

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

MAHMOUD YADEGARI

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REASONS FOR JUDGMENT  
**BEFORE THE HONOURABLE JUSTICE C. MOCHA**  
on July 6, 2010 at TORONTO, Ontario

Courtroom 122(A)

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APPEARANCES:

B. Reitz, Mr.

Counsel for the Crown

J. Conroy, Ms.

Counsel for the Crown

F. Addario, Mr.

Counsel for the Accused

W. Thompson, Mr.

Counsel for the Accused

2.

Reasons for Judgment

Mocha, C.

TUESDAY, JULY 6, 2010

R E A S O N S   F O R   J U D G M E N T

MOCHA, C. (Orally):

Mr. Mahmoud Yadegari stands charged with ten counts on the information before me: one count under the *United Nations Act*, one count under the *Nuclear Safety and Control Act*, one count pursuant to the *Export and Import Permits Act*, three counts contrary to the *Customs Act* and four counts under the *Criminal Code*, two for forgery and two for uttering a forged document.

Most of the facts in this case are agreed upon. I wish to take this opportunity to thank counsel for their demonstration of how experienced, professional counsel can focus a trial on the key issues, rather than cloud and protract proceedings with minutia.

The following facts are admitted: Mahmoud Yadegari, also known as David or Navid Yadegari, resided at and ran his business from 18 Abitibi Avenue in Toronto. His business, N&N Express Incorporated, was incorporated on December the 19<sup>th</sup>, 2005 with Mr. Yadegari as the sole director, officer and employee.

3.

Reasons for Judgment

Mocha, C.

Between December 2008 and March 2009, Mr. Yadegari made efforts to obtain devices known as "pressure transducers" from two manufacturers, namely Setra Systems Incorporated and Pfeiffer Vacuum Incorporated.

Pressure transducers, which are also known as "manometers," are devices that convert pressure measurements into an electrical signal that can be recorded and/or displayed on a computer or other electronic device. Mr. Yadegari does not admit that he knew pressure transducers had these properties prior to his arrest.

Pressure transducers can be used in the process of uranium enrichment. One method of uranium enrichment is gas centrifugation. To optimize productivity of enriched uranium, the gas pressure inside a centrafuse must be kept below 13 kilopascals.

Pressure transducers are used to measure the pressure inside gas centrafuses. Some of the parts in the Setra transducers are made of Inconel 600 and Inconel 718. Inconel 600 is comprised of 72 percent nickel by weight, and Inconel 718 is comprised of 50 to 55 percent nickel by weight. Pressure transducers that are used in the uranium

4.

Reasons for Judgment

Mocha, C.

enrichment process are consumed during this process.

Mr. Yadegari purchased ten Setra pressure transducers from the Canadian distributor Alpha Controls and Instrumentation on December 18<sup>th</sup>, 2008. Mr. Yadegari requested a quote for Setra pressure transducers in an N&N Express purchase order dated December 23<sup>rd</sup>, 2008, in which he ordered ten Model 760 Vactron pressure transducers, seven of the ten were part number 760110CTAN17CD2A, the other three were part number 760110OTAN17CD2A.

On February 23<sup>rd</sup>, 2009, the order was sent to Mr. Yadegari. Each of the ten pressure transducers sold for \$1,109.00.

On March 4<sup>th</sup>, 2009, Mahmoud Yadegari attended at the office of DHL Express, an international freight forwarding company. He dropped off a package for international shipment containing two Setra pressure transducers with the part number 760110CTAN17CD2A. The labels were removed and they were marked sample one and sample two. The shipment was accompanied by two documents: the first was a DHL Express Combined Customer Invoice/Shipment Air Waybill.

5.

Reasons for Judgment

Mocha, C.

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Mr. Yadegari filled in parts two through six of the pre-printed form. Part two was information about the shipper named David Yadegari and N&N Express Incorporated as the shipper with an address and phone number. Under part three for receiver, Keft Trading Company was named as the receiver with an address in Dubai, United Arab Emirates. Part four gave the weight of the items. Part five called for a full description of the contents, and written under part five was "Setra electrical accessory." Under part six, it called for the declared value for Customs (As on Commercial/Proforma Invoice), and the value that was filled in was \$100.00. Mr. Yadegari signed and dated the shipper's agreement and paid the shipping fee of \$79.23.

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The second document was a commercial invoice. Mr. Yadegari prepared the commercial invoice, signed and dated it.

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In relation to the two Setra pressure transducers, neither Mr. Yadegari, nor N&N Express, applied for or obtained any of the following items: One, a Certificate of Exemption, pursuant to s.20 of the Regulations implementing the United Nations resolutions on Iran, secondly, an export permit, pursuant to s.7 of the *Export and Import Permits Act*,

thirdly, a licence pursuant to s.26 of the *Nuclear Safety and Control Act*.

Neither Mr. Yadegari, nor N&N Express, reported to the Canadian Border Services Agency any export of controlled goods, or goods valued at more than \$2,000.00. Mr. Yadegari also tried to obtain transducers from Pfeiffer, a pressure transducer manufacturer based in Germany.

On January 14<sup>th</sup>, 2009, Mr. Yadegari e-mailed Phivac Incorporated, a representative for Pfeiffer. Attached to the e-mail was a purchase order for 20 pressure transducers. Jean-François Poncelet of Phivac Incorporated advised that, because Mr. Yadegari was a reseller, Pfeiffer must be advised in writing of the country to which the product would be exported before it could process the order. He stated, "The reason is that they want to make sure it does not end up in some countries where Pfeiffer does not want to sell to." On January 16, 2009, Mr. Yadegari advised that the product was destined for Denmark. Pfeiffer, on the same day, approved the order.

On January 19<sup>th</sup>, 2009, Mr. Poncelet advised Mr. Yadegari that Pfeiffer required a "signed end-user certificate" and that it would be best to have the certificate signed by the

## Reasons for Judgment

Mocha, C.

customer in Denmark. Mr. Yadegari provided a declaration on N&N Express letterhead by fax stating, "This is to confirm that the products we are buying from Pfeiffer are going to be used in Denmark."

On March 4<sup>th</sup>, 2009, Suzette Miller advised Mr. Yadegari that the document was not accepted. She advised Mr. Yadegari that he needed to provide an end-user certificate and attached forms for two documents she said were required by German law. They were an end-user certificate and a letter to be transferred to the buyer's letterhead and signed by a corporate officer or manager in charge with the subject line: "Customer Certification and Letter of Assurance," copies of which are found at appendix 12.

On March 9<sup>th</sup>, 2009, Mr. Yadegari provided Pfeiffer with a completed copy of the end-user certificate by e-mail and a signed copy of the Letter of Assurance. The end-user on the certificate was listed as Keft Pharma Co. in Dubai, United Arab Emirates, and the purpose as "pharmaceutical."

On March 19, 2009, the order was cancelled by Pfeiffer due to "in-house export restrictions."

8.

Reasons for Judgment

Mocha, C.

5 After delivering the Setra transducers to DHL for shipping, Mr. Yadegari received a notice from the Canada Customs Export Control Unit on March 11, 2009 advising him that his DHL shipment had been detained for "permit determination/verification." He was asked to provide certain information to the export office, including a signed copy of Form B13A.

10 Mr. Yadegari completed an Export Declaration Form describing the pressure transducers as pressure gauges with a value of \$1,309.00. He signed the Export Declaration and dated it March 18<sup>th</sup>, 2009 and submitted it to the Canada Border Services Agency.

15 On April 16, 2009, members of the Royal Canadian Mounted Police arrested Mr. Yadegari at his home, pursuant to an arrest warrant. They also executed a search warrant and found the following items: There was a desktop computer running and logged into Yahoo E-mail as navi2000@yahoo.com.

20 On the hard drive of the computer seized from the home, police found the following: first, a brochure for Setra Model 760 Vacutron Series Absolute Pressure Transducers, two, a jpeg format scanned copy of the end-user certificate provided by Mr. Yadegari to Pfeiffer, three, an e-mail exchange between

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Reasons for Judgment

Mocha, C.

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Mr. Yadegari and Bill Shurben of Canada Analytical and Process Technologies, four, an e-mail exchange between Mr. Yadegari and Nima Alizadeh Tabari of TSI Company, five, a document containing the following: The name of Keft Trading Company with an address in Dubai, United Arab Emirates and a telephone number, six, an image of the Dik Drug Company logo, seven, a jpeg image of the end-user certificate in the name of Keft Pharma Company, eight, a photograph of a Setra transducer box, nine, a photograph of a Setra transducer, ten, an undated commercial invoice for Setra Electrical Accessory marked "as sample - free of charges," listing two units for a total price of \$100.00, the shipper listed as N&N Express and the consignee listed as Keft Trading Company in Dubai, United Arab Emirates.

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The next item, number 11, was an invoice numbered 200903524 from N&N Express to Keft Trading Company, dated March the 2<sup>nd</sup>, 2009 for two Setra electrical accessories gauge 1000 absolute at a price of \$2,975.28 per unit for a total of \$5,590.56 - the shipping method being listed as DHL. Item number 12 that was found was an invoice number 200903524 from N&N Express to Keft Company, dated March 4, 2009 for two Setra electrical accessories pressure gauge one bar (1000 millibars) with a

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Reasons for Judgment

Mocha, C.

promotional price of zero dollars and shipping and handling of \$100.00.

Also found were eight Setra pressure transducers in labelled boxes, three were part number 7601100TAN17CD2A, with consecutive serial numbers; five were part number 760110CTAN17CD2A, also with consecutive serial numbers. Each box also contained a calibration certificate issued by Setra for the transducer in the box, and also found was a Setra transducer box with the exterior label missing.

Inside that box police found Setra pressure transducer labels from 1,000 Torr units part number 760110CTAN17CD2A, exterior box labels, together with matching adhesive labels from the transducers with serial numbers 3864201 and 3864200.

Also in the box were two Setra calibration certificates bearing serial numbers: 3864200 and 3864201.

Also seized was a credit card application by Mr. Yadegari to Canada Analytical and Process Technologies dated December 10, 2008, together with a quotation dated January 12, 2009 for 100 Absolute Capacitance Manometers, and

finally a signed letter to Pfeiffer Vacuum dated January 19<sup>th</sup>, 2009.

The bulk of the evidence in this case is circumstantial. Although reasonable inferences can be drawn from circumstantial evidence, those inferences must be based on discernable proven facts, anything less is speculation and impermissible. The Court must take care not to draw overreaching inferences from the facts, and when there are competing inferences, the Court must be particularly mindful that at all times the onus is on the Crown to prove its case beyond a reasonable doubt. It is not enough that a fact or inference is probably true.

Similarly, the Court must take care not to abdicate its responsibility to carefully lay out the many pieces of circumstantial evidence to see if they fit together by simply saying there is no real evidence. This is a court of law, not a court of public opinion or expedience. As such, each count must be examined carefully as to the relevant facts, the legally permissible inferences that ought to be drawn from those facts and the applicable law.

Count one alleges that Mahmoud Yadegari on or about March the 4<sup>th</sup>, 2009 did knowingly attempt

## Reasons for Judgment

Mocha, C.

5 to sell, supply or transfer products to any person in Iran, or for the benefit of Iran, as prohibited by s.3(e) of the Regulations implementing the United Nations resolutions on Iran, thereby committing an offence pursuant to s.3(1) of the *United Nations Act*. Section 3(e) of the Regulations reads specifically:

10 "No person in Canada and no Canadian outside Canada shall knowingly sell, supply or transfer, directly or indirectly, any of the following products, wherever situated, to any person in Iran or for the benefit of Iran," with subsection (e) stating, "all products that appear in Information Circular

15 INFCIRC/254/Rev.7/Part 2."

20 Section 3.A.7 of this information circular lists pressure transducers with certain specific characteristics as products that are so restricted. Section 3.A.7 reads: "Pressure transducers capable of measuring absolute pressures at any point in the range zero to 13 kilopascals and having both of the following characteristics:

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(a) Pressure sensing elements made of or protected by aluminum, aluminum alloy, nickel or nickel alloy with more than 60 percent nickel by weight and

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13.

Reasons for Judgment

Mocha, C.

(b) Having either of the following characteristics:

(1) A full scale of less than 13 kilopascals and an "accuracy" of better than +1% of full-scale; or

(2) A full scale of 13 kilopascals or greater and an "accuracy" of better than +130 pascals."

Below that are technical notes. Number one states in item 3.A.7: "Pressure transducers are devices that convert pressure measurements into an electrical signal." Number two states in item 3.A.7: "'Accuracy'" includes nonlinearity, hysteresis and repeatability at ambient temperature."

The first issue is whether the pressure transducers that Mr. Yadegari attempted to export have the characteristics set out in 3.A.7. My ruling on the motion for the directed verdict sets out my reasons for concluding that the transducers in question have each of the characteristics set out in s.3.A.7. The only additional argument made is based on Exhibit 18 that was filed after my ruling. Exhibit 18 is a Setra Systems Company document that lists definitions of pressure terminology used by Setra's Pressure

5 Measurement Division. In that document, "accuracy" is defined as follows: "Combined error of linearity, hysteresis and repeatability (Setra uses the root sum of squares (RSS) method)."

10 This piece of evidence from Setra Systems does not alter the interpretation of s.3.A.7.

Firstly, "combined" is not the language used in the legislation. Secondly, the phrase "Setra uses" infers that there are other methods available.

15 The test at this stage of the proceedings is whether I am satisfied beyond a reasonable doubt that the transducers have the characteristics set out in s.3.A.7, and for the same reasons as set out in my prior ruling under the motion for directed verdict, I am  
20 satisfied to this level of certainty.

25 The next question is whether Mr. Yadegari did attempt to sell, supply or transfer the products directly or indirectly to a person in Iran or for the benefit of Iran. E-mails found on Mr. Yadegari's computer show numerous inquiries made for valves, gauges and transducers destined for Iran.

30 On January 13, 2009 Nima Alizadeh Tabari of TSI Company sent Mr. Yadegari an e-mail

5 stating, "We may face trouble with sending these materials to USA, please again think about the sending the goods to Dubai or To Iran or...only think till see what will happen."

10 In an e-mail dated February 17<sup>th</sup>, 2009, Dean Bokenfohr, for Cameron Valves and Measurement, declined to quote for the South Pars field "in the Iranian sector of the Persian Gulf" as it's destined for an embargoed country. Mr. Yadegari responded that he did not know it was for an embargoed country. The e-mails that I am referring to can be found in the compendium of e-mails - this particular one - at tab three pages 52 and 88.

15 On February 19<sup>th</sup>, 2009, Mr. Ali Sadeghianpour of Samson Controls Incorporated sent an e-mail to the defendant that he needed information about the end-user. Mr. Yadegari responded that the company is in Iran - South Pars zone. Mr. Sadeghianpour replies that, based on UN rules and restrictions, South Pars is not in the list of restricted companies to work with. This can be found at tab three, pages 100, 104 and 109.

25 Mr. Sadeghianpour testified that in a phone conversation with Mr. Yadegari he said the goods were going to Turkey or Azerbaijan. He met in person with Mr. Yadegari on February

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25<sup>th</sup>, 2009. Mr. Yadegari told him at that time that the destination was Iran South Gas field Project EPC. Mr. Yadegari stated TSI and the National Iranian Gas Company were in charge of the project, but he brought no documents to support this. He provided a data sheet, but the project name, number and EPC logo were missing. Mr. Yadegari told him he did not have the original data sheet.

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On April 6<sup>th</sup>, 2009, after the offence date, Mr. Yadegari e-mailed Alco Valves in response to a question regarding a quote given back on February 20<sup>th</sup>, 2009, responding that the client was in Iran. This can be located at tab five, pages one and two.

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The e-mails in the compendium of e-mails, which are Exhibit 9, establish that Mr. Yadegari was locating goods as specified by Mr. Tabari for TSI. Officer Hymander testified that two of these e-mails had sufficient information for him to analyze the country of origin. He was able to determine that Mr. Tabari was in Iran when he sent the two e-mails to Mr. Yadegari dated April 8<sup>th</sup> and April 14<sup>th</sup> of 2009.

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The compendium of e-mails in Exhibit 9 shows that Mr. Tabari was the client for whom Mr. Yadegari obtained the transducers. He is the



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only client with whom Mr. Yadegari communicates about specifications and details. The fact that Mr. Yadegari was also e-mailing other clients, for example, about lentils, as were put in as an exhibit by the defence, does not detract from this. Based on the e-mails, it would seem Mr. Yadegari and Mr. Tabari have a closer relationship than the normal business one.

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In Mr. Yadegari's e-mails to the various companies, including those relating to lentils, he signs his e-mails with his first and last name and the company name. In his e-mails to Mr. Tabari, both he and Mr. Tabari greet and sign off using just their first names.

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On December the 1<sup>st</sup> of 2008, Bill Shurben of CAPT asks Mr. Yadegari in an e-mail to provide the name and location where the products are to be used. Mr. Yadegari forwards the request to Mr. Tabari and asks: "let me know what I should tell him, he wants more detailes (sic)." The word "detailes" is spelt D-E-T-A-I-L-E-S. This can be found at tab one, page two.

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On December 3<sup>rd</sup>, Mr. Yadegari e-mails Mr. Shurben that he is waiting for a reply from

18.

Reasons for Judgment

Mocha, C.

his client. This is evidence that Mr. Tabari is his client.

5 On December 9<sup>th</sup>, 2008, Mr. Yadegari e-mails Mr. Shurben that the trading company he is dealing with is in Europe. This is at tab one, page eight.

10 Between January 10 and 14 of 2009, Mr. Yadegari and Mr. Tabari send various e-mails back and forth about Pfeiffer pressure transducers. Mr. Yadegari in a January 10<sup>th</sup> e-mail tells Mr. Tabari: "I will talk to him about the end-user before you want to order. Let me know what I should do, by the way do you want to contact Alcatel too?"

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20 Mr. Yadegari later confirms an order is placed with Pfeiffer, and on January the 14<sup>th</sup> Mr. Tabari e-mails to Mr. Yadegari: "The below part nos exactly must be confirmed on their letterhead to you, total value of order is 53000.00 USD the 26500.00 USD will be sent to you within coming days. Please acknowledge the order." Clearly, Mr. Tabari has placed an order for capacitance transmitters with Mr. Yadegari and is prepared to send payment.

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30 On February 11<sup>th</sup>, 2009, Sally Hammond of Tyco Flow Control asked for the company name and address for whom they were quoting. Mr.

Reasons for Judgment  
Mocha, C.

Yadegari forwarded the request to Mr. Tabari. This is located at tab three, page 33.

Between January and April 2009, Mr. Yadegari forwarded numerous price quotes and information on valves and transmitters to Mr. Tabari, and Mr. Tabari sent requests for quotes to Mr. Yadegari.

On April 15, 2009, Mr. Yadegari sends an e-mail to Mr. Tabari about a request from CB Automation for the company name and location where the goods are to be used before giving a quote to comply with U.S. export regulations. He asks Mr. Tabari, "Do you want me to say Keft Company in Dubai? Let me know please." This can be found at tab five, page 66.

On April 16, 2009, Mr. Tabari responds, "Let me check with end-user." This is at tab five, page 76.

The fact that Mr. Tabari may have intended to pass goods onto someone else after he received them is immaterial. The Crown need not prove where the goods were to ultimately end up, just that Mr. Yadegari attempted to sell them to someone in Iran, that someone being Mr. Tabari.

5 The relationship between Mr. Yadegari and Mr. Tabari, together with the e-mails sent from Mr. Tabari in Iran and the testimony of Mr. Sadeghianpour that TSI was involved in a project in Iran for which Mr. Yadegari was obtaining quotes for goods, is evidence that the defendant was attempting to sell the transducers to Mr. Tabari of TSI located in Iran.

10 The final component is whether Mr. Yadegari did this knowingly. Counsel for the defendant submits that the evidence discloses that Mr. Yadegari was not a sophisticated import/export operator. However, for three years, this was his business. Anyone in this business would know there are restrictions on exports - laws and regulations that must be complied with. On numerous occasions Mr. Yadegari was reminded of his obligation to be in compliance with these laws and regulations.

15 In the CAPT quotation, Exhibit 16, number five under Terms and Conditions reads: "Applicable laws (a) This agreement shall be governed in accordance with the province of Ontario and other applicable federal laws (b) The purchaser agrees that the goods and confidential information provided are subject to the export and Customs laws and regulations of Canada, the United States, and any other

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21.

Reasons for Judgment

Mocha, C.

5 applicable country and shall not export, re-export or transship directly or indirectly such goods or information without first obtaining proper government approval."

10 Although at times the defendant was advised of regulations in relation to other countries and internal company restrictions, they were reminders nonetheless of his obligation to be in compliance with all applicable laws and regulations. Mr. Yadegari was repeatedly told in e-mails that the seller of the transducers needed to know the end destination.

15 On December 20, 2008, Vanessa Chan of CAPT e-mailed Mr. Yadegari that, if he was reselling to another trading company, they needed the company information, including the destination, due to the "sensitivity" of their product.

20 On January 5<sup>th</sup>, 2009, the defendant responded by asking for his own information, what the product is used for and why it is so sensitive as he thought they were simple sensors. This can be found at tab one, page 20. Although Ms. Chan does not reply, Mr. Yadegari now knows there are concerns about the product he is attempting to export.

25 On January 9<sup>th</sup>, 2009, Mr. Shurben from the same company e-mails Mr. Yadegari that he

5 needs to know the final destination and use of  
the product before even giving a quote and  
asks further if he has an export license.  
This is at tab one, page 24. The respondent  
replies that the company is in Denmark and is  
being used for freeze drying. He never  
responds about whether he has an export  
license.

10 Mr. Shurben testified that the original  
request was for 100 transducers, which was  
extraordinary. Usually an order will be for  
one to three, and that is all that would be  
needed for a freeze-drying operation, and such  
an operation would not use the models  
requested by the defendant according to Mr.  
Shurben. It is important to note at this  
point that one of the admitted facts is that,  
during the process of enriching uranium,  
20 pressure transducers are used up. CAPT never  
made the sale to Mr. Yadegari.

25 On January 15<sup>th</sup>, 2009, Jean-François Poncelet,  
a representative of Pfeiffer, e-mailed Mr.  
Yadegari that to process his order they needed  
to know in writing, if possible, which country  
the gauges were going to, so they do not end  
up in some countries Pfeiffer does not want to  
sell to. The next day the defendant replies  
that the destination is Denmark. This is at  
30 tab two, pages eight and 11.

5 On January 19<sup>th</sup>, 2009, Mr. Poncelet says that they require a signed end-user certificate and that it would be best to have it signed by the customer in Denmark. This is at tab two, page 16. That same day the defendant faxes a letter to Pfeiffer that the gauges are going to be used in Denmark. He does not send an end-user certificate or any letter from the customer.

10 On March 4<sup>th</sup>, 2009, Suzette Miller e-mails Mr. Yadegari that the letter is not accepted and that they need a Letter of Assurance and an end-user certificate as required by German law. Samples of the two documents are sent as attachments. This is at tab four, pages one, four and 15.

15 The Letter of Assurance does not just refer to German controls. The first paragraph states that the products "may be subject to German or EU and other government export control regulations and restrictions." This can be found in the agreed statement of facts at appendix 12.

20 The next paragraph states the party agrees not to "transfer, export or re-export directly or indirectly any products acquired from Pfeiffer Vacuum to Cuba, Iran, North Korea, Libya,

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Further down it goes on to say, "That we will not transfer, export or re-export directly or indirectly to any party listed as prohibited from receiving products by the United Nations, or the European Union, or prohibited by applicable laws and that we are not on or under control of anybody on any such list that we will comply with all applicable regulations and restrictions whenever we transfer, export or re-export products obtained from Pfeiffer Vacuum."

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Mr. Yadegari responds on March the 9<sup>th</sup>, 2009 that, because the client had been making numerous inquiries for items to go to Denmark, he assumed these were going there as well, but they are in fact destined for the United Arab Emirates, and he attaches the filled-in letter of assurance signed by him and an end-use certificate from Keft Pharma Co., which interestingly had been referred to as Keft Trading Company or Keft Company in correspondence with other companies.

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On March 19<sup>th</sup>, 2009, Michele Trunca of Pfeiffer replies that the purchase order is cancelled as deliveries to the United Arab Emirates are not allowed due to in-house restrictions. The next day the defendant apologizes for "our misunderstanding."



Several other companies put the defendant on notice about restrictions.

On January 23<sup>rd</sup>, 2009, Tracey Anderson of Alcatel provides a quote to Mr. Yadegari. At the bottom is a note stating, "An end-user declaration must be supplied by the customer certifying the goods will be used in Canada."

On February 11<sup>th</sup>, 2009, Sally Hammond of Tyco Flow Control e-mailed Mr. Yadegari in response to being told the customer was Keft Trading Company in Dubai that they cannot "knowing it is a trading company." This is at tab three, page 36.

On February 17<sup>th</sup>, 2009, Dean Bokenfohr of CE Franklin Limited declined to give a quote for goods destined for the South Pars field "...in the Iranian sector of the Persian Gulf, approximately 100 km south-west of the Iranian coast," as it is for an embargoed country. This is at tab three, page 52. The defendant replies he did not know it was for an embargoed country. That is at page 88.

On February the 19<sup>th</sup>, 2009, Mr. Yadegari advises Ali Sadeghianpour of Samson Controls Incorporated that the goods were to be used in the oil field industries prj in Iran South Pars zone. In response, Mr. Sadeghianpour

5 wrote, "Based on UN rules and restrictions, South-Gas pars is not in the list of restricted companies to work with." This is at tab three, pages 104 and 109.

10 On April 15<sup>th</sup>, 2009, Phil Quesnelle of CB Automation Incorporated e-mailed Mr. Yadegari that they needed the company name and location before providing a quote to "ensure compliance with U.S. Government export regulations." This is at tab five, page 66.

15 The interpretation of the regulations by other companies is not relevant, unless the defendant is shown to have relied on them. There is no evidence of reliance by the defendant here. These communications, however, are evidence that the defendant was advised repeatedly of regulations restricting the export of these types of devices.

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25 Mr. Yadegari possessed the brochures and supporting documentation for the transducers. Although some of the specifications are expressed in Torr, rather than kilopascals as in the legislation, when asked to provide details to the Canadian Border Security Agency, Mr. Yadegari converted Torr to kilopascals in his correspondence dated April 30 7<sup>th</sup>, 2009.

## Reasons for Judgment

Mocha, C.

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In his correspondence with Mr. Tabari and various companies, Mr. Yadegari refers to the properties of the transducers. They refer to the various Torr available, the accuracy, corrosion resistance and so on. These are located at tab one, pages one through three, five and eight, and at tab two, pages one and two.

The fact that Mr. Yadegari knew these transducers were restricted is supported by evidence that establishes he removed the labels and supporting documentation before attempting to ship the two transducers.

Counsel for the defendant submits that Mr. Yadegari did not know that Customs would look in the package, and therefore no inference can be drawn, but he would have and should have been aware of the possibility as an export/importer.

Under the *Customs Act*, the defendant would be required to present the goods for examination if requested. The only inference that can be drawn from this fact, however, is that he knew the transducers were restricted, not that he knew they were restricted by the *United Nations Act*. Knowledge of this specific fact, however, can be inferred from the previous

mentioned correspondence where the *United Nations Act* is specifically referred to.

The defendant knew or, at the very least, was willfully blind that the transducers had the characteristics that made them restricted by the *United Nations Act*. The Crown must also prove that the attempt to sell went beyond mere preparation. The only thing that kept the sale from being completed was the detention of the transducers by the Canada Border Services Agency before they reached the purchaser.

Based on the totality of the evidence presented, I am satisfied that the Crown has proven beyond a reasonable doubt that the defendant attempted to sell products prohibited by s.3(e) of the Regulations implementing the UN Resolutions on Iran to a person in Iran, that he did so knowingly and that, as conceded in the agreed facts, he did not apply for or obtain a Certificate of Exemption pursuant to s.20 of the Regulations implementing the UN Resolutions on Iran.

Count two alleges that Mahmoud Yadegari on March the 4<sup>th</sup> of 2009 did attempt to export goods included in the Export Control list 4-3.A.7 with a stated destination of the United Arab Emirates, not under the authority of and

## Reasons for Judgment

Mocha, C.

in accordance with an export permit. The list under 4-3.A.7 includes pressure transducers that are capable of measuring absolute pressure at any point in the range zero to 13 kilopascals and having both of the following characteristics: (a) Pressure sensing elements made of or protected by aluminum, aluminum alloy, nickel or nickel alloy with more than 60 percent nickel by weight and

(b) Having either of the following characteristics:

(1) A full scale of less than 13 kilopascals and an "accuracy" of better than  $\pm 1\%$  of full-scale; or

(2) A full scale of 13 kilopascals or greater and an "accuracy" of better than  $\pm 130$  pascals."

For the same reasons as stated earlier, I am satisfied the pressure transducers that Mr. Yadegari attempted to export fall within the definition under 4-3.A.7.

Counsel for the defendant argues that confirming the technical characteristics of pressure transducers is well beyond the capability of a reasonable person. Mr. Yadegari is an exporter and was communicating

## Reasons for Judgment

Mocha, C.

5 directly with the companies selling this product. It would be very easy to perform due diligence and ask for confirmation of the specific characteristics of the pressure transducers that he attempted to export to ensure compliance. It is admitted that neither Mr. Yadegari, nor N&N Express, applied for or obtained an export permit pursuant to s.7 of the *Export and Import Permits Act*. The attempt to export went beyond a mere preparation, as indicated earlier.

15 I am satisfied that the Crown has proven the elements of count two beyond a reasonable doubt.

20 Count three alleges Mahmoud Yadegari on March 4<sup>th</sup>, 2009 unlawfully did fail to report goods as "restricted goods" prescribed by the *Customs Act*. Restricted goods are: "Goods the exportation of which is prohibited, controlled or regulated" under the *Customs Act* or any other Act of Parliament.

25 The pressure transducers that Mr. Yadegari attempted to export are restricted goods under the *Customs Act*. It is admitted that neither Mr. Yadegari, nor N&N Express, reported to the Canadian Border Services Agency the export of restricted goods. No lawful excuse has been provided for the failure to do so.

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Reasons for Judgment

Mocha, C.

5 I am satisfied the Crown has proven each of the requisite elements of count three beyond a reasonable doubt.

10 Count four alleges that Mahmoud Yadegari on March the 4<sup>th</sup> of 2009 unlawfully did fail to report goods having a value exceeding \$2,000.00 as prescribed by the *Customs Act*.

15 The purchase order for the transducers is found in appendix two of the agreed statement of facts. It lists the unit price for each transducer as \$1,109.00. The total for two is over \$2,000.00. An invoice found on Mr. Yadegari's computer from the defendant to Keft Trading Company dated March 2<sup>nd</sup>, 2009 in appendix 19 of the agreed statement of facts lists the total price of the two transducers as \$5,950.56.

20 Another invoice found on the computer at appendix 20 to Keft Company for two transducers lists the original price as \$1,309.00 and a promotional price of zero dollars with a \$100.00 shipping cost. A note at the bottom says, that if the product is kept and not sent back within 30 days, the customer will be charged the original price.

## Reasons for Judgment

Mocha, C.

On the commercial invoice given to DHL on March the 4<sup>th</sup> of 2009 at appendix seven, the defendant lists the total price as \$100.00 with a note: "As sample - free of charges," but it is not free of charge as the unit price is given as \$50.00 each.

Counsel for the defendant submits, firstly, that Mr. Yadegari believed that the value of the goods was less than \$2,000.00 because he was providing the goods at a price of \$50.00 each as samples. The wording of the regulations is "value," not "price." It is how much the goods are worth, not some number picked out of the air by the exporter. The value of the two transducers is clearly over \$2,000.00.

Counsel further submits that the defendant believed exemption 6(m) of the Regulation applies, which reads, "Goods other than goods exported for further processing that will be returned to Canada within 12 months after the date of exportation." There is nothing on the commercial invoice given to DHL that indicates the goods are to be returned. The only reference to this is on the invoice in appendix 20, but that only states that the goods may be returned. If they are not returned within 30 days, then the purchaser is charged the original price. Exemption (m)



## Reasons for Judgment

Mocha, C.

5 does not apply to the goods in this case. Section 8 similarly does not apply because the goods are not of a class described in s.6 or s.7.

I am satisfied that the Crown has proven each of the requisite elements of count four.

10 Count five alleges that Mahmoud Yadegari on March 18<sup>th</sup> of 2009 unlawfully did make a false or deceptive statement in writing, as prescribed by the Customs Act, specifically a Canada Border Services Agency Export Declaration Form B13A. The form submitted by Mr. Yadegari is at appendix 16 of the agreed statement of facts. He lists the value as \$1,309CAD, and the total value of the two "pressure gauges" as \$1,309CAD.

20 It would appear that, when Mr. Yadegari filled out the form, he referenced the invoice on his computer at appendix 20 where the original price is quoted as \$1,309CAD. This is further evidenced by the ultimate consignee being named as Keft Company, as it is in appendix 20, rather than Keft Trading Company, as it is on the waybill and other invoices. The defendant, it would appear, was having trouble keeping his story straight, rather than an honest but mistaken belief about the value.

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## Reasons for Judgment

Mocha, C.

The Crown has proven the elements of count five beyond a reasonable doubt.

Count six alleges that Mahmoud Yadegari on March 4<sup>th</sup> of 2009 unlawfully did attempt to export controlled nuclear equipment included in the schedule to the Nuclear Nonproliferation Import and Export Control Regulations, without obtaining an export license, contrary to s.48(k) of the Nuclear Safety and Control Act. The Regulations include dual use items, such as pressure transducers, with the characteristics as stated in s.B.2.2.8 of the regulations. It is almost identical to that found in the Customs Act regulations and the United Nations Act information circular.

For the same reasons as stated earlier, I am satisfied that the pressure transducers in this case meet the characteristics as set out in s.B.2.2.8. The attempt went beyond mere preparation, also for the reasons as stated earlier, and it is conceded that neither Mr. Yadegari, nor N&N Express, applied for or obtained a license pursuant to s.26 of the Nuclear Safety and Control Act.

I am satisfied the Crown has proven each of the elements of count six beyond a reasonable doubt.

## Reasons for Judgment

Mocha, C.

5 Count seven alleges that Mahmoud Yadegari on March 4<sup>th</sup>, 2009 did knowingly make a false document to wit: DHL Express waybill with intent that it be acted upon as genuine and did thereby commit forgery contrary to s.367 of the *Criminal Code*.

10 Section 366(1) of the *Criminal Code* provides that:

"Every one commits forgery who makes a false document, knowing it to be false, with intent:

15 (a) that it should in any way be used or acted on as genuine, to the prejudice of any one, whether within Canada or not, or

20 (b) that a person should be induced, by belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not."

Section 366(3) reads:

25 "Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing  
30 anything."

And further, s.366(4) states:

"Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine."

Section 321(b) defines false document as "a document that is made by or on behalf of the person who purports to make it but is false in some material particular."

The waybill at appendix six has a section for value of the goods and it reads: "Declared value for Customs (as on commercial/proforma invoice)."

The Crown need not prove what the defendant paid, although in this case there is evidence of that in appendix two. The information required is "value," which is not the same as purchase price.

The defendant provided an invoice with a price that did not reflect the value of the goods and an inaccurate description of the goods to support the value and description he placed on the waybill. This is not an error, but a deliberate falsehood as to material particulars.

## Reasons for Judgment

Mocha, C.

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Counsel for Mr. Yadegari submits that there is no evidence of prejudice and that no one was induced to do or failed to do anything as a result of this document. The document clearly states the value is for Customs. The intent in misstating the value and description was to ensure that the package cleared Customs and not be detained. The totality of the evidence establishes that this was deliberate and not accidental or careless.

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The Crown has proven each of the elements of count seven beyond a reasonable doubt.

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Count eight alleges that Mahmoud Yadegari on March the 4<sup>th</sup> of 2009 did knowingly use a forged document to wit: the DHL waybill as if it were genuine contrary to s.368(1).

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The defendant filled out and then handed the waybill to the DHL Express office, along with the package for shipment containing the two transducers. He is the party that created the forged document and therefore knew that he was using a forged document when he provided it to DHL.

The Crown has proven all of the elements of count eight beyond a reasonable doubt.

## Reasons for Judgment

Mocha, C.

Count nine alleges that Mahmoud Yadegari on March the 4<sup>th</sup> of 2009 did knowingly make a false document to wit: Keft Pharma Co. end-use certificate with the intent that it be acted upon as genuine and did thereby commit forgery contrary to s.367 of the *Criminal Code*.

Although Mr. Yadegari provided this document to a potential seller and a copy of it was found on his computer, the Crown must prove, not just that the document is false in any material particular, but that it was made by the defendant. The only real evidence from which this inference could be drawn is the Dik Drug Company logo that was also found on the defendant's computer. It is not just coincidence that the logo for this company matches the logo for Keft Pharma Company on the end-use certificate.

I am satisfied that this, together with several of the e-mails showing the circumstances leading up to the certificate being provided, prove the document was false. The problem is that the logo alone is not enough to prove that Mr. Yadegari made the false document. The address for Keft Pharma Company was not cut and pasted from the one found on the defendant's computer. The type used is different, and the city is capitalized on one and not on the other. The stamp used

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at the bottom of the certificate cannot be linked to Mr. Yadegari. There are no fingerprints and there was no handwriting analysis provided for the writing on the certificate.

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The Crown has not proven count nine beyond a reasonable doubt.

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Count ten alleges that Mahmoud Yadegari on March the 9<sup>th</sup> of 2009 did knowingly use a forged document to wit: Keft Pharma Co. end-use certificate as if it were genuine contrary to s.368(1) of the *Criminal Code*. As stated previously, I am satisfied the end-use certificate is a false document.

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In addition to the fake logo, the certificate states that the country of destination is the United Arab Emirates, and that the transducers will remain in the United Arab Emirates. It also states that re-exporting the goods is definitely excluded.

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Given my earlier finding that the goods were in fact intended for Mr. Tabari of TSI in Iran, the end-use certificate is a forged document.

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Although there is no evidence as to when the Dik Drug Company logo was found by Mr.

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Reasons for Judgment

Mocha, C.

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Yadegari, the evidence does establish that he knew these goods were not destined for Keft Pharma Company in the United Arab Emirates at the time he provided the forged end-use certificate to Pfeiffer Vacuum. His intention was that Pfeiffer rely on this end-use certificate as genuine.

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The Crown has proven all of the essential elements of count ten beyond a reasonable doubt.

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Consequently, there will be a finding of guilt on counts one through eight and count ten, and Mr. Yadegari is found not guilty on count nine.

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