant could only account for \$2000 that he might have withdrawn from a bank two months previously. He claimed the remainder of the currency was kept at his home. Finally, the Applicant claimed that he had \$100,000 in two bank accounts, earned from previous employment. He later said that he had spent the money that he earned from this employment since he had a family of five to take care of. He could not provide an explanation as to why he would continue to have funds originating from that employment.

[9] Because the Applicant’s currency had not been reported to Customs officials, it was seized as forfeit pursuant to s. 18(1) of the *PCMLTFA*. In addition, since the Customs official believed that there were reasonable grounds to suspect that the currency was proceeds of crime, no terms of release were offered, pursuant to s. 18(2) of the *PCMLTFA*.

[10] On January 14, 2009, the Applicant requested, through his counsel, a Minister's Decision in regards to the seizure, pursuant to s. 25 of the *PCMLTFA*. Submissions were made by the Applicant's counsel by letter dated January 21, 2009. It was submitted that the Applicant had complied with the legislation, that he was not offered an opportunity pursuant to s. 13 of the *PCMLTFA* to decide whether he wanted to continue with the export of the currency, and that he was not afforded the opportunity to speak to legal counsel.

[11] Receipt of the Applicant's s. 25 *PCMLTFA* request was acknowledged by the Canada Border Services Agency (CBSA) on February 6, 2009, and was forwarded to the CBSA Recourse Directorate. On March 19, 2009, the CBSA provided the Applicant with the written Notice of the Circumstances of the Seizure pursuant to s. 26(1) of the *PCMLTFA*. After explaining the basis of the enforcement action, the Notice invited the Applicant to furnish any evidence in the matter that he desired to furnish pursuant to s. 26(2) of the *PCMLTFA*, and stated the following:

Moreover, I would like to advise you that based on the information it would appear that you failed to meet your reporting requirements with respect to the seized currency. However, should you be able to provide sufficient evidence of the legitimate origin of the seized currency, a reduction of the level of action taken may be appropriate. That would result in the return of the seized currency, upon payment of a monetary penalty.

[12] Considerable correspondence passed between the parties in the process leading up to the Minister's decision. The Applicant claimed that the majority of his funds originated from loan repayments from a Mr. Muni Nadan, to whom he had lent money, and that the remainder came from cash rent payments he received from the tenant of his basement suite. He furnished a copy of a loan agreement with Mr. Nadan, a letter from TD Canada Trust bank confirming that he purchased a

\$50,000 bank draft payable to Mr. Nadan, a copy of the bank draft payable to Mr. Nadan, a residential tenancy agreement and photocopies of receipts confirming payment of rent in cash. On June 15, 2009, CBSA Recourse Directorate Adjudicator Jonathan Ledoux-Cloutier sent a letter to the Applicant. The letter said that the CBSA had received the submissions of documentary evidence pertaining to the origin of the funds. It said that if the submissions were accepted, “consideration would be given to reducing the level of action taken”, which would result in the return of the seized currency.

[13] In an undated document that may also have been sent on June 15, 2009, CBSA Recourse Directorate Adjudicator Jonathan Ledoux-Cloutier sent the CBSA a carbon copy of the letter described in the paragraph above. To this letter, he appears to have added a post-script, in which he explained that “the Agency is considering accepting this documentation and reducing the level of infraction”. This post-script does not appear to have been sent to the Applicant.

[14] On July 11, 2009, the officer who originally apprehended the Applicant sent an internal email to Mr. Ledoux-Cloutier, wherein he expressed his doubts as to the authenticity of the Applicant’s documentary evidence, suggesting that it may have been fabricated. The officer saw the evidence as inconsistent with the Applicant’s original statements at the airport; he said that during the original questioning, the Applicant at no time suggested that the unreported currency originated from rental income or from this specific loan repayment.

[15] On or about October 5, 2009, the CBSA adjudicator issued a document titled “Case Synopsis and Reasons for Decision,” which summarized the material received in the context of the ministerial review and contained a recommendation to the ministerial delegate, to whom authority has been delegated to render decisions pursuant to ss. 27 and 29 of the *PCMLTFA*. All of this material (i.e. the material received by the adjudicator in the context of the ministerial review and the Case Synopsis prepared by the adjudicator) was then provided to the ministerial delegate, Ms. Kathy Rush, for the purpose of enabling her to render the appropriate decision as required by the *PCMLTFA*.

[16] By letter dated October 26, 2009, Ms. Rush advised the Applicant that she had rendered a s. 27 and s.29 *PCMLTFA* decision.

II. The Impugned Decision

[17] In coming to her decision, the Minister’s delegate reviewed the Case Synopsis, the enforcement action, the evidence, and the applicable law as well as the documentation provided by both parties. In particular, she explicitly acknowledged each of the Applicant’s assertions and pieces of evidence pertaining to the lawful origins of the money.

[18] In her view, the evidence established that the Applicant did contravene s. 12(1) of the *PCMLTFA* in respect of the currency that was seized. The reason for this determination was the fact that the Applicant declared to a Customs official that the currency in his possession did not exceed the \$10,000 reporting threshold when this was untrue.

[19] She also found that the CBSA did indeed have reasonable grounds to suspect that the currency was the proceeds of crime. She therefore determined, pursuant to s. 29 of the *PCMLTFA*, that the forfeiture of the seized currency shall be maintained, since the evidence provided by the Applicant was not sufficient to prove the lawful origin of the currency. The reasons for that decision appear to be twofold:

... although the multitude of documents and submissions provided by your counsel suggested that the entire amount of the seized currency was legitimate, the documentation and submission provided did not clearly substantiate the legitimate origin of the seized currency. Your counsel only emphasized that the vast majority of the seized currency originated from this loan's repayments you received and the additional amount was cash rental payments received. Furthermore, by acknowledging that the currency was kept at your residence, this created an undocumented void between a potential legitimate origin and the seized funds.

[20] On December 3, 2009, the Applicant commenced the present application for judicial review to challenge the s. 29 *PCMLTFA* decision.

III. Issues

[21] Counsel for the Applicant has raised essentially three issues:

- a) Was the decision of the Minister's delegate to confirm the forfeiture of the seized currency reasonable, considering the evidence that was before her?
- b) Did the Minister breach his duty of fairness and of full disclosure by not forwarding to the Applicant the postscript attached to the Recourse Directorate Adjudicator's letter of June 15, 2009?
- c) Did the Applicant have the opportunity to decide not to continue with the exportation of the currency?

IV. Analysis

[22] Before turning to the issues raised in this application for judicial review, it is worth looking at the statutory cross-border currency reporting regime to situate this case within its legislative context.

[23] The objectives of the *PCMLTFA* are clearly set out at s. 3 and include the following:

(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

(...)

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

(...)

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

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

[24] In order to implement the objective specified at s. 3(a)(ii), Part 2 of the *PCMLTFA* provides for a currency reporting regime whereby importers and exporters of currency must make a report to a Customs official whenever they import or export large quantities of currency or monetary instruments into or out of Canada.

[25] The relevant reporting requirements in the case at bar (which involves an exportation of currency) stem from ss. 12(1) and 12(3)(a) of the *PCMLTFA* along with ss. 2, 3 and 11 of the *Cross-border Currency and Monetary Instruments Reporting Regulations* (SOR/2002-412). These provisions require every person who exports currency from Canada worth \$10,000.00 or more to report this exportation in writing and without delay to a Customs official.

[26] In the event that a person exports currency from Canada worth \$10,000.00 or more and fails to report the exportation, the currency is subject to seizure as forfeit by a Customs official pursuant to s. 18(1) of the *PCMLTFA*, if that official believes on reasonable grounds that s. 12(1) has been contravened.

[27] Pursuant to s. 18(2) of the *PCMLTFA*, the Customs official must then decide whether there are reasonable grounds to suspect that the currency is proceeds of crime or funds for terrorist financing. If the official answers this question in the affirmative, the seized currency must remain forfeit. If the official answers this question in the negative, he or she must return the currency upon receipt of the prescribed penalty, which ranges from \$250 to \$5,000.

[28] Furthermore, s. 23 of the *PCMLTFA* provides that currency seized as forfeit pursuant to s. 18(1) of the *PCMLTFA* is automatically forfeited to Her Majesty in right of Canada from the time of the contravention of s. 12(1) in respect of which it was seized and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

[29] As per s. 24 of the *PCMLTFA*, the forfeiture of seized currency is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by the review and appeal procedure provided by ss. 24.1 and 25 of the *PCMLTFA*.

[30] Specifically, s. 25 of the *PCMLTFA* permits the person from whom the currency was seized to request a decision of the Minister as to whether s. 12(1) of the *PCMLTFA* was contravened, provided such a request is made in writing within 90 days after the date of the seizure.

[31] If a decision is requested under s. 25 of the *PCMLTFA*, the President of the CBSA is obliged to serve that person with written notice of the circumstances of the seizure, pursuant to s. 26(1) of the *PCMLTFA*. That person is then entitled pursuant to s. 26(2) of the *PCMLTFA* to provide any evidence in the matter that he or she desires to furnish. The Minister must then, pursuant to s. 27 of the *PCMLTFA*, make a decision with respect to whether s. 12(1) of the *PCMLTFA* was contravened. This decision of the Minister can be termed the “Section 27 Decision”.

[32] If the Minister decides that there was no failure to report, the currency or the assessed penalty must then be returned, pursuant to s. 28 of the *PCMLTFA*.

[33] If, on the other hand, the Minister decides that there was a failure to report, the Minister must then render a second decision, as per s. 29 of the *PCMLTFA*, with respect to the appropriate sanction for the infraction. This decision is effectively a review of the quantum of the sanction imposed by the Customs official pursuant to s. 18(2) (i.e., full forfeiture or a penalty ranging from

\$250 to \$5,000). Section 29 of the *PCMLTFA* requires the Minister to either confirm the Custom official's decision with respect to the sanction or to reduce it to some lesser penalty. This second decision of the Minister can be termed "the Section 29 Decision".

[34] Section 30 of the *PCMLTFA* allows the person who requested a Section 27 Decision to appeal that decision by way of an action in the Federal Court. However, a person who wishes to challenge a Section 29 Decision must do so by means of a judicial review application pursuant to s. 18.1 of the *Federal Courts Act*.

[35] The Applicant and the Respondent agree that the appropriate standard of review is reasonableness. Indeed, this is consistent with various decisions of the Court of Appeal and of this Court on this issue: see, most recently, *Ayobe v. The Minister of Public Safety and Emergency Preparedness*, 2009 FC 264, at para. 18, as well as *Dag v. The Minister of Public Safety and Emergency Preparedness*, 2008 FCA 95, at para. 4; *Sellathurai v. Minister of Public Safety and Emergency Preparedness*, 2008 FCA 255, at para. 25; *Yang v. Minister of Public Safety and Emergency Preparedness*, 2008 FCA 281, at para. 9.

[36] Therefore, the impugned Section 29 Decision in the case at bar warrants significant deference. In accordance with the Supreme Court of Canada's guidelines in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, it should be set aside only if the decision is not one of a number of possible, reasonable conclusions that was available to the Minister.

- a) Was the decision of the Minister's delegate to confirm the forfeiture of the seized currency reasonable, considering the evidence that was before her?

[37] The Applicant claims to have provided sufficient documentary evidence proving the legitimate source of the money seized. To prove that much of the funds came from the repayment of a loan he had made, he submitted the loan agreement, a copy of a bank draft showing the transfer of funds from his account to the borrower, and a confirmation of this draft from his bank. He argues that this evidence of a legitimate loan should countervail the weight attached to his own use of the term "loan sharking," which is central to the seizing officer's report. In addition, to prove that the balance of the funds came from rental income, he submitted copies of rental receipts indicating that he received payments from his tenant in cash.

[38] Contrary to the Applicant's submissions, I am satisfied that these documents were duly considered in the "Case Synopsis and Reasons for Decision" prepared by the CBSA Adjudicator and in the decision of the Minister's delegate. They are all listed and discussed in both the Case Synopsis and the decision. The fact that this evidence was not found to satisfactorily substantiate his claims does not mean that it was not considered.

[39] Counsel for the Applicant also argued that there were no reasonable grounds to suspect that the money itself was proceeds of crime. However, this argument is turning the test on its head. The Applicant's submission erroneously implies that the Respondent has the burden of proving that the currency was the proceeds of crime. Yet, the jurisprudence is quite clear that the onus falls on the Applicant to persuade the Minister that the seized currency is not the proceeds of crime.

[40] The Federal Court of Appeal in *Sellathurai* held that the only question for determination under s. 29 of the *PCMLTFA* is whether the Minister will exercise his discretion to grant relief from forfeiture, either by returning the funds or by returning the statutory penalty paid to secure the release of the funds. The Applicant must persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the funds are not proceeds of crime. Where the Minister is satisfied that the seized currency comes from a legitimate source, it follows that the currency cannot be proceeds of crime. If the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. These principles have been stated quite explicitly in the following two paragraphs of the *Sellathurai* decision:

[49] Where the Minister repeatedly asks for proof that the seized currency has a legitimate source, as he did in this case, it is a fair conclusion that he made his decision on the basis of the applicant's evidence on that issue. The underlying logic is unassailable. If the currency can be shown to have a legitimate source, then it cannot be proceeds of crime.

[50] If, on the other hand, the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. The distinction is important because it goes directly to the nature of the decision which the Minister is asked to make under section 29 which, as noted earlier in these reasons, is an application for relief from forfeiture. The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy

him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.

[41] The Applicant was unable to demonstrate the origin of the currency seized by Canadian Customs Officials or to otherwise satisfy the Minister's delegate that the seized currency was not proceeds of crime. The Applicant was given numerous opportunities to provide evidence to establish that the currency originated from a legitimate source. When asked initially about the origin of the funds, the Applicant informed the Customs official that the funds were obtained through "loan sharking". While the Applicant later submitted a loan agreement and receipts for rental income received in cash, the documentation did not establish the source of the currency.

[42] When initially questioned by the Customs official, the Applicant admitted that he had not worked in the past five years because he was disabled by a heart condition. He then claimed that the currency in his possession was from business loans that he made to his brother and an associate named "Dan". Curiously, he was unable to provide a last name, a business name or address for "Dan" even though it was someone to whom he had loaned money.

[43] The Applicant also acknowledged that he was unable to provide documentary evidence of the currency's origin because the currency was kept at his residence as opposed to a financial institution.

[44] Based on the evidence that was before her, the Minister's delegate confirmed the forfeiture. It cannot be said that her conclusion was unreasonable; her finding that the evidence failed to

establish that the currency originated from a legitimate source was definitely one of the number of possible, reasonable conclusions that was open to her.

[45] Finally, the Applicant submitted that his right to know the case against him was breached, because he was not informed as to what evidence would be sufficient to dispel the view that the seized currency was illegally obtained. I find this argument devoid of merit. The correspondence made it clear that the CBSA was looking for documentary evidence proving the legitimate origin of the funds. As was made clear in at least two letters to the Applicant, it was not enough to show that part of the money originated from a loan repayment; what was requested was additional evidence documenting the specific origin of the money that was lent in the first place. Accordingly, I find that the Applicant was adequately informed of the case that needed to be met.

- b) Did the Minister breach his duty of fairness and of full disclosure by not forwarding to the Applicant the postscript attached to the Recourse Directorate Adjudicator's letter of June 15, 2009?

[46] Counsel for the Applicant contends that the CBSA "post-script" described above at paragraph 14 of these reasons indicates that the adjudicator had decided to reduce his infraction and return the funds, kept that decision secret from him, and then revoked it. To use the Applicant's words, this would amount to a "conspicuous" breach of the duty of fairness and full disclosure.

[47] In my view, the Applicant overstates the significance of this post-script. The body of the letter sent to the Applicant contains the same essential message as does the allegedly secret post-script: that the CBSA was considering reducing the infraction and returning the funds.

The disclosure of the post-script would have been of no benefit to the Applicant. It is true that the Agency was “considering accepting” the documentation provided by the Applicant, and reducing the level of infraction. However, no decision had yet been made and further information was thereafter communicated to the Adjudicator by the officer who had originally seized the currency. Moreover, the Adjudicator was not the person authorized to make the decision on behalf of the Minister. It cannot be said, therefore, that he revoked his decision, since no decision had been made or could have been made when the letter to which the post-script was attached had been sent.

- c) Did the Applicant have the opportunity to decide not to continue with the exportation of the currency?

[48] Finally, the Applicant argues that he was never given the opportunity to decide whether to continue to proceed with the exportation of the currency, and that the CBSA officers thereby breached s. 13 of the *PCMLTFA*.

[49] In making this argument, the Applicant appears to understand s. 13 as imposing a positive obligation upon the officer to explicitly offer the person an opportunity to halt the exportation. However, a fair reading of s. 13 offers no indication that such a positive obligation exists. Furthermore, there is no suggestion in the record that the Applicant gave any signal communicating a desire to cease the exportation during the approximate 2.5 hours of questioning before the money was seized. As such, he cannot avail himself of s. 13.

[50] For all of the foregoing reasons, I am therefore of the view that this application for judicial review ought to be dismissed, with costs.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed, with costs.

“Yves de Montigny”

Judge

ANNEX “A”

Proceeds of Crime (Money Laundering) and Terrorist Financing Act / Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes.

Relevant Provisions

3. The object of this Act is

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

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

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

3. La présente loi a pour objet :

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

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

(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements

transfrontaliers d'espèces
et d'effets,

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

(iii) constituer un
organisme chargé de
l'examen de
renseignements,
notamment ceux portés à
son attention en
application 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 proceeds of their
criminal activities, while
ensuring that appropriate
safeguards are put in place to
protect the privacy of persons
with respect to personal
information about themselves;
and

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

(c) 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.

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.

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.

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.

(...)

(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

(...)

(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 exportés par courrier;

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

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

13. A person or an entity that is required to report currency or monetary instruments may, at any time before they are retained under subsection 14(1) or forfeited as a result of a contravention of subsection 12(1), decide not to proceed further with importing or exporting them.

13. La personne ou l'entité qui a l'obligation de déclarer les effets ou espèces peut, en tout temps avant leur rétention en application du paragraphe 14(1) ou leur confiscation résultant d'une contravention au paragraphe 12(1), renoncer à poursuivre leur importation ou exportation.

14. (1) Subject to subsections (2) to (5), if a person or an entity indicates to an officer that they have currency or monetary instruments to report under subsection 12(1) but the report has not yet been completed, the officer may, after giving notice in the prescribed manner to the person or entity, retain the currency or monetary instruments for the prescribed period.

14. (1) Sous réserve des paragraphes (2) à (5), si la personne ou l'entité indique à l'agent qu'elle a des espèces ou effets à déclarer en application du paragraphe 12(1) mais que la déclaration n'a pas encore été complétée, l'agent peut, moyennant avis à la personne ou l'entité selon les modalités réglementaires, retenir les espèces ou effets pour la période réglementaire.

(2) In the case of currency or monetary instruments imported or exported by courier or as mail, the officer shall, within the prescribed period, give the notice to the exporter if the exporter's address is known, or, if the exporter's address is not known, to the importer.

(2) Dans le cas où les espèces ou effets sont importés ou exportés par messenger ou par courrier, l'avis est donné, dans le délai réglementaire, à l'exportateur si son adresse est connue ou, dans le cas contraire, à l'importateur.

(3) Currency or monetary instruments may no longer be retained under subsection (1) if,

(3) Les espèces ou effets ne peuvent plus être retenus en application du paragraphe (1) si, durant la période visée à ce

during the period referred to in that subsection,

(a) the officer is satisfied that the currency or monetary instruments have been reported under subsection 12(1); or

(b) the importer or exporter of the currency or monetary instruments advises the officer that they have decided not to proceed further with importing or exporting them.

(4) The notice referred to in subsection (1) must state

(a) the period for which the currency or monetary instruments may be retained;

(b) that if, within that period, the currency or monetary instruments are reported under subsection 12(1) or the importer or exporter decides not to proceed further with importing or exporting them, they may no longer be retained; and

(c) that currency or monetary instruments retained at the end of that period are forfeited to Her Majesty in right of Canada at that time.

(5) Currency or monetary instruments that are retained by an officer under subsection (1) are forfeited to Her Majesty in right of Canada at the end of the

paragraphe, l'un des événements suivants se produit :

a) l'agent constate qu'ils ont été déclarés en conformité avec le paragraphe 12(1);

b) l'importateur ou l'exportateur informe l'agent qu'il a renoncé à poursuivre leur importation ou exportation.

(4) L'avis doit contenir les éléments suivants :

a) la période de rétention;

b) la mention qu'il est mis fin à la rétention des espèces ou effets si, pendant cette période, ils sont déclarés conformément au paragraphe 12(1) ou l'importateur ou l'exportateur renonce à poursuivre leur importation ou exportation;

c) la mention qu'à la fin de cette période, les espèces ou effets retenus seront confisqués au profit de Sa Majesté du chef du Canada.

(5) Les espèces ou effets retenus en vertu du paragraphe (1) sont confisqués au profit de Sa Majesté du chef du Canada à l'expiration de la période visée à

period referred to in that subsection, and the officer shall send any incomplete report in respect of the forfeited currency or monetary instruments made under subsection 12(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.

(...)

23. Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada from the time of the contravention of subsection 12(1) in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

ce paragraphe et l'agent transmet au Centre toute déclaration incomplète entreprise dans le cadre du paragraphe 12(1) à l'égard de ces espèces ou effets.

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.

(...)

23. Sous réserve du paragraphe 18(2) et des articles 25 à 31, les espèces ou effets saisis en application du paragraphe 18(1) sont confisqués au profit de Sa Majesté du chef du Canada à compter de la contravention au paragraphe 12(1) qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

24. The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by sections 24.1 and 25.

24.1 (1) The Minister, or any officer delegated by the President for the purposes of this section, may, within 30 days after a seizure made under subsection 18(1) or an assessment of a penalty referred to in subsection 18(2),

(a) cancel the seizure, or cancel or refund the penalty, if the Minister is satisfied that there was no contravention; or

(b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced.

(2) If an amount is refunded to a person or entity under paragraph (1)(a), the person or entity shall be given interest on that amount at the prescribed rate for the period beginning on the day after the day on which the amount was paid by that person or entity and ending on the day on which it was refunded.

24. La saisie-confiscation d'espèces ou d'effets effectuée en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 24.1 et 25.

24.1 (1) Le ministre ou l'agent que le président délègue pour l'application du présent article peut, dans les trente jours suivant la saisie effectuée en vertu du paragraphe 18(1) ou l'établissement de la pénalité réglementaire visée au paragraphe 18(2) :

a) si le ministre est convaincu qu'aucune infraction n'a été commise, annuler la saisie, ou annuler ou rembourser la pénalité;

b) s'il y a eu infraction mais que le ministre est d'avis qu'une erreur a été commise concernant la somme établie ou versée et que celle-ci doit être réduite, réduire la pénalité ou rembourser le trop-perçu.

(2) La somme qui est remboursée à une personne ou entité en vertu de l'alinéa (1)a) est majorée des intérêts au taux réglementaire, calculés à compter du lendemain du jour du paiement de la somme par celle-ci jusqu'à celui de son remboursement.

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 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.

26. (1) If a decision of the Minister is requested under section 25, the President shall without delay serve on the person who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

(2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

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.

(2) If charges are laid with respect to a money laundering offence or a terrorist activity financing offence in respect of

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 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.

26. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 25 un avis exposant les circonstances de la saisie à l'origine de la demande.

Moyens de preuve

(2) Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

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).

(2) Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité ou pour

the currency or monetary instruments seized, the Minister may defer making a decision but shall make it in any case no later than 30 days after the conclusion of all court proceedings in respect of those charges.

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

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.

infraction de financement des activités terroristes ont été intentées relativement aux espèces ou effets saisis, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

(3) Le ministre signifie sans délai par écrit à la personne qui a fait la demande un avis de la décision, motifs à l'appui.

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.

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.

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

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.

(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.

(3) The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

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).

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de 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 l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

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) 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.

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en a

été informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

(4) If the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, the total amount that can be paid under subsection (3) shall 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.

(4) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de produit de l'aliénation, aucun paiement n'est effectué.

Cross-border Currency and Monetary Instruments Reporting Regulations
(SOR/2002-412)
Règlement sur la déclaration des mouvements transfrontaliers d'espèces et d'effets
(C.P. 2002-1945)

Relevant Provisions

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.

3. Subject to subsections 4(3) and (3.1) and section 8, a report with respect to the importation or exportation of currency or

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.

3. Sous réserve des paragraphes 4(3) et (3.1) et de l'article 8, la déclaration de l'importation ou de l'exportation

monetary instruments shall

- (a) be made in writing;
- (b) contain the information referred to
 - (i) in Schedule 1, in the case of a report made by the person described in paragraph 12(3)(a) of the Act, if that person is not transporting on behalf of an entity or other person,
 - (ii) in Schedule 2, in the case of a report made by the person described in paragraph 12(3)(a) of the Act, if that person is transporting on behalf of an entity or other person,
 - (iii) in Schedule 2, in the case of a report made by the person or entity described in paragraph 12(3)(b), (c) or (e) of the Act, and
 - (iv) in Schedule 3, in the case of a report made by the person described in paragraph 12(3)(d) of the Act;
- (c) contain a declaration that the statements made in the report are true, accurate and complete; and
- (d) be signed and dated by the person or entity described in paragraph 12(3)(a), (b), (c), (d) or (e) of the Act, as

d'espèces ou d'effets doit :

- a) être faite par écrit;
- b) comporter les renseignements prévus à :
 - (i) à l'annexe 1, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour son propre compte,
 - (ii) à l'annexe 2, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour le compte d'une entité ou d'une autre personne,
 - (iii) à l'annexe 2, dans le cas d'une déclaration faite par la personne ou l'entité visée aux alinéas 12(3)b), c) ou e) de la Loi,
 - (iv) à l'annexe 3, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)d) de la Loi;
- c) porter une mention selon laquelle les renseignements fournis sont véridiques, exacts et complets;
- d) être signée et datée par la personne ou l'entité visée aux alinéas 12(3)a), b), c), d) ou e) de la Loi, selon le cas.

applicable.

11. A report with respect to currency or monetary instruments transported by a person departing from Canada shall be submitted without delay by the person at the customs office located at the place of exportation or, if it is not open for business at the time of exportation, at the nearest customs office that is open for business at that time.

11. La déclaration relative à des espèces ou effets transportés par une personne quittant le Canada doit être présentée sans délai par cette personne au bureau de douane situé au lieu de l'exportation ou, si ce bureau est fermé au moment de l'exportation, au bureau de douane le plus proche qui est ouvert.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2026-09

STYLE OF CAUSE: SUKHVIR SINGH SIDHU V. THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: September 7, 2010

**REASONS FOR ORDER
AND ORDER:** DE MONTIGNY, J.

DATED: September 13, 2010

APPEARANCES:

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Ms. Michelle Shea FOR THE RESPONDENT

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