

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

SELVARASA PONNIAH

JUDGMENT PROCEEDINGS

REMOTELY BEFORE THE HONOURABLE JUSTICE I. JAFFE

On December 30, 2022, at BRAMPTON, Ontario

APPEARANCES

G. Gill

Counsel for Crown

G. Tomlinson

Counsel for Selvarasa Ponniah

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**E X H I B I T S**

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[sic] Indicates preceding word has been reproduced verbatim and  
Is not a transcript error.

[ph] Indicates word has been spelled phonetically

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Transcript ordered:	January 28, 2023
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R E A S O N S F O R J U D G M E N T

5 JAFFE, I. (Orally) :

Introduction

10 Selvarasa Ponniah is charged with one count of aggravated assault allegedly committed against his son-in-law Mayruran Meganathan. The charge was laid on December 2nd, 2020 when police were summoned to the home of Mr. Ponniah and it was discovered that Mr. Ponniah had slashed his son-in-law's face with a box cutter style blade.

15 That Mr. Ponniah cut his son-in-law's face is not in dispute. Rather, Mr. Ponniah claims that he acted in self-defence.

20 Self-Defence

25 Before turning to the evidence, it's helpful to review the statutory provisions and legal principles within which the evidence must be considered. Mr. Ponniah claims that he struck his son-in-law in self-defence. This particular defence is statutorily recognized in Section 34(1), of the *Criminal Code*, which reads as follows.

30 34(1) A person is not guilty of an offence if

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5 (a) they believe on reasonable grounds that force is being used against them or another person, or that a threat of force is being made against them or another person;  
(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or other persons from that use of threat or of force; and  
(c) the act committed is reasonable in the circumstances.

10 Recently in *R. v. King* ONCA 665 at para 28, 2022 decision of Ontario Court of Appeal. The Court of Appeal summarized the nature of the three inquiries in the following terms:

15 26. These three lines of inquiry have been described in short form as the catalyst, the motive and the response. The catalyst focuses on the accused's state of mind and asks whether the accused subjectively believed, on objectively reasonable grounds, that force was being used or threatened against them or another person. The motive asks whether the accused did something for the subjective purpose of defending or protecting themselves or another. And the response asks whether the conduct of the accused was reasonable in the circumstances, having regard to the non-exhaustive list of factors in Section 34(2).

25 When self-defence is being advanced, the accused bears an evidential burden of establishing an air of reality to each of the above elements of the defence: *Cinous*, at para. 52. The air of reality test will be met when there is evidence on the record upon which a properly instructed jury, acting reasonably, could acquit: *Cinous*, at para.

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49. Despite the reference to a jury in the common articulation of the test, it applies equally in a Judge alone trial: *Tran*, 2010 SCC 58, at paragraph 41, *R. v. Edowen*, 2021 ONSC 2157, at paragraph 17.

In determining whether an air of reality has been established, the Court must consider all of the evidence and assume that evidence relied upon by the defence is true: *Cinous*, at paragraph 53. Once it's found that there is an air of reality to each of the three elements of the defence, the onus is on the Crown to prove beyond a reasonable doubt that the requirements of self-defence have not been met: *R. v. King*, 2022 ONCA 665, at para. 26.

In this case, the Crown has conceded that there is an air of reality to the defence and accordingly my focus is on whether the Crown has proven that Mr. Ponniah was not acting in self-defence.

**The evidence**

The Crown called two witnesses, the alleged victim and his wife (who is the defendant's daughter Kalagini Selevarasa).

At the time of the incident, Ms. Selevarasa and her husband were living with her parents at their

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home. Ms. Selevarasa testified that on the day in question, she had realized that a kettle was no longer working and she threw it out in a large trash bin that was located outside of the home. Later that evening, when she entered the kitchen to prepare food, she observed that same kettle back in the kitchen. In a raised voice, Ms. Selevarasa asked who had brought the kettle back into the house and Mr. Ponniah, who was in the living room and had been drinking, responded by using "bad words" in Tamil.

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Ms. Selevarasa's husband, Mr. Meganathan, who had also been drinking, then entered the room and began arguing with Mr. Ponniah.

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Ms. Selevarasa explained that during the back-and-forth argument, her father was insulting her husband by criticizing his appearance and his missing tooth. At one point, her mother took her father upstairs, however, about 10 minutes later the police knocked on their door.

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It turns out that Mr. Ponniah had called the police while upstairs using his cell phone.

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The police remained on scene for about 10 or 15 minutes, and after interviewing everyone and urging everyone to retreat to their respective bedrooms and sleep, the police departed.

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Ms. Selevarasa recalled that her mother confiscated her father's phone after confronting him about having called the police. Once the police left, her parents retreated to their bedrooms and her husband went outside to have a cigarette. When her husband returned, he was even more intoxicated than he had been before.

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Ms. Selevarasa described her husband as being very hyper and agitated and kept calling her father downstairs to "solve the matter like a man". Her parents came back downstairs, however when they decided to return to their room, her husband physically blocked their way while standing at the top of the stairs.

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Ms. Selevarasa video recorded portions of the altercation after the police left. Ms. Selevarasa explained that she recorded her husband with the intention of sending the clips to his sister so that she would pick him up and take him away.

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Those clips were played for the Court. In one clip Mr. Ponniah's seen sitting on a sofa while his son-in-law confronts him verbally. Ms. Selevarasa can be heard yelling at her husband in an attempt to calm him down.

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The second clip captured Ms. Selevarasa's husband at the top of the stairs, clearly agitated and apparently physically pushing his wife away.

Ms. Selevarasa was able to pull her husband away from the landing and her parents were able to make their way to her mother's bedroom. Ms. Selevarasa in turn, took her husband to their bedroom and yelled at him for being too hyper.

In fact, Ms. Selevarasa testified that while her husband gets hyper when he drinks, she had never seen her husband that hyper before. Despite her efforts to calm him down, he became angrier. Ms. Selevarasa described how her husband then left their bedroom and knocked quite hard on her parents' door, asking her father to come out. Instead, her mother opened the door and told the complainant to calm down and stop yelling and swearing.

Ms. Selevarasa recalled how her father was in the bedroom yelling back at the complainant. Ms. Selevarasa then called her husband's father, hoping he could convince her husband to calm down while her father kept provoking him.

Ms. Selevarasa even sprayed her husband in the face with Windex hoping to stop him from confronting her father, but this only aggravated him.



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Ms. Selevarasa testified that her husband then tried to push himself into her parents' room, but her mother kept pushing him back out. Ms. Selevarasa assumed that her husband must have made contact with her mother because he got so close to her while he was trying to push past her in the bedroom. However, Ms. Selevarasa never saw her husband grab her mother, and she denied the defence suggestion that her husband was trying to reach over her mother and punch her dad. She did, however, agree that her husband was trying to grap the father.

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Ms. Selevarasa testified that as her husband was standing flush against her mother with his hand inside the door, she observed her father's hand and an orange-handled box cutter appear over her mother's left shoulder. The next thing Ms. Selevarasa observed, was the knife traveling once from up to down while her father said something in Tamil to the effect "Take this now". Ms. Selevarasa observed blood being sprayed everywhere and when her husband turned towards her, she realized that his face had been cut.

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Ms. Selevarasa explained that she began to cry and scream and saw her mother grab the knife from her from her father's hand. Her husband became even more hyper than before and her father and husband began fighting each other in the master

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bathroom with her husband punching and her father grabbing at her husband's face wound.

Ms. Selevarasa testified that while her father had suffered a serious injury in late 2019 or early 2020 which impaired his mobility, by the time of the incident, he was "perfectly fine". Ms. Selevarasa explained that her father was able to take the bus and buy beer.

Ms. Selevarasa acknowledged in cross examination that her husband was usually hyper, but that day, they could not control him. She also acknowledged that as the incident escalated, she pushed her husband to stop him from walking towards her father. At the same time, however, her father was also being stopped by his wife.

The defendant's son-in-law and alleged victim Mayruran Meganathan testified for the Crown, and for the most part his evidence is consistent with that of his wife.

Mayruran Meganathan recalled that in the evening of December 2nd, 2020, he was in the living room watching a movie and consuming chicken wings and wine. While drinking his second glass of wine, he overheard his parents in law argue in the nearby kitchen and they began to yell at his wife. Mr. Meganathan yelled at his family members to "shut up", and told them to "calm

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down". At this point, the defendant walked past him and said something in Tamil to the effect of "This is what happens when you bring the garbage to the house".

Mr. Meganathan explained that in an aggressive and angry tone, he responded by asking, "Why did you say that", which prompted his father-in-law to call the police.

Mr. Meganathan testified that once the police left the residence, he went for a cigarette and consumed another glass and a half of wine.

He and his wife then entered their bedroom. According to Mr. Meganathan, he was inside his bedroom for approximately an hour and consumed another two glasses of wine. He explained that he could hear his parents in law arguing, and he could specifically hear his father-in-law insulting his physical appearance and his profession. Angered by his father in law's insults, he confronted his father-in-law in an aggressive manner while standing at the top of the stairs near the bedrooms.

He explained that in confronting his father-in-law, he was hoping to scare him, but he did not intend on becoming physical.

Meanwhile, his wife was on the phone with his father and also recording him.

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Mr. Meganathan testified that it was when he was outside of his parents in law's bedroom that he got stabbed. At the time, Mr. Meganathan explained that he was confronting his father-in-law with the same aggressive tone as was captured on the video recording. Again, with the intention of scaring him.

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Mr. Ponniah reached out and cut him with a knife and said something like, "here, keep it". The cutting by the knife happened so quickly. And he did not even know he had been cut until he saw himself in the mirror. However, immediately after being cut, he chased his father-in-law in the bathroom, where he threw punches at his father-in-law.

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Mr. Meganathan explained that the wound in his face required 35 stitches to close.

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Mr. Meganathan denied that he ever physically threatened either of his parents-in-law during the altercation though he admits he was very aggressive. In fact, he admits that he had never been angrier.

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Mr. Meganathan initially assessed his own level of intoxication at the moment of the assault at 6 out of 10, though after he viewed his wife's video recordings, he agreed with defence

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counsel's suggestion that he was closer to 9 or 10. He acknowledged that his father-in-law, Mr. Ponniah, was not as heavily intoxicated as he had seen him before. He believed Mr. Ponniah had consumed about 3 or 4 beers.

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The defendant, Selvarasa Ponniah and his wife testified for the defence. 68-year-old Mr. Ponniah testified that he had been retired since 2019 following a spinal injury which left him hospitalized for four months, and for about a year he required assistance to walk.

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Mr. Ponniah's recollection of what started the chain of events on December 2nd accords with his daughters in that he recalled it began with an argument over a kettle which his daughter had thrown out. According to Mr. Ponniah his son-in-law interjected in the argument by insulting him, at which point Mr. Ponniah's wife asked their son-in-law why he was being so disrespectful.

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Mr. Ponniah explained that his wife and daughter made him go to his room and feeling unsafe with his son-in-law in the house he called the police.

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Mr. Ponniah testified that the police officers came to the house, and once they had left the house he entered his wife's bedroom to confront her about why she had sent the police away. His wife responded by taking Mr. Ponniah's phone away

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from him to prevent him from calling the police again.

5 Mr. Ponniah testified that while they were in the bedroom. his son-in-law started to kick at the door angry. Mr. Ponniah explained that is son in law was, "using filthy words and calling us names". Mr. Ponniah explained his son in law as like a "mad dog", who was impossible to calm.

10 Mr. Ponniah explained that neither his wife, who was blocking him at the door, nor his daughter, who was pulling at him, could control him.

15 Mr. Ponniah explained that his son-in-law was jumping over his wife's shoulder to get at him, and he reached down into a box next to him to grab anything he could with which to strike his son-in-law. It happened to be a knife, but had it been a water bottle instead, he would have used that to strike. The way Mr. Ponniah described the cutting incident, it was almost as though he was holding out the knife and his son-in-law jumped into it, causing the long gash from the top of his face to the bottom.

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30 In cross examination, Mr. Ponniah denied the suggestion that he ever threatened his son-in-law in December 2nd, or that he ever got frustrated and angry. Mr. Ponniah did admit to insulting his son-in-law about his teeth, but claimed to have

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5 done so only after his son-in-law insulted him about his missing teeth. He denied the suggestion that he had been drinking that night, let alone that he was intoxicated. He claimed to have had zero alcohol that night.

10 PC Whitley, a member of the Peel Regional Police Service, attended the house following both calls to the police and described in court both Mr. Ponniah and Mr. Meganathan as being heavily intoxicated. He also noted that Mr. Ponniah did not appear to have any mobility issues as he was "moving about quite well".

15 Uthanyarani Selvarasa, the defendant's wife, testified for the defence as well. She explained that her husband had been drinking on December 2nd, though to her he did not appear drunk prior to the incident.

20 Ms. Selvarasa's recollection of how the incident unfolded accords with her husbands and daughters, in that it all begins with a dispute about the kettle. She recalled that at one point her son-in-law, who was drunk, told her husband that they had to throw him in the garbage bin and she scolded him for speaking disrespectfully.

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30 When the officers attended the home the first time, her husband did not appear as drunk as her son-in-law, who once the police left, became very

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angry. She recalled how they were both insulting each other and she and her daughter were trying to calm them both. Neither of them were physical.

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Ms. Selevarasa recalled that at one point when she and her husband were in their separate bedrooms, she overheard her son-in-law banging on her husband's door telling him to come out fight with him. Her husband then came into her room and sat on her bed. She advised him not to argue with their son-in-law because he was drunk and behaving badly.

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Ms. Selevarasa admitted that she hid her husband's cell phone because she did not want him to call the police again.

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Ms. Selevarasa testified that the complainant eventually came into her bedroom but she told him to leave. When he refused she was able to push him out as far as the door but no further because the complainant put his hand on the door and prevented her from closing the door.

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Ms. Selevarasa explained that her husband got off the bed and walked up behind her as she was standing at the door facing their son-in-law. Ms. Selevarasa attempted to get her son-in-law's hand out of the door and yelled at her daughter to help her, but her daughter was on the phone at the time. All this time, her son-in-law was yelling



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insults at her husband, and she could tell that her husband was very scared.

5 She described her son in law as being very out of control and her daughter spraying him with cleaning fluid did nothing to calm him down. According to Ms. Seleverasa, however, the complainant did not reach over her to punch at her husband.

10 Turning now to whether the Crown has proven beyond a reasonable doubt that Mr. Ponniah was not acting in self defence.

15 There were multiple aspects of Mr. Ponniah's evidence I simply do not accept.

20 I do not believe he consumed zero alcohol on the night in question.

I do not believe his mobility was as limited as Mr. Ponniah claims.

25 I do not believe he remained silent during the conflict, never insulting his son-in-law.

30 On these points, his evidence was contradicted by the other witnesses, whose evidence on these points was not challenged, and whose evidence I do accept.

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5 All witnesses, including the officer, testified that Mr. Ponniah was intoxicated. Moreover, the officer noted no impairment in Mr. Ponniah's mobility and observation was that which is consistent with the evidence of Mr. Ponniah's family members. I believe Mr. Ponniah was casting himself as more of an innocent invalid than he actually was on December 2nd.

10 Nevertheless, any trier of fact is entitled to accept all, some or none of a witnesses' evidence, and a rejection of some aspects of Mr. Ponniah's evidence does not lead me to reject all is evidence. Particularly since much of his evidence finds some support from the other witnesses, including the evidence of the alleged victim and find support as well from the video clips.

15 Addressing now the three elements of self-defence.

20 I find that Mr. Ponniah reasonably believed force or threat of force was being used against him or another. Every witness, both for the Crown and the defence testified that in the moments before the alleged assault an intoxicated, extremely angry and uncontrollable Mr. Meganathan was calling out Mr. Ponniah to fight him, and was physically attempting to enter the room in which Mr. Ponniah had retreated. Mr. Ponniah's wife was the only barrier to Mr. Meganathan entering the room. Even Mr. Meganathan's wife was unable

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to pull him off his course of action, and attempts to dissuade him by spraying Windex in his face only served to inflame his anger. The fact that Mr. Meganathan, by his own admission, punched a hole or a crack in the wall just prior to the alleged assaults, adds to the reasonableness of Mr. Ponniah's subjective belief that Mr. Meganathan was about to inflict similar force on him.

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With respect to the second element of the defence, I also find that Mr. Ponniah's actions in grabbing the knife and holding it to Mr. Meganathan was done for the subjective purpose of defending himself and his wife, who was literally caught in the middle.

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In his evidence, Mr. Ponniah claimed to have been fearful of Mr. Meganathan. Mr. Meganathan's decision to summon the police to his home is consistent with that level of fear. Moreover, his wife, whose evidence was not seriously challenged, testified that she could tell her husband was scared.

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Mr. Ponniah's daughter acknowledged that her decision to spray her husband in the face with Windex (an act which itself constitutes an assault) was a split-second decision undertaken out of concern that her husband was going to fight her father.

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It would be reasonable for Mr. Ponniah to have had that same concern. Even if Mr. Meganathan had no actual intention of physically assaulting Mr. Ponniah, Mr. Ponniah would have had no way of knowing that. Mr. Meganathan's conduct on that night would have led anyone to believe he was not only capable of fighting but intending to do just that.

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Confronted by Mr. Meganathan who, by all accounts was hyper, intoxicated and angry, and was intent on scaring Mr. Ponniah. I find that Mr. Ponniah's action in grabbing the knife and thrusting it over his wife's shoulder towards Mr. Meganathan was motivated by fear and a desire to protect himself and his wife.

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Even if I did not believe Mr. Ponniah's evidence on this element of the defence, I would nonetheless find that this was possibly the case and that the Crown had failed to prove otherwise.

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Finally, in assessing the reasonableness of Mr. Ponniah's actions, I have considered all factors set out in s. 34(2).

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Regardless of his state of mobility or immobility, on December 2, 68-year-old Mr. Ponniah found himself being confronted by a stronger man over 25 years younger than him. Mr. Meganathan was only

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41, he was strong, he was intoxicated and he was uncontrollable.

5 Mr. Meganathan had proven that he was not going to be verbally or physically dissuaded from confronting his father-in-law.

10 Mr. Meganathan acknowledged in his evidence that his wife was unable to control him, and that in fact he agreed he himself was unable to control his own anger.

15 Mr. Meganathan's mother-in-law, asked him to leave the master bedroom and Mr. Meganathan refused. Mr. Megathan's mother-in-law had to push him out of the room but only got him as far as the door because he put his hand on the door and prevented her from closing it.

20 Mr. Ponniah tried to deal with his fears earlier by calling the police. That did not work. The police came and left, and his wife then confiscated his phone. At the time he struck Mr. Meganathan with a knife, he was without a phone, and his wife was unable to shut the bedroom door, in other words Mr. Ponniah was left with limited alternative means by which to defend himself.

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30 I have no doubt that Mr. Ponniah played some role in the escalation of events. I do not believe he was sober and I do not believe he remained mute.

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He too had been drinking and he too was physically insulting.

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However, having considered all the evidence, I've come to the conclusion that the Crown has not proven that the force used by Mr. Ponniah was unreasonable in the circumstances. Ultimately, it has not been proven beyond a reasonable doubt that Mr. Ponniah was not acting in self-defence. In fact, I find he likely was doing just that. I find Mr. Ponniah not guilty.

FORM 2

Certificate of Transcript

Evidence Act, Section 5(2)

I, Michelle Lewis, certify that this document is a true and accurate transcript of the recording of SELVARASA in the Ontario Court of Justice held at 150 Bond Street, East, Oshawa, Ontario, taken from recording(s) No. 3111\_203\_20221230\_1022207\_30\_JAAFFER which has been certified in Form 1 by S. Cunningham.



July 12, 2023  
(Date)

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(Signature of Authorized Person)

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