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Dokaj v. Canada (Minister of National Revenue), 2005 FC 1437 (CanLII)

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T-1118-04

2005 FC 1437

Gjovalin Dokaj (*Plaintiff*)

v.

Minister of National Revenue (*Defendant*)

Indexed as: Dokaj v. M.N.R. (F.C.)

Federal Court, Layden-Stevenson J.--Ottawa, October 4 and 24, 2005.

Federal Court Jurisdiction --Customs officials in Montréal seizing US$25,950, CAN$400 plaintiff failing to report as required by Proceeds of Crime (Money Laundering) and Terrorist Financing Act, s. 12(1)--Following plaintiff's request pursuant to s. 25, Minister's delegate deciding, under s. 27, s. 12(1) contravened--Also concluding, under s. 29, seized currency to be held in forfeit--Plaintiff admitting failure to report currency, but appealing delegate's s. 29 decision, by way of action in Federal Court, pursuant to s. 30--Defendant bringing Federal Courts Rules, s. 220 motion requesting determination of question of law: whether Court having jurisdiction under Act, s. 30 to review ministerial decision made under s. 29--Clear s. 30 providing for appeal of s. 27 decision (whether or not s. 12(1) contravened), not s. 29 (sanction)--Federal Court's jurisdiction pursuant to Act, s. 30 thus limited to reviewing s. 27 decision.

Construction of Statutes --Federal Court not having jurisdiction under Proceeds of Crime (Money Laundering) and Terrorist Financing Act, s. 30 to review decision made under s. 29--S. 27 stipulating Minister shall decide whether s. 12(1) contravened--S. 29 providing for review of quantum of sanction if contravention of s. 12--No ambiguity in language--S. 30 authorizing appeal re: Minister's decision under s. 25, which relates only to decision as to whether s. 12(1) contravened--References to "decision" in s. 30 thus referring to Minister's determination under s. 27--Conclusion supported by reference to case law dealing with analogous seizure review, appeal mechanism in Customs Act--Federal Court concluded its jurisdiction under Customs Act, s. 135

(statutory appeal) limited to determining whether contravention of Customs Act justifying seizure--Parliament not changing this mechanism when adopted Act--This choice respected by Court.

Practice -- Preliminary Determination of Question of Law --Federal Court not having jurisdiction under Proceeds of Crime (Money Laundering) and Terrorist Financing Act, s. 30 to review ministerial decision made under Act, s. 29.

This was a motion brought under section 220 of the *Federal Courts Rules* to request that the Court determine a question of law, to wit whether the Federal Court has jurisdiction under section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to review a ministerial decision made under section 29 of the Act.

The plaintiff was scheduled to travel to Albania when customs officials at Dorval International Airport (now called the Montréal Pierre Elliott Trudeau International Airport) seized US$25,950 and CAN$400 from the plaintiff after he failed to report those amounts. Pursuant to section 25 of the Act, the plaintiff requested a decision of the Minister as to whether subsection 12(1) was contravened. That subsection requires that the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount (currently $10,000 pursuant to the *Cross-border Currency and Monetary Instruments Reporting Regulations*) be reported. The Minister's delegate concluded, under section 27 of the Act, that subsection 12(1) was contravened. The delegate then concluded, under section 29, that the seized currency was to be held in forfeit. The plaintiff, who admitted having failed to report the currency to the customs officials, initiated an appeal of the delegate's decision (i.e. the section 29 sanction) by way of an action in the Federal Court, pursuant to section 30 of the Act. The defendant's motion to strike the action on the basis that the Court's jurisdiction under section 30 of the Act is limited to reviewing the section 27 decision was dismissed. It then brought the present motion under section 220 of the Rules.

Held, the question of law should be answered in the negative.

The decisions of the Minister pursuant to sections 27 and 29 are discrete decisions. Section 27 stipulates that the Minister shall decide whether subsection 12(1) was contravened. Section 29 provides that if there is a failure to report, the Minister is to review the quantum of the sanction imposed by the customs officials and either confirm it or reduce it to some lesser penalty. Section 30 provides for an appeal in relation to the determination made under section 27. It does not permit an appeal of a decision made under section 29. There is no ambiguity in the language. The Act authorizes an appeal in relation to a decision of the Minister under section 25. Section 25 relates only to a decision as to whether subsection 12(1) was contravened. It necessarily follows that the references to "a decision" and "the decision" in subsection 30(1) refer to the Minister's determination under section 27 of the Act. Consequently, the Federal Court's jurisdiction, pursuant to section 30 of the Act, is limited to reviewing the decision under section 27 of the Act (i.e. whether or not there was a contravention of the Act under subsection 12(1)).

This conclusion was supported by reference to the case law dealing with the analogous seizure review and appeal mechanism provided in the *Customs Act*. A review of the similar sections of the Act and *Customs Act* indicated that Parliament intended that the seizure review and appeal mechanisms in the Act mirror and complement those found in the *Customs Act* so that the two regimes can operate harmoniously. The same basic scheme is to apply in relation to both Acts. It is also notable that Parliament entrusted the administration and enforcement of the cross-border currency reporting regime in the Act to the same customs officials who are assigned and experienced with the administration and enforcement of the "goods reporting regime" in the *Customs Act*. The Federal Court has concluded that its jurisdiction on statutory appeal under section 135 of the *Customs Act* (which concords with section 30 of the Act) is confined to determining whether there

has been a contravention of the *Customs Act* that would justify the seizure. The Court is precluded from dealing with any other issues on such statutory appeals, including reviews of decisions rendered by the Minister in relation to sanctions. When Parliament adopted the Act, it had the opportunity to create a single statutory appeal for decisions rendered under sections 27 and 29. It chose not to do so and this choice was respected by the Court.

statutes and regulations judicially

considered

Canada Customs and Revenue Agency Act, S.C. 1999, c. 17, s. 2, "Commissioner".

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412 , ss. 1(1) "monetary instruments" (as am. by SOR/2003-358 , s. 25), (2) "Act", 2, 3 (as am. by SOR/2002-412 , s. 19), 11, 18.

Customs Act, R.S.C., 1985 (2nd Supp.), c. 1, ss. 12 (as am. by S.C. 1992, c. 28, s. 3; 1996, c. 31, s. 75; 1997, c. 36, s. 149; 2001, c. 25, s. 12), 110, 117 (as am. by S.C. 1997, c. 36, s. 185; 2002, c. 22, s. 338), 122, 123 (as am. by S.C. 2001, c. 25, s. 66), 129 (as am. *idem*, s. 69), 130 (as am. by S.C. 1993, c. 25, s. 83; 1999, c. 17, s. 127; 2001, c. 25, s. 71), 131 (as am. by S.C. 1993, c. 25, s. 84; 2001, c. 25, s. 72), 132 (as am. by S.C. 1992, c. 28, s. 26; 1993, c. 25, s. 85; 2001, c. 25, s. 73), 133 (as am. by S.C. 1992, c. 28, s. 27; 1993, c. 25, s. 86; 1997, c. 36, s. 189; 2001, c. 25, s. 74), 135 (as am. by S.C. 1990, c. 8, s. 49; 2002, c. 8, s. 134).

Federal Courts Act, R.S.C., 1985, c. F-7 , ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 18 (as am. by S.C. 1990, c. 8, s. 4; 2002, c. 8, s. 26).

Federal Courts Rules, SOR/98-106 , ss. 1 (as am. by SOR/2004-283 , s. 2), 220.

Order Transferring Certain Portions of the Canada Customs and Revenue Agency to the Canada Border Services Agency, SI/2003-216.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17, ss. 1 (as am. by S.C. 2001, c. 41, s. 48), 2 "Centre", "Commissioner", "Minister", "officer", "person" (as enacted by S.C. 2001, c. 41, s. 49), "prescribed", 3 (as am. by S.C. 2001, c. 41, s. 50), 12 (as am. by S.C. 2001, c. 41, s. 54), 14, 18 (as am. by S.C. 2001, c. 41, s. 134), 23, 24, 25 (as am. by S.C. 2001, c. 41, s. 61), 26, 27 (as am. by S.C. 2001, c. 41, s. 62), 28, 29, 30 (as am. by S.C. 2002, c. 8, s. 161), 31.

Public Service Rearrangement and Transfer of Duties Act, R.S.C., 1985, c. P-34 , ss. 2(*a*), 3.

cases judicially considered

applied:

ACL Canada Inc. v. M.N.R. (1993), 1993 CanLII 9341 (FC), 107 D.L.R. (4th) 736; 68 F.T.R. 180 (F.C.T.D.).

considered:

Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559; (2002), 212 D.L.R. (4th) 1; [2002] 5 W.W.R. 1; 166 B.C.A.C. 1; 100 B.C.L.R. (3d) 1; 18 C.P.R. (4th) 289; 93 C.R.R. (2d) 189; 287 N.R. 248; 2002 SCC 42.

referred to:

Pushpanathan v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982; (1998), 160 D.L.R. (4th) 193; 11 Admin. L.R. (3d) 1; 43 Imm. L.R. (2d) 117; 226 N.R. 201; *Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539; (2005), 258 D.L.R. (4th) 193; 339 N.R. 1; 2005 SCC 51; *Time Data Recorder International Ltd. v. M.N.R.* (1993), 66 F.T.R. 253; 13 T.T.R. 332 (F.C.T.D.); affd (1997), 211 N.R. 229; 2 T.T.R. (2d) 122 (F.C.A.); *Nerguizian v. M.N.R.* (1996), 121 F.T.R. 241 (F.C.T.D.); *He v. Canada* (2000), 2000 CanLII 14822 (FC), 182 F.T.R. 85; 4 T.T.R. (2d) 253 (F.C.T.D.); *Canada (Attorney General) v. Laidlaw* (1998), 237 N.R. 1 (F.C.A.).

MOTION under section 220 of the *Federal Courts Rules* to determine a question of law: whether the Federal Court has jurisdiction under section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to review a ministerial decision made under section 29 of the Act. The Federal Court does not have such jurisdiction.

appearances:

Matthew T. McGarvey for plaintiff.

Jan E. Brongers for defendant.

solicitors of record:

Shore Davis McGarvey, Ottawa, for plaintiff.

Deputy Attorney General of Canada for defendant.

The following are the reasons for order and order rendered in English by

[1]Layden-Stevenson J.: The question to be answered in this case is whether the Federal Court has jurisdiction under section 30 [as am. by S.C. 2002, c. 8, s. 161] of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 [s. 1 (as am. by S.C. 2001, c. 41, s. 48)] (the Act) to review a ministerial decision made under section 29 of the Act. I have concluded that the answer is "no" because the Act does not vest the Federal Court with appellate jurisdiction to review a section 29 ministerial decision.

[2]The defendant, by notice of motion under section 220 of the *Federal Courts Rules*, SOR/98-106 [s. 1 (as am. by SOR2004-283, s. 2)], and on consent of the plaintiff, sought an order directing the determination of a question of law. Madam Justice Tremblay-Lamer, by order dated March 24, 2005, granted the request.

FACTS

[3]The parties submitted an agreed statement of facts. A copy of that document is attached to these reasons as Schedule "A". For context, a recitation of the pertinent facts is set out here.

[4]The plaintiff, Mr. Dokaj, is a Canadian citizen. On October 16, 2003, he was scheduled to travel from Dorval Airport (as it then was) in Montréal to Athens, Greece en route to Albania. At the time, he was in possession of approximately $25,950 in U.S. currency and $400 in Canadian funds. When asked by customs officials if he had in his possession more than $10,000 he answered that he did not. Customs officials, upon searching Mr. Dokaj, discovered the aforementioned currency in his

wallet, coat pocket, and luggage. A customs officer seized the money and provided him with a "Customs Seizure Receipt".

[5]Mr. Dokaj requested that the Minister review the seizure of the monies. The ministerial delegate, in correspondence dated March 16, 2004, rendered the following decision:

After considering all of the circumstances, I have decided, under section 27 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, that there has been a contravention in respect of the currency which was seized.

Under section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the seized currency is held as forfeit.

The ministerial delegate enclosed, in the correspondence, a copy of sections 26, 27 [as am. by S.C. 2001, c. 41, s. 62] and 30 of the Act and commented "[y]ou may find this information helpful should you wish to appeal this decision."

[6]Mr. Dokaj initiated an appeal by way of action by issuing a statement of claim, pursuant to section 30 of the Act, and requested monetary relief equal to the value of the seized currency less a penalty of $2,500. Mr. Dokaj admits, in the statement of claim, that he failed to declare the currency to the customs officials. He alleges that the ministerial delegate erred in law because she: (a) "failed to investigate the source of the currency as documented by the solicitor acting for the plaintiff;" and (b) "failed to consider alternatives to forfeiture without terms of release pursuant to subsection 18(2) of the [Act]."

[7]The defendant Minister moved to strike the statement of claim on the basis that the Court's jurisdiction, under section 30 of the Act, is limited to reviewing the section 27 decision and it is without jurisdiction to entertain an appeal of a section 29 decision. A prothonotary concluded that the answer to the question was not plain and obvious and accordingly dismissed the motion. The Prothonotary suggested that the proper procedure for adjudication would be a motion to determine a question of law. Hence, the Minister moved under section 220 of the Rules and the order of Madam Justice Tremblay-Lamer issued.

ISSUE

[8]The sole issue is the determination of the question: "Does the Federal Court have jurisdiction pursuant to section 30 of the [Act] to review a ministerial decision issued pursuant to section 29 of the Act?"

THE RELEVANT STATUTORY PROVISIONS

[9]The relevant statutory provisions are attached to these reasons as Schedule "B". For ease of reference, sections 25 [as am. by S.C. 2001, c. 41, s.61] to 30 of the Act are reproduced here.

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

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 Commissioner 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 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.

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

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, 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.

(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 25 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.

(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.

THE POSITIONS OF THE PARTIES

[10]The Minister takes the position that the Federal Court's jurisdiction under section 30 is limited to considering the section 27 decision. Consequently, the Court is without jurisdiction to deal with an appeal of the section 29 decision.

[11]Mr. Dokaj contends that the Federal Court's appellate jurisdiction under subsection 30(1) must necessarily include jurisdiction to hear an appeal from a decision made under section 29 of the Act.

THE ARGUMENTS

[12]The Minister's argument is two-pronged. First, based on a contextual approach to statutory interpretation, the right of appeal to the Federal Court contained in section 30 of the Act cannot reasonably be extended to include the Minister's decision as to sanction for a violation of subsection 12(1) [as am. by S.C. 2001, c. 41, s. 54] of the Act. Section 30 provides that a person who requests a decision of the Minister under section 25 may appeal the Minister's decision. Section 25, in turn, refers to requesting a review for "a decision of the Minister as to whether subsection 12(1) was contravened." The appeal provided for in section 30 therefore relates solely to subsection 12(1). That subsection creates the obligation to report the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

[13]Put another way, an individual who contravenes subsection 12(1) may, under section 25, request a ministerial review. However, the provision for review (as specifically stipulated in section 25) relates to subsection 12(1). The Minister must render a decision as to whether subsection 12(1) was contravened. An appeal lies to the Federal Court with respect to the Minister's decision by virtue of section 30, but that section specifically stipulates that the appeal is with respect to a section 25 review. Approached from either direction, the result is the same. The appeal provided for in section 30 is concerned with a "contravention" of subsection 12(1).

[14]The Minister bolsters this argument by reference to the *Customs Act*, R.S.C., 1985 (2nd Supp.), c. 1. It was Parliament's intention, according to the Minister, to institute an appeal mechanism harmonized with the *Customs Act*, an analogous statute with strikingly similar review mechanisms. Moreover, the administration and enforcement of the Act was entrusted to the same customs officials charged with the administration and enforcement of the *Customs Act*.

[15]For example, both statutes allow an individual, from whom goods are seized by a customs official for contravention of the statute in question, to request a ministerial decision as to whether a contravention occurred. Additionally, when the Minister decides that either of the respective statutes has been contravened, a determination is made as to whether the sanction imposed by the customs official is appropriate. The Minister asserts that under the *Customs Act*, the second decision cannot be challenged by means of a statutory appeal to the Federal Court pursuant to section 135 of the *Customs Act* or otherwise.

[16]The Minister points to several instances where the Federal Court has concluded that its jurisdiction on a section 135 [as am. by S.C. 1990, c. 8, s. 49; 2002, c. 8, s. 134] *Customs Act* statutory appeal is limited to determining whether or not there has been a contravention of the *Customs Act* that would justify the seizure. The Court is precluded from dealing with any other issues on such statutory appeals including reviews of decisions rendered by the Minister in relation to sanctions. Rather, the recourse available to a person who disagrees with the penalty imposed for contravening the *Customs Act* is an application for judicial review under section 18 [as am. by S.C. 1990, c. 8, s. 4; 2002, c. 8, s. 26] of the *Federal Courts Act*, R.S.C., 1985, c. F-7 [s. 1 (as am. by S.C. 2002, c. 8, s. 14)]. The Minister urges the Court to interpret the Act as it has interpreted the *Customs Act* and confirm that a statutory appeal under section 30 of the Act is limited to a consideration of the Minister's section 27 decision that the Act was contravened for failure to report the seized currency. It is not permissible to add words where there is an acceptable interpretation without reading in words.

[17]Mr. Dokaj claims that while the Minister's submissions regarding similarity between the two statutes are attractive, they are superficial and constitute an elevation of form over substance. The frailties include: a lack of regard to the effect of such decisions for citizens; resort to analogies that invite a review of the similarities between the statutes without consideration of the differences; and a failure to appreciate that the intention of Parliament is presumed to be based on reason and logic. Section 30 of the Act should be interpreted as being applicable to both section 27 and section 29 because both constitute the same decision.

[18]In Mr. Dokaj's view, once the Minister has determined that there has been a contravention of subsection 12(1), the Minister must, of necessity, proceed to section 29 to determine what sanction is to be imposed (the presumption being the return of the currency less any penalty unless there is a finding that the funds are proceeds of crime or of terrorist activity).

[19]Construction in a strict grammatical sense, says Mr. Dokaj, is based on the presumption that the statute was drafted properly to achieve parliamentary purpose. While the legislative text is the source from which parliamentary intent is most likely inferred, the Court must look not to the text, but to the meaning of the statute. It is open to the Court to import words so long as it does not add to what is already implied by the statute. Parliament could not reasonably have intended two different mechanisms of review flowing from the same decision under subsection 12(1). If two reasonable interpretations can be found, the Court should adopt that which is more logical.

[20]Mr. Dokaj argues that where an obvious conflict exists between the letter and the spirit of the law, the Court should undertake to interpret logically to give effect to legislative intent and override those written expressions incompatible with the purpose of the law. Moreover, section 24, the review provision of the Act, precludes review except as provided in sections 25-29. This, he says, is indicative of Parliament's intent to include both sections 27 and 29 under the statutory right of appeal in section 30. Since a section 29 decision, of necessity, flows from section 27, the two cannot be separated because the second decision is mandated by the making of the first decision. The two are inextricably intertwined and the appeal process must encompass all logical and correlative decision making that follows from it.

[21]Regarding the Minister's position that the Act should be interpreted in the same manner as the *Customs Act*, Mr. Dokaj submits that to do so would be improper. The two statutes are similar in structure, but not in purpose. For instance, under the *Customs Act*, goods seized are automatically forfeited making it logical to preclude a review of penalty. In contrast, the Act does not entail automatic forfeiture; it requires return of the funds unless there are reasonable grounds for believing that the funds flow from terrorist activities or are proceeds of crime. Section 23 of the Act must be read in conjunction with subsection 18(2) [as am. by S.C. 2001, c. 41, s. 134]. The penultimate

distinction between the *Customs Act* and the Act, according to Mr. Dokaj, is that under the former a penalty is purely discretionary whereas the latter dictates mandatory return unless subsection 18(2) is put into play.

[22]Mr. Dokaj contends that the Minister's interpretation results in a cumbersome and complex review mechanism whereby a person, from whom funds have been seized (who wishes to have the decision reviewed), must engage in two different proceedings on substantially the same facts.

ANALYSIS

[23]In *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559, Mr. Justice Iacobucci, at paragraphs 26-29, discussed the principles of statutory interpretation. Those paragraphs (citations omitted) state:

In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1, at p. 6, "words, like [page 581] people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56 (CanLII), at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter". . . .

Other principles of interpretation--such as the strict construction of penal statutes and the "*Charter* values" presumption--only receive application where there is ambiguity as to the meaning of a provision. . . .

What, then, in law is an ambiguity? To answer, an ambiguity must be "real". . . . The words of the provision must be "reasonably capable of more than one meaning". . . . By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, 1999 CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".

[24]Guided by these principles, I turn to the Act which is the result of an initiative that is not unique to Canada. The Financial Action Task Force (FATF), of which Canada is a member, is comprised of approximately 40 nations (all of them industrialized). FATF is committed to addressing, among other things, the sharing of information in relation to transnational crime. The Act received Royal Assent on June 29, 2000, and many of its provisions have been introduced piecemeal.

[25]The objectives of the Act are set out in section 3 [as am. by S.C. 2001, c. 41, s. 50] therein and include the following:

3. . . .

(*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, and

. . .

(*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 commit-ments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity.

[26]Of particular concern, here, is the objective stipulated in subparagraph 3(*a*)(ii). Implementation of this objective was to have been achieved through Part 2 of the Act which 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. Part 2 of the Act became effective with the coming into force of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 (the Cross-border Regulations) on January 6, 2003. The relevant reporting requirements in this case (involving the exportation of currency) stem from subsection 12(1) and paragraph 12(3)(*a*) [as am. by S.C. 2001, c. 41, s. 54] of the Act in conjunction with sections 2, 3 [as am. by SOR/2002-412 , s. 19], and 11 of the Cross-border Regulations. These provisions require every person who exports, from Canada, currency or monetary instruments worth $10,000 or more to report this exportation to a customs official.

[27]When reports are made with respect to cross-border movements of currency or monetary instruments in excess of $10,000, the reports are forwarded to the Financial Transaction Reports Analysis Centre of Canada (FINTRAC) which apparently possesses expertise in tracking and analysing international currency and monetary instruments transfers. If patterns appear, FINTRAC may become suspicious that the funds constitute "dirty" money in which case information may be passed on to a law enforcement agency.

[28]Notably, the Act does not prohibit the transporting of large amounts of currency. Rather, it requires that amounts exceeding $10,000 be reported. The obligation to report arises in all cases, i.e.

whether the money is "dirty" or otherwise.

[29]The scheme in relation to the transporting of more than $10,000 of currency or monetary instruments is contained in sections 12 through 39 of the Act and in the Cross-border Regulations. In circumstances where a person exports from Canada currency worth more than $10,000 and fails to report the exportation, subsection 18(1) of the Act provides that the currency is subject to seizure as forfeit, by a customs officer, if the customs officer believes on reasonable grounds that subsection 12(1) of the Act has been contravened. By virtue of subsection 18(2) of the Act, the customs officer must return the seized currency or monetary instruments less the prescribed penalty (which ranges from $250 to $5,000 under section 18 of the Cross-border Regulations) unless the officer has reasonable grounds to suspect that the currency is proceeds of crime or funds for terrorist financing.

[30]Section 23 of the Act stipulates that (subject to return under subsection 18(2) and the review provisions of sections 25 to 31) currency seized as forfeit under subsection 18(1) is automatically forfeited to Her Majesty in right of Canada from the time of the contravention in respect of which it was seized and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

[31]Section 25 of the Act permits either the person from whom the currency was seized or the lawful owner of the currency to request a decision of the Minister[1] as to whether subsection 12(1) of the Act was contravened, provided such a request is made in writing within 90 days after the date of the seizure. If such a request is made, the Commissioner[2] is obliged to serve that person with written notice of the circumstances of the seizure, pursuant to subsection 26(1) of the Act. The person is then entitled, under subsection 26(2), to provide any evidence in the matter that he or she wishes to submit provided that the evidence is tendered within 30 days of receiving the Commissioner's written notice.

[32]The Minister is required, under section 27 of the Act, to make a decision with respect to whether subsection 12(1) of the Act was contravened. If the Minister decides that there was no failure to report, the currency or the assessed penalty must be returned to the person, pursuant to section 28 of the Act. If, on the other hand, the Minister decides that there was a failure to report, the Minister will, under section 29 of the Act, determine the appropriate sanction for the infraction, including whether to confirm the forfeiture (where the customs officer has determined that the currency or monetary instruments constitute proceeds of crime or terrorist financing).

[33]Section 30 of the Act permits the person who requested a decision of the Minister to appeal that decision by way of an action in the Federal Court. The narrow issue is which decision is appealable, the section 27 decision, the section 29 decision, or both.

[34]With respect, I do not share Mr. Dokaj's view that a decision under section 27 and a decision under section 29 constitute the "same decision". A reading of the provisions simply does not support such an interpretation. Section 27 requires nothing more and nothing less than for the Minister to decide whether subsection 12(1) was contravened. The fact that an affirmative response precipitates a review of the penalty which, in turn, results in another determination does not convert the two decisions into a single determination.

[35]The decisions of the Minister pursuant to sections 27 and 29 are discrete decisions. One deals with contravention; the other deals with penalty and forfeit. Section 27 stipulates that the Minister shall decide whether subsection 12(1), i.e. the requirement to report, was contravened. The wording is unequivocal and leaves no room for doubt. Section 29 provides that, in circumstances where the Minister determines that there was a failure to report, the Minister is to review the quantum of the sanction imposed by the customs official under subsection 18(2), i.e. full forfeiture or a penalty

ranging from $250 to $5,000. The Minister will either confirm the customs official's determination with respect to sanction or reduce it to some lesser penalty.

[36]What then of the appeal procedure provided for in section 30 of the Act? I share the Minister's view that the section provides for a statutory appeal in relation to the determination made under section 27. It does not permit an appeal of a decision made under section 29. For ease of reference, subsection 30(1), section 25 and subsection 27(1) are again reproduced. The emphasis is mine.

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

. . .

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.

. . .

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.

[37]There is no ambiguity in the language. The Act authorizes an appeal in relation to a decision of the Minister under section 25. Section 25 relates only to a decision as to whether subsection 12(1) was contravened (the provision that imposes the obligation to report). It necessarily follows that the references to "a decision" and "the decision" in subsection 30(1) refer to the Minister's determination under section 27 of the Act. In my view, it cannot reasonably be construed in any other way. Consequently, the Federal Court's jurisdiction, pursuant to section 30 of the Act, is limited to reviewing the decision under section 27 of the Act. That decision is with respect to whether or not there was a contravention of the Act under subsection 12(1).

[38]While other ministerial decisions taken in the context of a seizure under the Act, such as a decision under section 29, may be the subject of judicial review applications initiated under section 18 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, they cannot be the subject of a statutory appeal brought pursuant to section 30 of the Act. Section 24 of the Act constitutes a strong privative clause that insulates, but does not immunize, decisions (other than those under section 27) from judicial review. Indeed the Minister takes the position that judicial review of such decisions is available and the existence and ambit of the privative clause is to be assessed in the consideration of the factors comprising the pragmatic and functional analysis (see: *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982).

[39]I agree with Mr. Dokaj that the result is one that is both awkward and inconvenient. I disagree, though, with his thesis that Parliament could not reasonably have intended two different mechanisms of review regarding the same decision. First, I have determined that the decisions are discrete. Second, I have concluded that the interpretation of the provision in question yields the result that Parliament's intention was to restrict the statutory appeal to decisions made under section 27 of the Act. Third, even in circumstances where the result can be viewed as unfair, if such a result is contemplated by the legislation, it does not displace Parliament's intent: *Medovarski v. Canada*

(Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51 (CanLII), [2005] 2 S.C.R. 539.

[40]My conclusion in this respect is supported by reference to the jurisprudence dealing with the analogous seizure review and appeal mechanism provided in the *Customs Act*. The similarity between the seizure review and appeal mechanism contained in the Act and that contained in the *Customs Act* is readily apparent. Specifically, the sections concord as follows: section 12 of the Act with section 12 [as am. by S.C. 1992, c. 28, s. 3; 1996, c. 31, s. 75; 1997, c. 36, s. 149; 2001, c. 25, s. 12] of the *Customs Act*; section 18 of the Act with sections 110 and 117 [as am. by S.C. 1997, c. 36, s. 185; 2002, c. 22, s. 338] of the *Customs Act*; section 23 of the Act with section 122 of the *Customs Act*; section 24 of the Act with section 123 [as am. by S.C. 2001, c. 25, s. 66] of the *Customs Act*; section 25 of the Act with section 129 [as am. *idem*, s. 69] of the *Customs Act*; section 26 of the Act with section 130 [as am. by S.C. 1993, c. 25, s. 83; 1999, c. 17, s. 127; 2001, c. 25, s. 71] of the *Customs Act*; section 27 of the Act with section 131 [as am. by S.C. 1993, c. 25, s. 84; 2001, c. 25, s. 72] of the *Customs Act*; section 28 of the Act with section 132 [as am. by S.C. 1992, c. 28, s. 26; 1993, c. 25, s. 85; 2001, c. 25, s. 73] of the *Customs Act*; section 29 of the Act with section 133 [as am. by S.C. 1992, c. 28, s. 27; 1993, c. 25, s. 86; 1997, c. 36, s. 189; 2001, c. 25, s. 74] of the *Customs Act*; and section 30 of the Act with section 135 of the *Customs Act*.

[41]A review of these provisions indicates that Parliament intended that the seizure review and appeal mechanisms in the Act mirror and complement those found in the *Customs Act* so that the two regimes can operate harmoniously. The same basic scheme is to apply in relation to both Acts. It is also notable that Parliament entrusted the administration and enforcement of the cross-border currency reporting regime in the Act to the same customs officials who are assigned and experienced with the administration and enforcement of the "goods reporting regime" in the *Customs Act*.

[42]The Federal Court has concluded that its jurisdiction on a section 135 *Customs Act* statutory appeal is confined to determining whether there has been a contravention of the *Customs Act* that would justify the seizure. The Court is precluded from dealing with any other issues on such statutory appeals, including reviews of decisions rendered by the Minister in relation to sanctions. An individual who disagrees with the sanction imposed for contravening the *Customs Act* must resort to section 18 of the *Federal Courts Act*: *ACL Canada Inc. v. M.N.R.* (1993), 1993 CanLII 9341 (FC), 107 D.L.R. (4th) 736 (F.C.T.D.); *Time Data Recorder International Ltd. v. M.N.R.* (1993), 66 F.T.R. 253 (F.C.T.D.); affd (1997), 211 N.R. 229 (F.C.A.); *Nerguizian v. M.N.R.* (1996), 121 F.T.R. 241 (F.C.T.D.); *He v. Canada* (2000), 2000 CanLII 14822 (FC), 182 F.T.R. 85 (F.C.T.D.).

[43]Mr. Justice MacKay, in *ACL Canada Inc.*, opined as follows [at page 757]:

I note in passing that, if my interpretation of the Act is correct, there is an anomalous situation presented for anyone seeking to question the Minister's decisions in relation to seizures and forfeitures. The Act provides for an appeal of a decision of the Minister on the issue of whether there has been a contravention of the Act or regulations and such an appeal may be made by way of an action in this court within 90 days of notice of the decision. The exercise of discretion in imposing the penalty, like any other administrative discretion, even where there is a privative clause, is subject to judicial review in this Court, but since amendments to the *Federal Court Act* effective February 1, 1992, relief must be sought by an application for judicial review, not by an action, to be commenced within 30 days of the decision sought to be reviewed, unless the Court grants an extension of time to apply. The person affected by customs seizures and penalties can only be confused by the two remedial processes Parliament has now provided under the two statutes. Parliament might well consider whether both decisions of the Minister, under ss. 131 and 133, should be subject to review in a single proceeding, by way of an appeal or on application for judicial review.

[44]Justice MacKay's invitation to Parliament was extended in 1993. The *Customs Act* has not been modified. When Parliament adopted the Act, some seven years later, it had the opportunity to create a single statutory appeal for decisions rendered under sections 27 and 29 of the Act, if it so desired, but it chose otherwise. That choice, having been taken by Parliament, must, in my view, be respected by the Court.

[45]Mr. Dokaj claims that there exists a major distinction between the Act and the *Customs Act* that justifies deviation from the jurisprudence relating to the *Customs Act*. That distinction is with respect to what he describes as "automatic forfeiture" under the *Customs Act* versus "no automatic forfeiture under the Act." He contends that the Act creates a presumption for return of the money and the provision is mandatory.

[46]The short answer to this submission is section 23 of the Act which, like section 122 of the *Customs Act*, does provide for automatic forfeiture. It is correct that subsection 18(2) specifies that unless the customs official has reasonable grounds to suspect that the currency or monetary instruments constitute proceeds of crime or terrorist financing, the seized currency or monetary instruments shall, on payment of a penalty in the prescribed amount, be returned to the individual or the lawful owner. This subsection is analogous to section 117 of the *Customs Act* which allows for the return of seized goods if money is paid equal to a maximum of the value of the goods plus the duties owing. The only distinction between the provisions is that the *Customs Act* does not delineate a test to be applied by the customs official in deciding whether or not the goods should be returned. Rather, it permits the Minister to exercise discretion in this regard.

[47]It is also true that section 133 of the *Customs Act* uses the word "may" to describe the various options available to the Minister, when reviewing the sanction for non-compliance imposed by the customs official, while section 29 of the Act uses the word "shall". In my view, that is a difference without a distinction. It is unreasonable to suggest that the Minister could choose not to render any decision under section 133 of the *Customs Act* after finding that a contravention had occurred. The word "may", in that context, must be interpreted as mandatory rather than permissive (see: *Canada (Attorney General) v. Laidlaw* (1998), 237 N.R. 1 (F.C.A.)).

[48]Finally, the fact that the privative clause at section 123 of the *Customs Act* refers to precluding review other than in the manner provided by section 129, while the privative clause at section 24 of the Act refers to precluding review other than in the manner provided by sections 25-30, in no way detracts from the clear and unambiguous language employed within those provisions. The similarities between the Act and the *Customs Act* far outweigh the minor distinctions. The overall scheme of both is the same and Parliament intended that they operate harmoniously.

[49]To conclude, in my view, to interpret subsection 30(1) of the Act in the manner proposed by the plaintiff would require the insertion of words not included in the provision. Specifically, an amendment such as that set out below would be necessary.

30. (1) A person who requests a decision of the Minister under section 25 may, within 90 days after being notified of the decision, appeal the decision [and any subsequent decision under section 29] by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant

[50]Parliament chose not to insert such language and it is not for the Court to override Parliament's intent.

[51]In the result, for the foregoing reasons, the answer to the question--does the Federal Court have jurisdiction pursuant to section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist*

Financing Act, S.C. 2000, c. 17 to review a ministerial decision issued pursuant to section 29 of that Act--is no. In the exercise of my discretion, I decline to award costs.

ORDER

THIS COURT ORDERS THAT the answer to the question set out below is "no".

Does the Federal Court have jurisdiction pursuant to section 30 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 to review a ministerial decision issued pursuant to section 29 of that Act?

[1] S. 2 of the Act defines the "Minister", in relation to sections 25 to 39, as the Minister of National Revenue. However, effective December 12, 2003, responsibility for the administration of those provisions of the Act originally assigned to the Minister of National Revenue was transferred to the Solicitor General of Canada, [now] styled as the Minister of Public Safety and Emergency Preparedness, pursuant to Order in Council P.C. 2003-2064 [SI/2003-216] and sections 2(*a*) and 3 of the *Public Service Rearrangement and Transfer of Duties Act*, R.S.C., 1985, c. P-34. Therefore, references to the "Minister" with respect to events prior to December 12, 2003 are to the Minister of National Revenue; references to the "Minister" with respect to events post-December 12, 2003 are to the Solicitor General of Canada.

[2] S. 2 of the Act defines the "Commissioner" as the Commissioner of Customs and Revenue (by reference to s. 2 of the *Canada Customs and Revenue Agency Act* [S.C. 1999, c. 17]). Effective December 12, 2003 the responsibilities of the Commissioner of Customs and Revenue with respect to customs matters have been transferred to the President of the Canada Border Services Agency, pursuant to Order in Council P.C. 2003-2064 [SI/2003-216] and ss. 2(*a*) and 3 of the *Public Service Rearrangement and Transfer of Duties Act*, R.S.C., 1985, c. P-34. Therefore, references to the "Commissioner" with respect to events prior to December 12, 2003 are to the Commissioner of Customs and Revenue; references to the "Commissioner" with respect to events post-December 12, 2003 are to the President of the Canada Border Services Agency.

SCHEDULE A

to the

Reasons for order and order dated

October 24, 2005

in

Gjovalin Dokaj

and

Minister of National Revenue

T-1118-04

AGREED STATEMENT OF FACTS

The parties agree that the following are the facts upon which the Court can base its determination of the question of law pursuant to the Rule 220 motion made by the Defendant on consent:

1. The Plaintiff is a Canadian citizen, originally from Albania, who resides in Toronto, Ontario.

2. The Defendant is the Solicitor General of Canada. Effective December 12, 2003, responsibility for the administration of those provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* S.C. 2000, c. 17 [hereinafter "PCMLTFA" originally assigned to the Minister of National Revenue was transferred to the Solicitor General of Canada, styled as the Minister of Public Safety and Emergency Preparedness, pursuant to Order in Council P.C. 2003-2064 and sections 2(a) and 3 of the *Public Service Rearrangement and Transfer of Duties Act*, R.S.C. 1985, c. P-34.

3. On October 16, 2003, the Plaintiff was travelling to Tirana, Albania via Athens, Greece. His flight to Greece was to depart from the Montreal International Airport (Dorval).

4. The Plaintiff was carrying $US 25,950.00 in currency of the United States of America and $400.00 in Canadian currency.

5. On October 16, 2003, customs officials at the Montreal International Airport (Dorval) asked the Plaintiff if he was in possession of any currency or monetary instruments of a value equal to or greater than $10,000.00 Canadian Dollars. The Plaintiff answered the question in the negative.

6. Customs officials then proceeded to search the Plaintiff. The search revealed $US 25,950.00 in American currency and $400.00 in Canadian currency in his coat pocket, luggage and wallet. The total value of this currency on October 16, 2003 was approximately $34,654.00.

7. As none of the currency found in the possession of the Plaintiff had been reported to Customs officials, contrary to section 12(1) of the *PCMLTFA*, the currency was seized as forfeit and was not returned to the Plaintiff pursuant to section 18 of the *PCMLTFA*. A "Customs Seizure Receipt" was provided to the Plaintiff, a copy of which is attached as. Exhibit "A" to this agreed statement of facts.

8. On or around October 29, 2003, the Plaintiff requested a decision of the Minister of National Revenue as to whether section 12(1) of the *PCMLTFA* was contravened pursuant to section 25 of the *PCMLTFA*.

9. On or around November 20, 2003, officials of the Minister of National Revenue advised the Plaintiff that his October 29, 2003 request had been accepted as a request for a review of the October 16, 2003 enforcement action pursuant to section 25 of the *PCMLTFA*. At the same time, the Plaintiff was provided with a notice of the circumstances of the seizure pursuant to section 26(1) of the *PCMLTFA* and invited to furnish any evidence in the matter that he may desire to furnish pursuant to section 26(2) of the *PCMLTFA*.

10. On or around December 17, 2003, the Plaintiff provided additional evidence to be considered pursuant to section 26(2) of the *PCMLTFA*.

11. On March 16, 2004, the Defendant issued a decision pursuant to section 27 of the *PCMLTFA* that there was a contravention of section 12(1) of the *PCMLTFA* in respect of the currency in question that had been seized from the Plaintiff. Also on March 16, 2004, the Defendant issued a decision pursuant to section 29 of the *PCMLTFA* confirming that the seized currency is forfeited to Her Majesty in right of Canada.

12. By Statement of Claim dated June 9, 2004, the Plaintiff has instituted a statutory appeal pursuant to section 30 of the *PCMLTFA*.

13. By order dated October 26, 2004, the Federal Court (Tabib P.) dismissed the Defendant's motion to strike the Plaintiff's claim but granted an extension of time for the filing of a defence.

14. The Defendant filed a statement of defence on November 24, 2004.

15. The Plaintiff filed a reply on December 6, 2004.

Attached is Exhibit "A" to the Agreed Statement

of Facts

Canada Customs Agences des douanes and Revenue Agency et du revenu du C anada	**Customs Seizure Receip t** **Reçu pour saisie douani ère**	**Service Mode/Type de ser vice** Personal/En personne Mail/Poste

Name/Nom	Customs Office/Bureau de douane
DOKAJ, Gjovalin	Dorval Int'l Airport - Traffic
1170 Fisher Ave. app. 809	975, blvd, Roméo Vachon nord
Ottawa, Ontario, Canada, K1Z 5R7,	C.P. 445

(613) 7616188	Dorval, Québec Canada, H4Y 1H1, (514) 6337700
Seizure Date/Date de la saisie Receipt Number/Numéro de reçu	Seizing Officer/Agent de la saisie Seizure No./No de la saisie
2003-10-16	14451 3961-03-1566
Allegation/Allégation The said currency or monetary instruments are seized under subsection 18(1) of the Proceeds of Crome Money Lawndering Terrorist Financing Act, because they were not reported contrary to the provisions of subsection 12(1) of that act.	Lesdits instruments monétaire et espèces sont saisis en vertu du paragraphe 18(1) de la Loi sur le recyclage des produits de la criminalité et le financement des accivités terroristes, parce qu'ils n'ont pas été déclarés conformément aux dispositions du paragraphe 12(1) de la loi.

Recap - Terms of Return/Récapitulation - Conditions de restitution

Goods/Marchandises	$0.00
Conveyance/Moyen de transport	$0.00
Total Amount Required/Monant total requis	$0.00
Total Amount Received/Montant total reçu	$0.00

Right to Request a Minister's Decision	**Droit de demander au ministre de rendre une décision**
If you, or the lawful owner of the currency or monetary instruments wish to file a request to review this enforcement action and request a decision of the Minister of National revenue you must give notice in writing to the officer who took t	*Si vous, ou le propriétaire légitime des espèces ou des instruments monétaire, désirez contester cette mesure d'exécution et demander au mnistre du evenu national de rendre une décision, vous devez remettre un avis écrit à l'agent qui*

he enforcement action or to an officer at the cu stoms office closest to the place whee the enfor cement action was taken. This request must be f iled within 90 days after the date the enforceme nt action was taken.

a pris la mesure d'exécution ou à un agent du bureau de douane le plus proche du lieu ou la mesure a été prise. Cette demande doit être pré sentée dans les 90 jours suivant la date de la m esure d'exécution.

A person who requests a decision of the Ministe r may, with 90 days after being notified of the d ecision, appeal the decision by way of an actio n in the Federal Court in which the person is th e plaintiff and the Minister is the defendant.

Toute personne qui demande une décision du ministre pourra dans les 90 jours suivant la no tification de la décision, interjeter appel de cel le-ci en exerçant une poursuite devant la Cour fédérale dans laquelle la personne est demand eresse et le ministre défendeur.

Canada Customs Agences des douanes

and Revenue Agency et du revenu du Canada

Statement of Records Seized/Relevé de marchandises saisies

DOKAJ, Gjovalin 3961-03-1566

Item/Art. 1 : 210,000, Suspect de revenus tirés d'activités criminelles, Monnaie, 100 Dollar des États-Unis

CDM Value/Valeur CDN 27,720.00	Rate-Goods/Taux des marchandises Aucune CDM	Rate/Conveyance/Taux du moyen de transport S/O
T.O.R.-Goods/C.D.M. des marchandises $0.00	T.O.R.-Conv. /C.D.M. du moyen de trans. $0.00	Disposition/Aliénation **Aucune C.D.M.**

Item/Art. 2 : 99,000, Suspect de revenus tirés d'activités criminelles, Monnaie, 50 Dollars des États-Unis

CDM Value/valeur CDN $6,534.00	Rate-Goods/Taux des marchandises Aucune CDM	Rate-Conveyance/Taux du moyen de transport S/O
T.O.R.-Goods/C.D.M. des marchandises $0.00	T.O.R.-Conv./C.D.M. du moyen de trans. $0.00	Disposition/Aliénation **Aucune C.D.M.**

Item/Art. 3 : 8,000, suspect de evenus tirés d'activités criminelles, Monnaie, 50 dollars canadiens

CDM Value/Valeur CDN $400.00	Rate-Goold/Taux des marchandises Aucune CDM	Rate-Conveyance/Taux du moyen de transport S/O
T.O.R.-Goods/C.D.M. des merchandises $0.00	T.O.R.-Conv./C.D.M. du moyen de trans. $0.00	Disposition/Aliénation **Aucune C.D.M.**

Terms of Return / Goods Conditions de restitution - Marchandises	$0.00
Terms of Return / Conveyance Conditions de restitution - Moyen de transport	$0.09 0

PROTECTED WHEN COMPLETED

PROTÉGÉ LORSQUE COMPLÉTÉ

(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), sous réserve des adaptations occasionnées par les règles particulières à ces actions.

SCHEDULE B

to the

Reasons for order and order dated October 24, 2005

in

Gjovalin Dokaj

and

Minister of National Revenue

T-1118-04

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 [s. 2(1) "person" (as enacted by S.C. 2001, c. 41, s. 49)]

1. This Act may be cited as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

2. The definitions in this section apply in this Act.

. . .

"Centre" means the Financial Transactions and Reports Analysis Centre of Canada established by se ction 41.

. . .

"Commissioner" has the same meaning as in section 2 of the *Canada Customs and Revenue Agency Act* .

. . .

"Minister" means, in relation to sections 25 to 39, the Minister of National Revenue and, in relation to any other provision of this Act, the member of the Queen's Privy Council for Canada who is designated by the Governor in Council as the Minister for the purposes of that provision.

. . .

"officer" has the same meaning as in subsection 2(1) of the *Customs Act* .

"person" means an in dividual.

"prescribed" means prescribed by regulations made by the Governor in Council.

. . .

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

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

(*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 trans-national crime, particularly money laundering, and the figh t against terrorist activity.

. . .

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 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.

. . .

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.

(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.

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

(3) An officer who seizes currency or monetary instruments under subsection (1) shall

(*a*) if they were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and of the right to review and appeal set out in sections 25 and 30;

(*b*) if they were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and of the right to review and appeal set out in sections 25 and 30; and

(*c*) take the measures that are reasonable in the circumstances to give notice of the seizure to any person whom the officer believes on reasonable grounds is entitled to make an application under section 32 in respect of the currency or monetary instruments.

(4) The service of a notice under paragraph (3)(*b*) is sufficient if it is sent by registered mail addressed to the exporter.

. . .

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.

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 25 to 30.

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 Commissioner 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 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.

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

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, 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.

. . .

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

(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.

31. The service of the Commissioner's notice under section 26 or the notice of the Minister's decision under section 27 is sufficient if it is sent by reg istered mail addressed to the person on whom it is to be served at their latest known address.

Cross-border Currency and Monetary Instruments Reporting Regulations, SOR/2002-412 [s. (1) "monetary instruments" (as am. by SOR/2003-358 , s. 25)].

1. (1) The following definitions apply in the Act and these Regulations.

. . .

"monetary instruments" means the following instruments in bearer form or in such other form as title to them passes on delivery, namely,

(*a*) securities, including stocks, bonds, debentures and treasury bills; and

(*b*) negotiable instruments, including bank drafts, cheques, promissory notes, travellers' cheques and money orders, other than warehouse receipts or bills of lading.

For greater certainty, this definition does not apply to securities or negotiable instruments that bear restrictive endorsements or a stamp for the purposes of clearing or are made payable to a named person and have not been endorsed.

(2) The following definitions apply in these Regulations.

"Act" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* .

. . .

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 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)(6), (*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.

. . .

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.

. . .

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

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

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

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

(iii) has no previous seizures under the Act;

(*b*) $2,500, in the case of a person or entity who

(i) has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or who has made a false statement with respect to the currency or monetary instruments, or

(ii) has a previous seizure under the Act, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments; and

(*c*) $5,000, in the case of a person or entity who

(i) has concealed the currency or monetary instruments by using a false compartment in a conveyance, or

(ii) has a previous seizure under the Act for any type of concealment or for making a false statement with respect to the currency or monetary instruments.

Customs Act, R.S.C., 1985 (2nd Supp.), c. 1

12. (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.

(2) Goods shall be reported under subsection (1) at such time and in such manner as the Governor in Council may prescribe.

(3) Goods shall be reported under subsection (1)

(*a*) in the case of goods in the actual possession of a person arriving in Canada, or that form part of the person's baggage where the person and the person's baggage are being carried on board the same conveyance, by that person or, in prescribed circumstanc es, by the person in charge of the conveyance;

(*a*.1) in the case of goods imported by courier or as mail, by the person who exported the goods to Canada;

(*b*) in the case of goods, other than goods referred to in paragraph (*a*) or goods imported as mail, on board a conveyance arriving in Canada, by the person in charge of the conveyance; and

(*c*) in any other case, by the person on behalf of whom the goods are imported.

(3.1) For greater certainty, for the purposes of the reporting of goods under subsection (1), the return of goods to Canada after they are taken out of Canada is an importation of those goods.

(4) Subsection (1) does not apply in respect of goods that are reported in the manner prescribed under subsection (2) prior to importation at a customs office outside Canada unless an officer requires that the goods be reported again under subsection (1) after importation.

(5) This section does not apply in respect of goods on board a conveyance that enters Canadian waters, including the inland waters, or the airspace over Canada while proceeding directly from one place outside Canada to another place outside Canada unless an officer otherwise requires.

(6) Where goods are required by the regulations to be reported under subsection (1) in writing, they shall be reported in the prescribed form containing the prescribed information, or in such form containing such information as is satisfactory to the Minister.

(7) Goods described in tariff item No. 9813.00.00 or 9814.00.00 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*

(*a*) that are in the actual possession of a person arriving in Canada, or that form part of his baggage, where the person and his baggage are being carried on board the same conveyance,

(*b*) that are not charged with duties, and

(*c*) the importation of which is not prohibited under the *Customs Tariff* or prohibited, controlled or regulated under any Act of Parliament other than this Act or the *Customs Tariff*

may not be seized as forfeit under this Act by reason only that they were not reported under this section.

. . .

110. (1) An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize as forfeit

(*a*) the goods; or

(*b*) any conveyance that the officer believes on reasonable grounds was made use of in respect of the goods, whether at or after the time of the contravention.

(2) An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of a conveyance or in respect of persons transported by a conveyance, seize as forfeit the conveyance.

(3) An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened, seize anything that he believes on reasonable grounds will afford evidence in respect of the contravention.

(4) An officer who seizes goods or a conveyance as forfeit under subsection (1) or (2) shall take such measures as are reasonable in the circumstances to give notice of the seizure to any person who the officer believes on reasonable grounds is entitled to make an application under section 138 in respect of the goods or conveyance.

. . .

117. (1) An officer may, subject to this or any other Act of Parliament, return any goods that have been seized under this Act to the person from whom they were seized or to any person authorized by the person from whom they were seized on receipt of

(*a*) an amount of money of a value equal to

(i) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto

(A) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(*b*) in circumstances to which subsection 32.2(6) applies, or

(B) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case, or

(ii) such lesser amount as the Minister may direct; or

(*b*) where the Minister so authorizes, security satisfactory to the Minister.

(2) Despite subsection (1), if spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

. . .

122. Subject to the reviews and appeals established by this Act, any goods or conveyances that are seized as forfeit under this Act within the time period set out in section 113 are forfeit

(*a*) from the time of the contravention of this Act or the regulations in respect of which the goods or conveyances were seized, or

(*b*) in the case of a conveyance made use of in respect of goods in respect of which this Act or the regulations have been contravened, from the time of such use,

and no act or proceeding subsequent to the contravention or use is necessary to effect the forfeiture of such goods or conveyances.

123. The forfeiture of goods or conveyances seized under this Act or any money or security held as forfeit in lieu of such goods or conveyances is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 127.1 and 129.

. . .

129. (1) The following persons may, within ninety days after the date of a seizure or the service of a notice, request a decision of the Minister under section 131 by giving notice in writing, or by any other means satisfactory to the Minister, to the officer who seized the goods or conveyance or served the notice or caused it to be served, or to an officer at the customs office closest to the place where the seizure took place or closest to the place from where the notice was served:

(*a*) any person from whom goods or a conveyance is seized under this Act;

(*b*) any person who owns goods or a conveyance that is seized under this Act;

(*c*) any person from whom money or security is received pursuant to section 117, 118 or 119 in respect of goods or a conveyance seized under this Act; or

(*d*) any person on whom a notice is served under section 109.3 or 124.

(2) The burden of proof that notice was given under subsection (1) lies on the person claiming to have given the notice.

. . .

130. (1) Where a decision of the Minister under section 131 is requested under section 129, the Commissioner shall forthwith serve on the person who requested the decision written notice of the reasons for the seizure, or for the notice served under section 109.3 or 124, in respect of which the decision is requested.

(2) The person on whom a notice is served under subsection (1) may, within thirty days after the notice is served, furnish such evidence in the matter as he desires to furnish.

(3) Evidence may be given under subsection (2) by affidavit made before any person authorized by an Act of Parliament or of the legislature of a province to administer oaths or take affidavits.

131. (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(*a*) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

(*b*) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so contravened; or

(*c*) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

(1.1) A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.

(2) The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.

(3) The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the exten t and in the manner provided by subsection 135(1).

132. (1) Subject to this or any other Act of Parliament,

(*a*) where the Minister decides, under paragraph 131(1)(*a*) or (*b*), that there has been no contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, or, under paragraph 131(1)(*b*), that the conveyance referred to in that paragraph was not used in the manner described in that paragraph, the Minister shall forthwith authorize the removal from custody of the goods or conveyance or the return of any money or security taken in respect of the goods or conveyance; and

(*b*) where, as a result of a decision made by the Minister under paragraph 131(1)(*c*), the Minister decides that a penalty that was assessed under section 109.3 is not justified by the facts or the law, the Minister shall forthwith cancel the assessment of the penalty and authorize the return of any money paid on account of the penalty and any interest that was paid under section 109.5 in respect of the penalty.

(2) Where any money is authorized under subsection (1) to be returned to any person, there shall be paid to that person, in addition to the money returned, interest on the money at the prescribed rate for the period beginning on the day after the day the money was paid and ending on the day the money is returned.

133. (1) Where the Minister decides, under paragraph 131(1)(*a*) or (*b*), that there has been a contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, and, in the case of a conveyance referred to in paragraph 131(1)(*b*), that it was used in the manner described in that paragraph, the Minister may, subject to such terms and conditions as the Minister may determine,

(*a*) return the goods or conveyance on receipt of an amount of money of a value equal to an amount determined under subsection (2) or (3), as the case may be;

(*b*) remit any portion of any money or security taken; and

(*c*) where the Minister considers that insufficient money or security was taken or where no money or security was received, demand such amount of money as he considers sufficient, not exceeding an amount determined under subsection (4) or (5), as the case may be.

(1.1) If the Minister decides under paragraph 131(1)(*c*) that the person failed to comply, the Minister may, subject to any terms and conditions that the Minister may determine,

(*a*) remit any portion of the penalty assessed under section 109.3; or

(*b*) demand that an additional amount be paid.

If an additional amount is demanded, the total of the amount assessed and the additional amount may not exceed the maximum penalty that could be assessed under section 109.3.

(2) Goods may be returned under paragraph (1)(*a*) on receipt of an amount of money of a value equal to

(*a*) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto

(i) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(*b*) in circumstances to which subsection 32.2(6) applies, or

(ii) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case; or

(*b*) such lesser amount as the Minister may direct.

(3) A conveyance may be returned under paragraph (1)(*a*) on receipt of an amount of money of a value equal to

(*a*) the value of the conveyance at the time of seizure, as determined by the Minister; or

(*b*) such lesser amount as the Minister may direct.

(4) The amount of money that the Minister may demand under paragraph (1)(*c*) in respect of goods shall not exceed an amount equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto,

(*a*) at the time of seizure or of service of the notice under section 124, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(*b*) in circumstances to which subsection 32.2(6) applies; or

(*b*) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case.

(5) The amount of money that the Minister may demand under paragraph (1)(*c*) in respect of a conveyance shall not exceed an amount equal to the value of the conveyance at the time of seizure or of service of the notice under section 124, as determined by the Minister.

(6) For the purpose of calculating the amount of money referred to in subsection (2) or (4), where the value for duty of goods cannot be ascertained, the value of the goods at the time of seizure or of service of the notice under section 124, as determined by the Minister, may be substituted for the value for duty thereof.

(7) If an amount of money is demanded under paragraph (1)(*c*) or (1.1)(*b*), the person to whom the demand is made shall pay the amount demanded together with interest at the prescribed rate for the period beginning on the day after the notice is served under subsection 131(2) and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount. However, interest is not payable if the amount demanded is paid in full within thirty days after the notice is served.

135. (1) A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant.

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