

Date: 20070207

Docket: T-836-06

Citation: 2007 FC 136

Ottawa, Ontario, February 7, 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

MARC ELIE THÉRANCÉ

Applicant

and

MINISTER OF PUBLIC SAFETY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of a decision by Jason Proceviat, manager of the Canada Border Services Agency, Atlantic, Quebec and Pacific Section (the respondent). In this decision dated April 19, 2006, he authorized that the amount of US\$7,075 be seized as forfeit pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act).

I. Issue

[2] Was the decision dated April 19, 2006, based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the facts before the decision-maker?

[3] For the reasons that follow, this question is answered in the negative. Accordingly, the application for judicial review will be dismissed.

II. Factual background

[4] A taxi driver from Haiti, the applicant is an independent contractor with five taxi permits.

[5] On November 22, 2005, while he was heading towards the boarding area for flight AC950 at Pierre-Elliot Trudeau International Airport en route to Haiti, Maryse Poirier, a customs officer (the officer), asked him if he had currency or monetary instruments of a value equal to or greater than C\$10,000. At that same moment, the Canada Border Services Agency's detector dog headed toward the applicant and sat down to indicate that the dog had smelled a drug-like odour emanating from his carry-on luggage.

[6] The applicant reported to the officer that he had US\$20,000 in his possession. However, the search of his baggage revealed that in fact he had a total of US\$27,075. The undeclared amount of \$7,075 was seized in accordance with the Act, while the Royal Canadian Mounted Police retained the amount of \$20,000.

[7] On November 25, 2005, the applicant filed a request for the Minister's decision on the customs authorities' seizure of the undeclared US\$7,075. With supporting documents, he denied that the funds were proceeds of crime and alleged that the total amount of US\$27,075 broke down as follows:

- (a) US\$20,000 for the acquisition of land and for beginning the construction work of his house;
- (b) US\$5,605 from his Montreal friends to distribute to their families, which explained why he had various smaller amounts divided in sealed envelopes addressed to different individuals in Haiti; and
- (c) US\$1,470 to rent a car and take care of his living expenses during his trip.

III. Impugned decision

[8] In her recommendation dated April 6, 2006, Sonya Bisson, adjudicator from the Recourse Directorate (the adjudicator) observed that section 27 of the Act had indeed been violated and recommended that pursuant to section 29, the amount of US\$7,075 be seized as forfeit. The adjudicator noted the following facts:

[TRANSLATION]

1. The detector dog gave two indications.
2. The readings on the ion test were quite high for cocaine on the applicant's suitcase lock as well as on his money envelopes. The rest of the envelopes coming from other individuals were not contaminated. The applicant says that he does not use drugs and cannot explain the high reading on his personal belongings.
3. A total of \$27,075 was in U.S. currency only, the majority of which was in \$20 denominations (588 x \$20). According to the information provided by the RCMP, the \$20 bill is the most used in drug trafficking on the street in Canada.
4. The applicant often travels to Haiti, a source country for cocaine smuggling.

5. The information provided by the applicant was not credible. Anyone can produce handwritten documents.

6. During his interview with the inspectors, the applicant stated that he wanted to invest money at the Scotiabank in Haiti. An investor would not risk transporting so much cash to invest with a bank located in a country as unstable as Haiti, especially when this bank has branches in Canada. Further, the applicant does not make any mention of his intention to invest in this bank in his submissions. A story fabricated when he was under pressure?

[Emphasis in original.]

[9] The adjudicator then wrote as follows:

[TRANSLATION]

Therefore, while the applicant's income could justify the possession of such an amount and that it is possible, in fact, that he was helping his friends by transporting money to their relatives abroad, there are too many indicators that tend to establish that part of the amount seized was proceeds of crime. Under the circumstances, I would recommend that the penalty as issued by seizing inspector be maintained because it is consistent with the Agency's guidelines for this type of offence.

[10] She also relied on the officer's report, as well as on the ion tests that were carried out on the money seized from the applicant:

[TRANSLATION]

Of these various tests, I noted, first, that the money was not uniformly contaminated. In the case of the seizure mentioned above, a contamination of 534 is in fact quite high, therefore higher than average. Indeed, what is peculiar about the money Mr. Thérancé was transporting is that what he declared as his own personal money in separate envelopes had a reading that was sufficiently high (534) to suggest cocaine on the ionscan while the ionscan results for the rest of the money that he was transporting for others was negative. How then do we explain that only his money was contaminated? That is what I am asking myself.

[11] On April 19, 2006, Mr. Proceviat followed the adjudicator's recommendation. This is an application for judicial review of that decision.

IV. Relevant statutory provisions

[12] The relevant legislative and regulatory provisions can be found in Appendix “A” at the end of these reasons. To summarize, the provisions state as follows:

- (a) A true and complete written declaration must be made without delay for currency or monetary instruments upon importation as well as exportation of a value equal to or greater than C\$10,000.
- (b) A breach of this obligation is subject to a penalty or a seizure as forfeit.
- (c) A decision to seize as forfeit is final and is protected by a privative clause.

V. Analysis

The standard of review

[13] First, the standard of review applicable to the review of this Minister’s decision must be established. The analysis of the four factors set out in *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, can be used to determine whether the standard of review applicable to the impugned decision is that of correctness, reasonableness or patent unreasonableness.

(i) *Privative clause/right to appeal*

[14] The Act contains a privative clause at section 24. The forfeiture of currency or monetary instruments seized pursuant to Part 2 of the Act is final and not subject to review.

(ii) *The tribunal's expertise*

[15] The Act entrusts customs authorities with verifying the reports of importations or exportations of currency or monetary instruments. It also gives the customs officers the power to seize as forfeit currency or monetary instruments where the officers have reasonable grounds to believe that subsection 12(1) has been contravened. When a seizure has taken place, the currency or monetary instruments must be returned, less a prescribed penalty unless the officers have reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime or funds for use in the financing of terrorist activities (subsection 18(2)).

[16] Those who have these decision-making powers have mechanisms at their disposal that have become more and more sophisticated for detecting genuine or false documentation used by some individuals in order to establish the acquisition, possession and destination of the ownership of goods. It is therefore necessary to show deference.

(iii) *The object of the Act*

[17] Essentially, the purpose of the Act is to detect and deter money laundering and the financing of terrorist activities. This serves to protect ordinary citizens from these criminal activities. However, provisions were put in place to ensure that there were appropriate safeguards to protect the privacy of persons with respect to personal information gathered during investigations, searches and seizures (Part 3 of the Act).

(iv) *The nature of the problem*

[18] The case law informs us that when a question is purely factual, there must be greater deference for the impugned decision. When the question is of mixed fact and law, there is less deference. Finally, if it is a question of law, there is no deference owed by the Court.

[19] In the matter under review, it is a mixed question of fact and law since the decision-maker had to decide whether the factual record gave rise to reasonable grounds to suspect that the undeclared currency was proceeds of crime.

[20] Following the pragmatic and functional analysis, the Court adopts the standard of review of patent unreasonableness. At the hearing, the parties stated their approval for this standard of review.

Was the decision dated April 19, 2006, based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the facts before the decision-maker?

[21] Bear in mind that the question at issue is whether the forfeiture of currency was based on reasonable suspicions about the currency's criminal origins. After reviewing the applicant's submissions, the customs officer's report, the adjudicator's recommendation as well as the ion tests, and considering the evidence regarding the detector dog's indications, I am satisfied that the decision dated April 19, 2006, authorizing that the amount of US\$7,075 be seized as forfeit is not patently unreasonable.

[22] These indicators are the very basis of the decision (see page 2, paragraph 3):

[TRANSLATION]

The very high ion reading for drugs on your personal effects, the alert given by the detector dog on two occasions, your vague and strange explanations at the time of the enforcement, the documents lacking in credibility and of course, your failure to

report an amount of such value are, *inter alia*, all indicators which tend to establish that you were in possession of currency that was proceeds of crime.

[23] It is also important to note that the applicant gave four different versions regarding the ownership of the \$27,075 U.S. dollars found in his possession.

[24] There is no reason for the Court to intervene in this matter.

[24] The respondent did not insist on costs.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. Without costs.

“Michel Beaudry”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

APPENDIX “A”

RELEVANT LEGISLATION

1. The required reporting of suspicious financial transactions and cross-border movements of currency and monetary instruments is an integral part of the objectives of this Act, as stated at paragraph 3(a)(ii):

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

...

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

...

3. La présente loi a pour objet

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

[. . .]

(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,

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

2. The obligation to report is found at section 12 of the Act.

Currency and monetary instruments

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

Limitation

Déclaration

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

Exception

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

Who must report

(3) Currency or monetary instruments shall be reported under subsection (1) (a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;
...

Duty to answer and comply with the request of an officer

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

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

Déclarant

(3) Le déclarant est, selon le cas :

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

[...]

Obligation du déclarant

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

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

3. The threshold value of currency or monetary instruments that must be reported for importation and exportation is provided under section 2 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 (the Regulations).

Reporting of Importations and Exportations

2. (1) For the purposes of reporting the

Valeur minimale des espèces ou effets

2. (1) Pour l'application du

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.	paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 \$.
(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on	(2) La valeur de 10 000 \$ est exprimée en dollars canadiens ou en son équivalent en devises selon :
...	[. . .]

4. The general manner of reporting is provided under section 3 of the Regulations:

General Manner of Reporting	Forme de la déclaration
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	3. Sous réserve des paragraphes 4(3) et (3.1) et de l'article 8, la déclaration de l'importation ou de l'exportation d'espèces ou d'effets doit:
(a) be made in writing;	a) être faite par écrit;
(b) contain the information referred to	b) comporter les renseignements prévus à:
(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,	(i) à l'annexe 1, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour son propre compte,
(ii) 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,	(ii) à l'annexe 2, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)a) de la Loi, si elle transporte les espèces ou les effets pour le compte d'une entité ou d'une autre personne,
(iii) 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	(iii) à l'annexe 2, dans le cas d'une déclaration faite par la personne ou l'entité visée aux alinéas 12(3)b), c) ou e) de la Loi,
(iv) in Schedule 3, in the case of a report made by the person described in paragraph 12(3)(d) of the Act;	(iv) à l'annexe 3, dans le cas d'une déclaration faite par la personne visée à l'alinéa 12(3)d) de la Loi;
(c) contain a declaration that the statements made in the report are true, accurate and complete; and	c) porter une mention selon laquelle les renseignements fournis sont véridiques, exacts et complets;
(d) be signed and dated by the person or entity described in paragraph 12(3)(x), (b), (c), (d) or (e) of the Act, as applicable.	d) être signée et datée par la personne ou l'entité visée aux alinéas 12(3)a), b), c), d) ou e) de la Loi, selon le cas.

5. The report must be complete and true. The Regulations require that when exporting funds, this report must be submitted without delay.

Exportation Reporting

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.

Déclaration des exportations

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

6. The seizure and forfeiture powers conferred to the customs officers are found in the following section:

Seizure and forfeiture

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.

Saisie et confiscation

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

Return of seized currency or monetary instruments

(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.

Mainlevée

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

7. The Act contains a privative clause at section 24, which provides that the forfeiture of seized currency under Part 2 of the Act is final and is not subject to review or to be otherwise dealt with except in the limited manner set out in sections 25 to 30 of the Act.

**Review and Appeal
Review of 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

**Révision et appel
Conditions de révision**

24. La confiscation d'espèces ou d'effets saisis en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre

dealt with except to the extent and in the manner provided by sections 25 to 30.

Request for Minister's decision

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.

Notice of President

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

Evidence

(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.

Decision of the Minister

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

Deferral of decision

(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.

Notice of decision

(3) The Minister shall, without delay

forme d'intervention que dans la mesure et selon les modalités prévues aux articles 25 à 30.

Demande de révision

25. La personne entre les mains de qui ont été saisis des espèces ou effets en vertu de l'article 18 ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander au ministre de décider s'il y a eu contravention au paragraphe 12(1) en donnant un avis écrit à l'agent qui les a saisis ou à un agent du bureau de douane le plus proche du lieu de la saisie.

Signification du président

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

Moyens de preuve

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

Décision du ministre

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

Report de la décision

(2) Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité ou pour infraction de financement des activités terroristes ont été intentées relativement aux espèces ou effets saisis, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

Avis de la décision

(3) Le ministre signifie sans délai par

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

If there is no contravention

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

If there is a contravention

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

Limit on amount paid

(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.

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

Cas sans contravention

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

Cas de contravention

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

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

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

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

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

Limitation du montant versé

(2) En cas de vente ou autre forme d'aliénation des espèces ou effets en vertu de la Loi sur l'administration des biens saisis, le montant de la somme versée en vertu de l'alinéa (1)a) ne peut être supérieur au produit éventuel de la vente ou de l'aliénation, duquel sont soustraits les frais afférents exposés par Sa Majesté; à défaut de

produit de l'aliénation, aucun paiement n'est effectué.

Appeal to Federal Court

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.

Cour fédérale

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

Ordinary action

(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.

Action ordinaire

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

Delivery after final order

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

Restitution au requérant

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en a été informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

Limit on amount paid

(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.

Limitation du montant versé

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

8. Part 3 of the Act establishes the Financial Transactions and Reports Analysis Centre of Canada under the mandate of the Minister of Public Safety:

**PART 3
FINANCIAL TRANSACTIONS
AND REPORTS ANALYSIS
CENTRE OF CANADA**

Objet

40. The object of this Part is to establish an independent agency that

**PARTIE 3
CENTRE D'ANALYSE DES
OPÉRATIONS ET
DÉCLARATIONS FINANCIÈRES
DU CANADA**

Objet

40. La présente partie a pour objet de constituer un organisme qui :

(a) acts at arm's length from law enforcement agencies and other entities to which it is authorized to disclose information;

(b) collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities;

(c) ensures that personal information under its control is protected from unauthorized disclosure;

(d) operates to enhance public awareness and understanding of matters related to money laundering; and

(e) ensures compliance with Part 1.

Establishment of the Centre Centre established

41. (1) There is hereby established the Financial Transactions and Reports Analysis Centre of Canada.

Powers of Centre

(2) The Centre may exercise powers only as an agent of Her Majesty in right of Canada.

Minister is responsible

42. (1) The Minister is responsible for the Centre.

Minister may direct

(2) The Minister may direct the Centre on any matter that, in the Minister's opinion, materially affects public policy or the strategic direction of the Centre.

Statutory instruments

(3) A direction under subsection (2) is not a statutory instrument for the purposes of the Statutory Instruments Act.

Advisor

(4) The Minister may from time to time engage the services of any person to advise and report to the Minister on any matter referred to in subsection (2).

a) est autonome et indépendant de tout organisme chargé de l'application de la loi et des autres entités à qui il est autorisé à communiquer des renseignements;

b) recueille, analyse, évalue et communique des renseignements utiles pour la détection, la prévention et la dissuasion en matière de recyclage des produits de la criminalité ou de financement des activités terroristes;

c) assure la protection nécessaire aux renseignements personnels qui relèvent de lui;

d) sensibilise le public aux questions liées au recyclage des produits de la criminalité;

e) procède à des contrôles d'application de la partie 1.

Constitution du Centre Constitution du Centre

41. (1) Est constitué le Centre d'analyse des opérations et déclarations financières du Canada.

Mandataire de Sa Majesté

(2) Le Centre ne peut exercer ses pouvoirs qu'à titre de mandataire de Sa Majesté du chef du Canada.

Ministre responsable

42. (1) Le Centre est placé sous la responsabilité du ministre.

Instructions du ministre au directeur

(2) Le ministre peut donner des instructions au Centre sur les matières qui, selon lui, touchent notablement des questions d'ordre public et les orientations stratégiques du Centre.

Caractère non réglementaire

(3) Les instructions visées au paragraphe (2) ne constituent pas des textes réglementaires au sens de la Loi sur les textes réglementaires.

Conseiller

(4) Le ministre peut retenir les services d'une personne pour le conseiller et lui faire rapport sur toute matière visée au paragraphe (2).

**Organization and Head Office
Appointment of Director**

43. (1) The Governor in Council shall appoint a Director to hold office during pleasure for a term of not more than five years.

Reappointment

(2) Subject to subsection (3), the Director is eligible to be reappointed on the expiry of a first or subsequent term of office.

Limitation

(3) No person shall hold office as Director for terms of more than ten years in the aggregate.

Absence or incapacity

(4) In the event of the absence or incapacity of the Director, or if the office of Director is vacant, the Governor in Council may appoint a qualified person to hold office instead of the Director for a term of not more than six months, and the person shall, while holding that office, have all of the powers, duties and functions of the Director under this Part.

Delegation by Director

(5) The Director may delegate to any person, subject to any terms and conditions that the Director may specify, any power, duty or function conferred on the Director under this Act.

**Organisation et siège
Nomination du directeur**

43. (1) Le gouverneur en conseil nomme le directeur du Centre à titre amovible pour un mandat d'au plus cinq ans.

Renouvellement

(2) Sous réserve du paragraphe (3), le mandat du directeur est renouvelable.

Durée limite

(3) La durée d'occupation maximale du poste de directeur par le même titulaire est de dix ans.

Absence ou empêchement

(4) En cas d'absence ou d'empêchement du directeur ou de vacance de son poste, le gouverneur en conseil peut charger une personne compétente de l'intérim pour une période d'au plus six mois; l'intérim est dès lors assuré avec plein exercice des pouvoirs et fonctions prévus par la présente partie.

Délégation par le directeur

(5) Le directeur peut déléguer à toute personne, selon les modalités et dans les limites qu'il fixe, les attributions qui lui sont conférées sous le régime de la présente loi.

FEDERAL COURT
SOLICITORS OF RECORD

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