

Federal Court



Cour fédérale

**Date: 20091130**

**Docket: T-232-08**

**Citation: 2009 FC 1222**

**BETWEEN:**

**GABRIEL AZOUZ**

**Plaintiff**

**and**

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

**Defendant**

**REASONS FOR JUDGMENT ON THE MERITS**

**AND ORDER AS TO COSTS**

**LEMIEUX J.**

**Introduction and facts**

[1] In Montréal, on October 26, 2009, after having heard the parties, I dismissed Mr. Azouz's appeal, filed under section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, 2000, c. 17 (the Act). The following reasons are in support of my decision. The only issue before the Court was whether Mr. Azouz had contravened subsection 12(1) of the Act.

[2] I set out in the annex to these reasons the relevant provisions of the Act and of the associated Regulations—the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 (the Regulations).

[3] Mr. Azouz’s appeal, by way of an action, concerned the decision of the Minister’s delegate, rendered under section 27 of the Act on November 14, 2007, in which she found that the plaintiff had contravened subsection 12(1) of the Act with respect to the currency in his possession seized on June 6, 2007, at the Trudeau International Airport.

[4] The circumstances surrounding this seizure of the currency and its return were established in a statement of agreed facts and admissions filed further to Prothonotary Morneau’s order of April 1, 2009. This statement read as follows:

[TRANSLATION]

1. On June 6, 2007, the plaintiff and his spouse were about to leave the country and go to Paris from the Montréal-Trudeau International Airport.
2. Once the plaintiff and his spouse had passed the pre-boarding checkpoint, they were approached by a senior customs officer.
3. The senior customs officer first asked the plaintiff and his spouse the following question:

Do you have any currency or monetary instruments in your possession with a value equal to or greater than 10,000.00 Canadian dollars?

4. The plaintiff and his spouse replied NO.

5. The senior customs officer asked them how much currency or monetary instruments they had in their possession.
6. The plaintiff's spouse told the officer that she had nothing in her possession.
7. The plaintiff answered that he had only a few thousand.
8. At the request of the senior customs officer, the plaintiff specified that he had 7,000 (seven thousand), then specified that he had in his possession 4,000 euros and 2,000 Canadian dollars.
9. The senior customs officer asked the plaintiff and his spouse to follow him so that he could verify their statements, and he led them towards an interview room. Another customs officer who was assisting him followed them at a distance of about 8 feet.
10. During the walk between the pre-boarding checkpoint and the interview room, the plaintiff gave his spouse 700 euros.
11. The senior customs officer asked the plaintiff's spouse to give him the amount her spouse had just given her, which she did.
12. The plaintiff and his spouse then entered the interview room.
13. An examination of the plaintiff's monetary instruments revealed that the plaintiff had in his possession various currencies with a value of \$11,097.78 Canadian distributed as follows:
  - 5,000 euros;
  - 3,041 US dollars; and
  - 700 Canadian dollars.
14. No money was found in the possession of the plaintiff's spouse, Peggy Azouz.

15. The senior customs officer then seized as forfeit this sum of \$11,097.78 under subsection 18(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (hereafter the Act).
16. The customs officer returned the seized currency to the plaintiff (\$11,097.78) upon payment by the plaintiff of a penalty of \$2,500 set out in paragraph 18(b) of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412.
17. In this regard, the customs officer issued a written notice of the seizure in the name of the plaintiff and his spouse, Peggy Azouz. This notice indicated, in particular, the amount of currency seized, the amount of the imposed penalty as well as the plaintiff's right to appeal.
18. On June 6, 2007, the senior customs officer wrote the narrative report set out in section 20 of the Act. The assisting customs officer also wrote a narrative report on this date. These narrative reports were first disclosed to the plaintiff's counsel, Sami Iskandar, on or before July 3, 2007.

[5] Following these events, in accordance with sections 25 and 27 of the Act, Mr. Azouz requested a decision of the Minister as to whether subsection 12(1) of the Act had been contravened. The plaintiff's counsel presented his evidence against the seizure. A report written by an officer with the Canada Border Services Agency (the Agency) described the facts and circumstances of the seizure based on the two narrative statements of the senior customs officer and his assistant. The Minister's delegate rendered her decision, according to section 27 of the Act, on November 14, 2007.

[6] The Minister's delegate found the following:

1. There was a contravention of subsection 12(1) of the Act: “as the currency in your possession was of a value greater than \$10 000.00 CAD and you failed to declare it to Canada Border Services Agency, a contravention of subsection 12(1) of the Act did occur. The currency was lawfully subject to seizure under subsection 18(1) of this Act.”
2. The plaintiff’s spouse, Peggy Azouz, did not contravene subsection 12(1) of the Act and her name was withdrawn from the Canada Border Services Agency records.
3. The penalty upon the return of the seized currencies should have been \$250 rather than \$2,500: “because, although the currency was not reported, it was not concealed, a full disclosure of the facts was made upon discovery and you were not subject to a previous seizure under this Act. The prescribed penalty for a Level 1 infraction is \$250.”

[7] By means of a letter dated November 28, 2007, Mr. Azouz asked the Minister’s delegate if it was possible to withdraw his name from the customs databank so that he would not experience any inconvenience going through customs as a result of the seizure of June 6, 2007.

[8] On December 24, 2007, an Agency adjudicator replied to the plaintiff’s counsel that the plaintiff’s name would stay in the Agency’s system for a period of 6 years from the time of the contravention, and that consequently the plaintiff could be the subject of enhanced checks when going through customs in the future.

[9] In the meantime, on or around November 28, 2007, the plaintiff received a letter from the Agency telling him that his request to participate in the NEXUS system had been refused because of a previous contravention of the customs legislation. This NEXUS program is for Canadian and American business people who travel frequently and aims to facilitate customs procedures during departures and arrivals at the common borders of the two (2) countries.

[10] On February 12, 2008, the plaintiff filed an action in this case under section 30 of the Act.

#### Preliminary comments

[11] As mentioned in his order dated April 1, 2009, regarding the pre-trial conference and the conduct of the action, Prothonotary Morneau ordered that the only issue for determination was whether the plaintiff had contravened subsection 12(1) of the Act. He also ordered that there would be no expert witness produced by the parties at trial and, as mentioned, ordered the filing of a statement of agreed facts and admissions, which was to be as complete as possible.

[12] At the beginning of the hearing on October 26, 2009, Mr. Azouz's counsel informed the Court that Mr. and Mrs. Azouz wanted to testify, which took the Court a bit by surprise considering the extent of the facts and admissions in the statement as well as the acknowledged principle that their testimony could not contradict what had been admitted in the statement or argued in the report sought before the Court under section 30 of the Act.

[13] The Court asked that this situation be clarified and after obtaining two admissions from the Minister, Mr. Azouz's counsel acknowledged that there was no point, and the Court found that it was irrelevant to make his clients testify. The admissions were the following:

1. The Minister admitted for the purposes of this case that 700 of the 5,000 euros Mr. Azouz had in his possession at the time of the seizure was the property of Mrs. Azouz, but it was not admitted that the 700 Canadian dollars in Mr. Azouz's possession was his spouse's property.
2. The Minister also admitted that Mr. Azouz subjectively did not believe that he was in possession of more than 10,000 Canadian dollars in euros, American dollars and Canadian dollars.

[14] I did not allow Mrs. Azouz to testify that the 700 Canadian dollars was her property. I was of the opinion that testimony in this regard would contradict either the statement or the report filed before this Court when there was never a question that the Canadian dollars belonged to her. In fact, one of the paragraphs of the report sought by Mr. Azouz indicated that the seven hundred Canadian dollars was his property.

[15] Finally, at the end of the argument, Mr. Azouz asked me if he could address the Court. I upheld the Minister's objection on this point on the ground that counsel representing him was in reply.

[16] The parties recognized that the appeal procedure before me was not a judicial review but rather a trial *de novo* in which the parties could testify and plead facts not before the Minister.

### Analysis

#### (1) The Act and the associated Regulations

[17] Everything concerning the duty to report the importation or exportation of currency is clear and unambiguous in the Act and the Regulations. They state to whom, by whom, when, how, why and in what circumstances a report must be made and the consequences of a contravention. These elements are set out in sections 12 and 18 of the Act and in sections 2, 3 and 11 of the Regulations.

[18] A person who leaves the country with, in his or her actual possession or as part of his or her baggage, currency with a value equal to or greater than \$10,000 has a duty to disclose this amount by means of a written report submitted, without delay, to an officer at the customs office located at the place of exportation or, if the office is closed, at the time of exportation, at the nearest customs office that is open.

[19] Enforcement of the Act is set out in section 18, which provides that if the officer believes on reasonable grounds that subsection 12(1) has been contravened, “the officer may seize as forfeit the currency” but must return the seized currency on payment of a penalty in the prescribed amount to the individual from whom it was seized or to the lawful owner unless the officer has reasonable grounds to suspect that the money is 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. The penalties are set out in section 18 of the Regulations. The amount: (1) of \$250 is prescribed for a person who has not



concealed the currency; (2) of \$2,500 is prescribed for a person who has concealed the currency; and (3) of \$5,000 is the maximum amount for a person who has concealed the currency by using a false compartment. I note, once again, that the minimum penalty was imposed on the plaintiff following his appeal to the Minister under section 27 of the Act.

[20] One of the purposes of the Act stated at subparagraph 3(a)(ii) is “requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments”.

(2) Mr. Azouz’s argument

[21] During his argument, Mr. Azouz’s counsel admitted that before taking his flight to Paris the evening of June 6, 2007, he (1) had in his possession the equivalent of more than 10,000 Canadian dollars (transcript, page 55), and (2) had not submitted the required written report (transcript, page 148, line 22). He reported it verbally only after going through security and when confronted by an officer.

[22] In his defence, he argued the following:

- (1) Under the circumstances, Mr. Azouz was not required to submit a report to the customs office in accordance with section 11 of the Regulations because he did not believe that he had more than \$10,000 on him because a large amount belonged to his spouse; he was convinced that he would have had less than \$10,000 in his pockets before boarding the plane as he intended to buy duty-free presents and have a meal in the airport with Mrs. Azouz.

- (2) The seizure under section 18 was illegal because, on the one hand, the officer did not believe on reasonable grounds that section 12 of the Act had been contravened and, on the other hand, the officer improperly exercised his discretion under the circumstances given that the purpose of the Act is to target money laundering or the financing of terrorist activities but not [TRANSLATION] “to nail someone with a few extra dollars” (transcript, page 60, line 14). According to counsel, the officer, by making the seizure, did not recognize that his discretion was to promote these purposes of the Act.
- (3) The Minister had to demonstrate that he had in his possession more than \$20,000 because his spouse was involved in the proceedings as a “co-offender”; she was included in the seizure.
- (4) The officer was verbally violent toward Mr. and Mrs. Azouz, which resulted in the charge against Mr. and Mrs. Azouz and then the seizure. He claimed that the Act is penal legislation and that the officer acted in bad faith.

### Conclusions

[23] I am unable to agree with any of the submissions of Mr. Azouz’s counsel. These submissions, on the one hand, go against the scheme of the Act, the case law that has interpreted it and Parliament’s related statutes and, on the other hand, are elements cited for the first time in an appeal before this Court. The following judgments are relevant to the interpretation of the Act and associated Regulations:

- (1) *Tourki v. The Minister of Public Safety and Emergency Preparedness*, 2006 FC 50 (F.C.), upheld in appeal 2007 FCA 186 (*Tourki*);
- (2) *Zeid v. The Minister of Public Safety and Emergency Preparedness*, 2008 FC 539 (*Zeid*);  
and
- (3) *Hoang v. The Minister of National Revenue et al*, 2006 FC 182 (*Hoang*).

[24] I also cite the Supreme Court of Canada's judgment in *Martineau v. The Minister of National Revenue*, 2004 SCC 81 and the decision by this Court in *Sarji v. Canada (The Minister of National Revenue (Customs and Excise – M.N.R.))*, [1999] F.C.J. No. 1401 rendered under the *Customs Act*.

[25] The following principles emerge from this case law:

- (1) The seizure and forfeiture process in the Act is a civil collection mechanism that is not intended to punish the individual; the individual is not an accused; the person is not charged with any criminal, quasi-criminal or regulatory offence (see: *Tourki*, 2007 FCA 186, at paragraphs 42 to 46). I add that section 73.11 of the Act requires, under the conditions applicable to the case, that the amount of the required penalties takes into account that the purpose of the penalties is not to punish but to encourage compliance with this Act and the associated Regulations.

- (2) “If you do not declare, the Customs officer is entitled to forfeit that which should have been declared. It is as simple as that.” (See the decision by my colleague, Justice Harrington, in *Tourki*, 2006 FC 50, at paragraph 56.)
  
- (3) The objectives of the *Customs Act* (CA) are to regulate, oversee and control cross-border movements of people and goods. The attainment of these objectives depends on the effectiveness of the voluntary or self-reporting system. To enforce the CA, Parliament has implemented civil and penal mechanisms (see *Martineau*, above, at paragraphs 26, 27 and 28 and see also *Tourki*, decision rendered by Justice Harrington, 2006 FC 50, at paragraph 54).
  
- (4) The purpose of the Act is more than combatting international money laundering. The Act requires the reporting of the importation of currency and monetary instruments. To achieve this purpose, a tracking system is obligatory (see *Hoang*, above, at paragraph 29).
  
- (5) A traveller’s subjective intention when failing to report is irrelevant; strict liability attaches to those who fail to report (see *Zeid*, above, at paragraph 53).

[26] Furthermore, in my opinion, for the following reasons there is no merit to the argument raised by the defendant’s counsel on the legality of the seizure on the ground that it was a search or a seizure without reasonable grounds or, in any event, that the officer improperly exercised his discretion.

[27] This issue was not relevant in the context of an appeal under section 30 of the Act of the decision of the Minister's delegate under section 27 of the Act. It was not raised as an issue before Prothonotary Morneau and, on the merits, the officer had reasonable grounds to seize given the responses given by the plaintiff and his spouse. In my opinion, his discretion to seize was completely consistent with the purposes of the Act and was exercised in accordance with the Act and the associated Regulations.

[28] According to the evidence, it is obvious that one of the principal reasons stated by Mr. Azouz for appealing to this Court was not that a \$250 penalty was imposed on him, but that his name was kept on a verification list for the future and because, subjectively, he did not think that he had contravened the Act. With respect to the first reason, it is not relevant in an appeal under section 30 of the Act; if he felt aggrieved on this point, other remedies were available to him; on the second point, his subjective belief, which was not called into question, has no relevance under the Act and the Regulations.

[29] At the end of the argument, the Minister's counsel informed me that the Minister had made the plaintiff an offer to settle—his abandonment without costs. If the Minister had had the provisions of sections 420 and 421 of the *Federal Court Rules* in mind, I do not believe that the requirement for a compromise in the Minister's offer would have been met (see *Canadian Olympic Association v. Olymel, Société en commandite*, 195 F.T.R. 216). I therefore think that the Minister is not entitled to double costs, but being the successful party, is entitled to ordinary costs. I therefore

order that Mr. Azouz pay the Minister's costs according to the scale of costs in the tariff of the rules,  
that is, at level 3.

“François Lemieux”

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Judge

Ottawa, Ontario  
November 30, 2009

Certified true translation  
Susan Deichert, Reviser

ANNEX A1. The Act

Section 12 of the Act requires that the exportation of currency be reported to the officer:

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

(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

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) 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

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 with the request of an officer

(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.

Sending reports to Centre

(5) Officers shall send the reports they

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

Obligation du déclarant

(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.

Transmission au Centre

(5) L'agent fait parvenir au Centre les



receive under subsection (1) to the Centre.

déclarations recueillies en application du paragraphe (1).

[Emphasis mine.]

[Je souligne.]

A request for a review and a decision of the Minister are provided for in sections 25 and 27:

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.

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.

...

...

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.  
Deferral of decision

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).  
Report de la décision

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

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

Notice of decision

Avis de la décision

(3) The Minister shall, without delay after

(3) Le ministre signifie sans délai par écrit

making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

à la personne qui a fait la demande un avis de la décision, motifs à l'appui.

[Emphasis mine.]

[Je souligne.]

Section 30 of the Act allows a person who requests a decision under section 27 to appeal the decision by way of an action in the Federal Court in which the person is the plaintiff:

#### Appeal to Federal Court

#### Cour fédérale

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.

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.

#### Ordinary action

#### Action ordinaire

(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.

#### Delivery after final order

#### Restitution au requérant

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

(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.

#### Limit on amount paid

#### Limitation du montant versé

(4) If the currency or monetary instruments were sold or otherwise disposed of under the Seized Property Management Act, the

(4) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens

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.

[Emphasis mine.]

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.

[Je souligne.]

## 2. Regulations

Sections 2 and 3 of the Regulations establish, for the purposes of subsection 12(1) of the Act, the value of currency to report as well as the manner of this reporting:

### REPORTING OF IMPORTATIONS AND EXPORTATIONS

#### Minimum Value of Currency or Monetary Instruments

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

### DÉCLARATION DES IMPORTATIONS ET EXPORTATIONS

#### Valeur minimale des espèces ou effets

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

person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

### General Manner of Reporting

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

dans le cours normal de ses activités à cette date.

### Forme de la déclaration

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

[Emphasis mine.]

[Je souligne.]

Section 11 of the Regulations prescribes where a report with respect to currency must be submitted and by whom. Section 15 establishes one exception for exported or imported currency:

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.

...

...

EXCEPTION APPLICABLE TO THE BANK OF CANADA

EXCEPTION RELATIVE À LA BANQUE DU CANADA

15. A person or entity is not required to make a report under subsection 12(1) of the Act with respect to stocks, bonds and debentures imported into Canada by courier or as mail if the importer is a financial entity or a securities dealer as defined in subsection 1(2) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations or a transfer agent.

15. Les espèces qui sont importées ou exportées par la Banque du Canada ou en son nom en vue de la distribution, du traitement ou de la mise à l'essai de billets de banque destinés à circuler au Canada n'ont pas à être déclarées en application du paragraphe 12(1) de la Loi.

[Je souligne.]

[Emphasis mine.]

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

**DOCKET:** T-232-08

**STYLE OF CAUSE:** GABRIEL AZOUZ v. THE MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 26, 2009

**REASONS FOR JUDGMENT  
ON THE MERITS AND  
ORDER AS TO COSTS:** LEMIEUX J.

**DATED:** November 30, 2009

**APPEARANCES:**

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