

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCHIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

**MOTION RECORD
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
Litigation Extradtion Advisory Division
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6
Fax: (416) 973-5004

Per: Eric O. Peterson
Tel: (416) 952-6334
Email: eric.peterson@justice.gc.ca
LSUC: # 34833B
Solicitor/counsel for the Respondent

TO:

Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3M1
Email: radu.cbsa@ohmi.org

TO:

Registrar
Federal Court
Suite 200, 180 Queen Street West
Toronto, Ontario
M5V 3L6

FEDERAL COURT OF CANADA

BETWEEN :

RADU HOCHIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

INDEX

TAB	DOCUMENT	PAGE NO.
1.	Notice of Motion	1-4
2.	Transcript of Radu Hociung Examination for Discovery	5-26
3.	Written Representations of the Respondent	27-42

TAB¹

Court file: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN :

RADU HOCIUNG

Plaintiff

And

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

NOTICE OF MOTION
(Defendant's Motion for Summary Judgment)

TAKE NOTICE THAT the defendant (the "Minister") will make a motion to the Court in writing pursuant to Rules 221 and 369 of the *Federal Courts Rules*.

The Minister proposes that this motion and the plaintiff's motion in writing to amend the statement of claim be dealt with together.

THE MOTION IS FOR:

1. Summary Judgment dismissing this action in its entirety, on the basis of the statement of claim as it presently stands and as it may be amended on the disposition of the plaintiff's motion to amend;

2. His costs of this motion and the action; and
3. Such other relief as counsel may advise and this Honourable Court deems just.

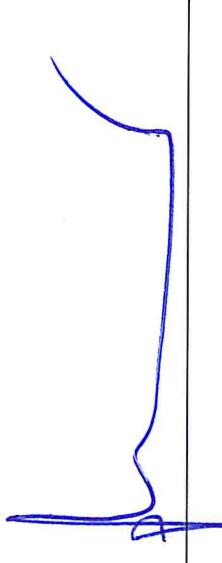
THE GROUNDS FOR THE MOTION ARE:

1. The only genuine issue are two questions of law, namely:
 - (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
 - (2) whether the collector coins at issue herein are currency or goods for the purposes of the *Customs Act*.
2. The Court may determine the foregoing questions of law and grant summary judgment accordingly.
3. The plaintiff claims damages and orders of mandamus in the statement of claim as it now stands and in his proposed amendments. He seeks damages for actions taken by Canada Border Services Agency officers and officials. He seeks mandamus in the form of an order compelling the Minister to dismantle the Canada Border Services Agency for being a criminal organization engaged in money laundering, and orders that the CBSA officers and officials involved be charged with fraud under the Criminal Code.

- 3
4. This Court's jurisdiction on an action brought pursuant to section 135 of the *Customs Act* is limited to non-monetary relief. It is not a regular civil action but rather a statutory appeal of a Ministerial Decision by way of action. This type of action is intended to provide the person affected by the Ministerial Decision with an opportunity for a trial de novo with the sole purpose of determining whether there has been a contravention of the *Customs Act*. These actions do not allow for claims for damages or requests for mandamus.
 5. The plaintiff appeals the Ministerial Decision, which confirmed that the seizure by the Canada Border Services Agency of several collector coins was proper given the plaintiff's failure to declare the coins as goods. The plaintiff mistakenly argues that collector coins are goods and believes they are currency.
 6. The Court should grant summary judgment by dismissing the action in its entirety, with costs. The Court should do so on the basis of the statement of claim as it now stands and as it may be amended following the disposition of the plaintiff's pending motion to amend.
 7. Sections 129 to 135 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.)
 8. Rules 221 and 369 of the *Federal Court Rules*.

4
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing
of the motion:

1. The pleadings herein, including the statement of claim as it now stands and as it may be amended on the disposition of the motion to amend.
2. The transcript of the examination for discovery of the plaintiff held on January 5, 2017, filed.



DATE: February 28, 2017

ATTORNEY GENERAL OF CANADA

Eric Peterson, Crown Counsel
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6
Tel: (416) 952-6334
Fax: (416) 973-5004

Counsel to the Minister of Public
Safety and Emergency Preparedness

TO: Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3M1
Email: radu.cbsa@ohmi.org

TAB²

FEDERAL COURT

BETWEEN:

RADU HOCTUNG

Appellant

- and -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

This is the examination of RADU HOCTUNG, for discovery held on consent of the parties at The Department of Justice, 130 King Street West, 34th Floor, Toronto, Ontario, on the 5th day of January, 2017.

APPEARANCES:

Radu Hociung

Mr. Eric Peterson

MS. Jeanette Duda

Self-represented

For the Respondent

Court Reporter

International Reporting Inc.
41-5450 Canotek Road
Gloucester, Ontario
K1J 9G2
www.irri.net
1-800-899-0006

(ii)

TABLE OF CONTENTS

PAGE

RADU HOCHUNG, Affirmed:

Examination by Mr. Peterson

1

Toronto, Canada

2
3 --- Upon commencing on Thursday, January 5, 2017
4 at 9:57 a.m.

5 RADU HOCIUNG, AFFIRMED:

6 --- EXAMINATION BY MR. PETERSON:

7 1 Q. So, Mr. Hociung, can you state your
8 full legal name for the record, for the transcript?

9 A. It's Radu Hociung.

10 2 Q. Okay.

11 A. R-A-D-U, H-O-C-I-U-N-G.

12 3 Q. And, can you give me your date of
13 birth, please, for the record?

14 A. It's December 6th, 1973.

15 4 Q. All right. And, your current address
16 in Canada?

17 A. It's 246 Southwood Drive in
18 Kitchener.

19 5 Q. All right. And, you are the
20 plaintiff in this Federal Court action?

21 A. I am.

22 6 Q. All right. So, I'm here to ask you
23 questions, primarily, today about the events at the
24 Canadian border that gave rise to your claim. I
25 understand there are some legal arguments in your
26 Statement of Claim as well, but I will not be asking
27 you about your legal argument. So, I am only going
28 to focus on what happened to you on the day in

2

1 question at the border.

2 So, first of all, can you tell me a bit of
3 your background, your educational background?

4 A. I attended University of Waterloo for
5 Engineering from 1994 until 2000. Before that, of
6 course, high school. I never finished the
7 university. I didn't actually graduate and earn a
8 Bachelor. And, that is my education, I think.

9 7 Q. Okay. And, I think you mentioned in
10 one of the conferences you're an engineer?
11 A. Yes.

12 8 Q. All right. But, so are you a
13 professional engineer?
14 A. I am not a professional engineer, no.

15 9 Q. Okay. Okay. So, what type of work
16 do you do? What type of engineering work do you do?
17 A. How is this relevant?

18 10 Q. It's simply -- sometimes the court
19 would like to see what professional background you
20 have when you -- what you bring to the table if you
21 don't have a lawyer with you.
22 A. But, you are here for evidence;
23 right?

24 11 Q. Right. If you don't want to answer,
25 that's fine.
26 A. I do not want to answer.
27 12 Q. All right. Let's get to the day in
28 question then. On -- first of all, this is on

1 October 21, 2014, you were coming back from the
2 United States crossing into Canada. What was the
3 purpose of your trip to the United States?

4 A. I went to the United States to
5 purchase tires for my car.

6 13 Q. All right.

7 14 A. That was the main purpose of my trip.

8 15 Q. All right. And, you also purchased
9 some collectible coins I understand?

10 A. I purchased some coins while on the
11 trip, yes.

12 15 Q. All right. And, were those coins
13 purchased on that same trip in the United States?

14 A. Yes.

15 16 Q. All right. How much did you pay for
16 those coins?

17 A. I paid 50 -- if my memory serves
18 correctly, \$5,700.00 U.S. dollars.

19 17 Q. All right. And, did you have a
20 receipt for that?

21 A. I do, yes.

22 18 Q. Okay. Had you gone to the United
23 States previously to buy collectible coins or was
24 that the first time you had done so?

25 A. I have been to the United States
26 before, but never bought collectible coins in the
27 United States before.

28 19 Q. Okay. Have you ever purchased

1 collectible coins from the United States elsewhere
2 and brought them into Canada, other than United
3 States?

4 A. Sorry, repeat?

5 20 Q. So, have you ever bought collectible
6 coins from the U.S. or any other country abroad, and
7 then brought it into Canada?

8 A. I don't understand the relevance.

9 21 Q. All right. Have you ever bought
10 collectible coins ---

11 A. I don't understand the relevance.

12 22 Q. My ---

13 A. I understand your question.

14 23 Q. Right. The relevance is if you have
15 declared those coins at Canada customs before or if
16 you have also maintained the position that they are
17 not -- they don't have to be declared. Was this the
18 first time when you ---

19 A. No, I understand the question.

20 24 Q. Right.

21 A. I'm thinking about whether -- how I
22 should answer it.

23 25 Q. Okay.

24 A. The answer is no.

25 26 Q. You had never previously ---
26 A. I have never purchased coins outside
27 of the United States and brought -- outside of
28 Canada and brought them into Canada without

1 reporting them.

2 27 Q. Okay. Had you ever declared

3 collectible coins in the past at the Canadian
4 border?

5 28 A. Had I or have I, or had I ----

6 Q. Had I.

7 A. ---- after that time?

8 29 Q. Had you at that time previously ever
9 declared to Canadian customs that you had purchased
10 collectible coins?

11 A. No, I have not.

12 30 Q. Okay. Are you in the business of
13 collecting coins? Are you ----

14 A. I am not, no.

15 31 Q.. No. Is it ----

16 A. However, I'm a collector of coins
17 like everybody else.

18 32 Q. Okay. So, had you previously
19 purchased U.S. collectible coins in Canada or is the
20 first time ----

21 A. That is not relevant, I believe.

22 33 Q. Was this the first time you had ever
23 purchased U.S. collectible coins?

24 A. U.S. minted?

25 34 Q. Yes.

26 A. I am not sure.

27 35 Q. Okay. All right. So, then, tell me
28 -- well, let's move on to October 21, 2014. Tell me

1 in your own words what took place when you
2 approached the Canadian border. You approached in
3 your car, and you were in a line-up, and then what
4 happened?

5 A. So, at first, of course, there's a --
6 the primary check window where I stopped. The
7 officer there asked me -- I believe he asked me what
8 -- I don't remember the words exactly. I believe
9 the extent of his answer -- of his questions was
10 whether I was bringing goods into Canada, whether I
11 had purchased goods to bring into Canada.

12 Q. Right.

13 A. I told him about the tires that I had
14 bought. On the day it happened, I had a little bit
15 of a migraine, and I had bought some Advil and some
16 water, and that is all. That is all the goods that
17 I told him about.

18 Q. All right.

19 A. He never asked me about whether I
20 brought currency, about how much currency or
21 financial instruments I have.

22 Q. He never asked you if you were in
23 possession of currency over \$10,000.00?

24 A. He did not.

25 Q. He did not?

26 A. I believe he did not.

27 Q. Okay. All right. And, was it your
28 understand at that time that the collectible coins

1 in your possession did not have to be declared?

2 A. Absolutely.

3 41 Q. And, what was the basis of your
4 understanding? Was it anything that you read at the
5 customs border crossing or ---

6 A. No, I had researched the topic well
7 ahead of time, and these coins are minted by the
8 United States Mint according to the United States
9 code, and I forgot the number. I believe it's 31.
10 It deals with the money and the currency of the
11 United States. So, they are minted at the United
12 States Mint by the United States Treasury according
13 to this law. And, in the law, they are clearly
14 stated to be a legal tender.

15 The mint itself on the site, the mint that
16 produces them, U.S. Mint, states clearly that they
17 are legal tender and, to me, that was enough to know
18 that this is currency that apply -- and, therefore,
19 currency regulations apply to it.

20 42 Q. So, they would be legal tender at
21 their face value or at their ---

22 A. Correct.

23 43 Q. --- commercial value?
24 A. Legal tender by definition is based
25 on the denomination.
26 44 Q. All right.
27 A. Not on any other value, but their
28 denomination, which is \$50.00 for the gold coins in

1 this case, and I believe \$1.00 for the silver coins.

2 45 Q. But, you paid \$5,700.00 for ---

3 A. That is correct.

4 46 Q. So, the commercial value far exceeded
5 the face value?

6 A. There is no such thing as a
7 commercial value. This is currency just like --
8 it's just currency. You can obtain currency at any
9 other value. The value that you obtain currency at
10 does not have to relate to the value of the
11 currency. The value of the currency is the
12 denomination ---

13 47 Q. Right.

14 A. --- and that is given by law.

15 48 Q. But, you did not pay the face value
16 of those coins.

17 A. I did not.

18 49 Q. Okay. So, if it's not the commercial
19 value, you paid, then, the retail value or...?

20 A. There's no such thing as retail.

21 Again, these are -- I believe it's not called the
22 retail value.

23 50 Q. What would it be called then? The
24 purchase price?

25 A. I'm not sure ---

26 51 Q. Okay. Fair enough.

27 A. --- what that -- what the number is
28 called.

1 52 Q. All right. So, at the primary line
2 of inspection, did you -- do you have any complaint
3 with what happened between you and the officer? Are
4 you taking issue with that particular officer in
5 this action?

6 A. I will not answer that at this time.

7 I may -- when I amend the Statement of Claim, there
8 may be additional claims.

9 53 Q. Okay. And then what happened next?

10 You weren't free to leave. That wasn't the end of
11 that.

12 A. Well, next, I had to go and pay the
13 taxes, import taxes for my tires ---

14 54 Q. Right.

15 A. --- and the other two items that I
16 brought. So, I went inside the customs office,
17 declared it to the officer what I had brought, which
18 was the tires and the other two items, and he
19 directed me to the cashier window, I paid the taxes
20 for the goods ---

21 55 Q. Right.

22 A. --- for the three items, and then he
23 said I was free to go, so I left ---

24 56 Q. Okay.

25 A. --- the customs office.

26 57 Q. Right, right. And then what happened
27 after that?

28 A. And then after that, on the way to my

1 car -- at this point, I didn't know that I was to be
2 secondarily inspected, so on the way to my car,
3 another officer, which is Officer Debski, came out
4 of his office with, I would say, a confrontational
5 greeting. He greeted me with a greeting, "What do
6 we have here?" Those were his exact words. I
7 remember them because they struck me as very odd.

8 I was, of course, a little taken aback,
9 not knowing if I'm in the back alley somewhere or at
10 the government building. I showed him my paper, my
11 paperwork, and I believe he asked me whether he can
12 look at my car. He asked me if the car -- if the
13 tires are mounted. I, of course, answered, "Yes,
14 they're mounted on." I think he had a very cursory
15 look at the tires, and I don't recall if he asked
16 for permission to search the car or not, but I
17 didn't oppose it anyway. So, he went on to search
18 my car.

19 58 Q. All right. And, that's when he found
20 the collectible coins; correct?
21 A. No.
22 59 Q. No. Okay.
23 A. That's when he found the receipt,
24 which I believe was on the front -- either on the
25 front seat of the car or -- on the passenger front
26 seat or in the glove compartment.
27 60 Q. Okay. And then ---
28 A. And then ---

1 61 Q. Yes, what happened next?
2 A. And then when he came out, he
3 confronted me. He asked me whether I reported
4 everything, whether I want to change my story, and
5 then I said, "No, I have nothing further to report."
6 So, he showed me the receipt and said, "What's
7 this?" And, I told him, "This is currency that I
8 purchased and I do not have to report it."
9 62 Q. Okay.
10 A. And, I'm not reporting it.
11 63 Q. Okay. And then what happened next?
12 They searched the vehicle and found the coins?
13 A. No, the coins were in my pocket.
14 So ----
15 64 Q. Oh.
16 A. --- all he did is he asked me, "Where
17 are the coins," because at this point he only had
18 the receipt from the car. So, I, of course, had the
19 coins in my pocket, as I keep all money. I don't
20 keep money around the car. And, I showed him, I
21 gave him the coins. He took them, fondled them
22 quite a bit I would say -- I might say. I think he
23 was quite inexperienced with coins like this. Maybe
24 he was happy to have them in his hand, I don't know.
25 And then he proceeded to explain a few
26 times that they are goods, goods, goods. And, of
27 course, I told him that they are stated on the Mint
28 website and the U.S. law that they are currency and

1 legal tender.

2 65 Q. Okay.

3 A. After which he -- he was very
4 confrontational. He was -- he took the stance --
5 his stance was also very confrontational. He made
6 me aware immediately that he was wearing -- or
7 carrying a gun. Like, his gun was, of course, in
8 his holster. He never drew his gun ---

9 66 Q. Right.

10 A. --- but he was facing me in such a
11 way that he was -- it seemed to me, I'm not
12 experienced with guns, but I was left with a feeling
13 that he's ready to pull it.

14 67 Q. Right.

15 A. And, he also said that this is a very
16 serious offence, and proceeded to explain that it is
17 an arrestable offence. He mentioned that at least
18 twice while outside ---

19 68 Q. Right.

20 A. --- that this was an arrest -- that
21 -- I don't believe -- I don't know if he used the
22 word "smuggling". I don't think he specifically
23 said what the offence was; however, he did say it's
24 an arrestable offence. He made it very clear that
25 he could have arrested me right then and there.
26 69 Q. Okay. And, but -- so what happened
27 next? At that point, did the conversation stop and
28 he let you go or...?

1 A. No, at that point, he went inside to
2 check with his supervisor or to do paperwork. He
3 ordered me to go to the -- inside the customs office
4 again and wait on the bench.

5 70 Q. Okay.

6 A. It was an order. He was yelling, at
7 this point, at me. I went inside, I waited for him,
8 it might have been maybe 15 minutes that I waited
9 for him. I think he came back one more time to ask
10 some questions about the coins. This was, of
11 course, about -- this was more than two years
12 ago ---

13 71 Q. Right.

14 A. --- and keeping in mind that I didn't
15 come to Canada to meet with you, so I didn't review
16 any of my papers, I didn't bring any of my notes.
17 I'm just recollecting memory that's two years old at
18 this point.

19 I believe my recollection is that he came
20 out one more time, at which point I -- that's when,
21 I believe, he told me that he would have to seize
22 them, and that's when I asked him what he would do
23 with them, what would happen with them, and
24 that's, I believe, at the point, he said that they
25 would be destroyed -- that I have to pay to get them
26 back. He wouldn't tell me how much, he hadn't
27 decided yet, but I asked him, "Who's going to
28 decide?"

1 72 Q. Right.

2 A. And, he responded that he would be
3 deciding. And, I asked him, "What happens if I
4 don't pay?" Of course, I knew that I don't owe a
5 penny since this do not have to be recorded --
6 reported, so I did not have -- I did not expect I
7 would have to pay anything to get my coins.

8 He said that if I do not pay his terms,
9 that the coins would be destroyed after either 30
10 days or 90 days. I don't recall the number he said,
11 but he gave a specific number like that, a multiple
12 of 30, and he said they would be destroyed if I
13 don't pay after that time.

14 73 Q. Okay.

15 A. After that, he went back into his
16 office to do more of paperwork or what he had to do.
17 Finally, when he came out, he cleared with the -- he
18 explained that he cleared with his supervisor that
19 he would not be arresting me, that it is not, in
20 fact, an arrestable offence as he had claimed
21 earlier, but he would have to continue with his
22 seizure paperwork.

23 74 Q. Okay. And then he gave you the
24 seizure paperwork?

25 A. And then he gave me the seizure
26 paperwork. I asked him a few questions when he
27 asked me the seizure paperwork, which he admitted
28 from his narrative report.

1 75 Q. Okay.

2 A. One specific question that I asked
3 him, since I knew that these coins would be
4 currency, I asked him -- and I knew there would be a
5 limit according to the *Proceeds of Crime and*
6 *Terrorist Financing Act*, there would be a limit up
7 to which -- under which they don't have to be --
8 currency does not have to be recorded, that is the
9 \$10,000.00 limit.

10 So, then, I asked him, what if somebody
11 were to come through the border with a suitcase of
12 gold coins like these that he thinks are goods?
13 Like, how would they have to be reported? And, he
14 said, "As long as they pay the tax, as long as they
15 report and pay the taxes, or the tax, then there's
16 no problem. They're free to go. You can bring any
17 amount," he said.

18 76 Q. Right.

19 A. Part of the paperwork that he gave me
20 was not just a seizure report and the -- not just
21 the seizure receipt and the terms, but also he gave
22 me a printout of a tax demand. I believe he showed
23 a tax rate of \$13.00 and he had quoted \$5,000.00
24 worth of gold coins.

25 77 Q. Right.

26 A. And, he decided 13 percent would be
27 the tax I would be assessed, and had I reported them
28 according to the currency -- excuse me, to the

1 Customs Act, that is the tax I would have been -- I
2 would have had to pay in order to sail through
3 without further questions.

4 Q. Okay. So, then ---

5 A. And then I left.

6 Q. Then you left? Okay.

7 A. I believe I returned one more to ask
8 whether -- this is just recollection. I believe I
9 returned one more to ask whether he would, or
10 whether the CBSA would ship me the coins when the
11 matter is finally sorted out, and I believe he
12 replied that they don't do -- that they don't ship,
13 that I would have to return in person to pick them
14 up.

15 Q. Okay. Do you recall what day of the
16 week was October 21st offhand?

17 A. I do not.

18 Q. Was it a week day or weekend?

19 A. I do not.

20 Q. Was the border crossing busy? Do you
21 remember?

22 A. No, it was completely not busy at
23 all.

24 Q. All right. Were you the only person
25 that you saw being detained in the secondary
26 inspection area?

27 A. I have no idea who else was detained.
28 There were a few people inside.

1 84 Q. All right. How long, approximately,
2 were you at the border crossing from the time you
3 pulled up for primary inspections to when you
4 ultimately pulled away again? Was it half an hour,
5 two hours, 10 hours....?

6 A. I believe -- no, I believe it was in
7 the order of two hours.

8 85 Q. Two hours. All right. So, prior to
9 pulling up and not declaring these coins, you had
10 did some research, you mentioned. Did you consult
11 with a lawyer or legal counsel?

12 A. No.

13 86 Q. All right. Did you contact my client
14 to ask for their preliminary opinion?

15 A. I did not.

16 87 Q. All right. Did you discuss whether
17 these coins would be declarable or not with anybody
18 in the coin collecting industry in Canada or the
19 U.S.?

20 A. I had read forums, internet forums of
21 other people that have imported coins from the U.S.
22 and from other countries, and I familiarized --
23 based on the forum conversations, I familiarized
24 myself with the import/export rules of currency at
25 borders ---

26 88 Q. Right.

27 A. --- at various borders. That's how I
28 learned that these coins are specifically minted by

1 the government as currency, so they can be imported
2 or exported freely within the confines, of course,
3 of the -- not the confines, but with the
4 requirements, with the reporting requirements of the
5 *Proceeds of Crime and Terrorist Financing Act.*

6 89 Q. All right.

7 90 A. Am I going to fast?

8 90 Q. No. Was this -- this was not your

9 first time crossing from Canada -- from the U.S.
10 into Canada by car; correct? You have crossed the
11 border previously?

12 A. I do not remember exactly, but I
13 believe so.

14 91 Q. Okay. Have you ever been detained
15 for a secondary inspection before or was this your
16 first time?

17 A. I believe I've been -- not detained,
18 but had to undergo the secondary inspection one time
19 on a trip by airplane, and I was arriving at
20 Pearson.

21 92 Q. Okay.

22 A. And, I had to open the luggage,
23 and...
24 93 Q. But, not at a land border?
25 A. I don't believe so.

26 94 Q. Okay. Was there anyone else that you
27 dealt with at the border on October 21st other than
28 Officer Debski that you are complaining about in

1 this lawsuit? Is he the only officer?

2 A. Well, I personally only dealt with
3 the reception officer that I first encountered when
4 I first went into the office, then with Officer
5 Debski and the cashier.

6 95 Q. Right.

7 A. I only interacted with three people
8 -- four people including the first response -- the
9 first line officer.

10 96 Q. Right. But, the only person that you
11 have a complaint with Officer Debski?

12 A. I don't know at this point.

13 97 Q. Okay. So, if that changes, you'll
14 let me know, but at this point in time, you're only
15 talking about Officer Debski?

16 A. If that changes, it will be in my
17 amended Statement of Claim.

18 98 Q. All right. All right. I think those
19 are all my questions. Thank you for coming.

20 A. You're welcome. May I ask what part
21 of this could not have been done in writing?

22 99 Q. The follow-up is intense. You can't
23 -- the rule states you have a right to examine
24 orally, and then if it ---

25 A. Yes ---

26 100 Q. --- doesn't pan out, then, whatever,
27 but there's no way I can judge what you're going to
28 say, and then, you know? It has to be done orally.

1 It takes the place of an examination in court, in
2 front of a judge.

3 A. All right. You have told me a lot of
4 things I don't believe so -- but, that's fine.

5 101 Q. Okay.

6 A. That's fine. You realize ---

7 102 Q. We're done. We're done.

8

9 --- Upon adjourning at 10:21 a.m.

10

11 C E R T I F I C A T I O N

12

13 I, Jeanette Duda, a legal transcriber in the Province
14 of Ontario, hereby certify the foregoing pages to be
15 an accurate transcription of recordings to the best of
16 my skill and ability, and I so swear.

17

18

19

20 Jeanette Duda, Legal Transcriber

21

22

23

24

25

26

27

28

TAB³

27

MEMORANDUM OF FACT AND LAW
Federal Court Rules, 1998, Rule 170

Court file: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCHUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

WRITTEN REPRESENTATIONS OF THE DEFENDANT
(Defendant's Motion for Summary Judgment)

OVERVIEW

1. The plaintiff brings this action to challenge the seizure of several United States Treasury gold and silver collector coins by the CBSA upon his return to Canada. The plaintiff intentionally chose not to declare these collector coins to the CBSA upon entry, on the mistaken belief that collector coins are currency. Because the collector coins are not currency but rather goods that must be

- declared, the CBSA seized the coins as forfeit for being in contravention of section 12 of the *Customs Act*.
2. The plaintiff appealed the seizure to the Minister, and the Minister's delegate rendered a Ministerial Decision confirming the seizure.
 3. The plaintiff now appeals to this Court by way of action pursuant to section 135 of the *Customs Act*. He also seeks claims damages herein with respect to the performance of duties of certain officers of the Canada Border Services Agency.
 4. The plaintiff has filed a motion to amend the statement of claim, to expand his claims for damages and to seek mandamus, namely, an order compelling the Minister to dismantle the Canada Border Services Agency for being a criminal organization engaged in money laundering, and orders that the CBSA officers and officials involved be charged with fraud under the Criminal Code.
 5. All of the damages and mandamus relief which the plaintiff is seeking arises from CBSA's position that the collector coins are goods that need to be reported as such, which the plaintiff failed to do.
 6. The Court's jurisdiction in an action pursuant to section 135 of the *Customs Act* is limited to specific non-monetary relief, namely, whether a contravention of the Act or regulations had occurred. Furthermore, section 106 of the *Customs Act* requires the plaintiff to bring a claim for damages by way of action within 3 months of the

21

alleged cause of action. The plaintiff failed to do so within the required timeframe and is now statute barred.

The only genuine issues in this action are two questions of law, namely:

- (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
- (2) whether the collector coins are currency or goods for the purposes of the *Customs Act*.

The Court may determine these questions and grant summary judgment accordingly pursuant to Rule 215(2)(b) of the *Federal Court Rules*.

STATEMENT OF FACTS

7. The plaintiff presented himself to the CBSA at the Queenston Bridge in Niagara-on-the-Lake, Ontario on October 21, 2014
8. At the primary inspection booth, the plaintiff declared to having purchased two tires valued at approximately \$500 and a bottle of Advil. He was subsequently referred to secondary to verify his declaration.

- 30
9. During secondary examination, a receipt from Jack Hunt Coin Broker Inc. dated October 21, 2014 was discovered in the glove compartment of the plaintiff's BMW.
 10. The receipt confirmed the purchase of United States gold and silver coins earlier that day in the U.S. in the amount of \$5,700.00 USD (\$6,427.89 CAD).
 11. The gold coins in question are four \$50 USD Buffalo Gold Bullion coins and are collector items not intended for circulation as currency. The silver coins in question are twenty \$1 USD Silver Eagles coins also collector items not intended for circulation as currency.
 12. On secondary inspection, Border Services Officer (BSO) Debski, seized the collector coins as forfeit for failure to report in accordance with section 12 of the *Customs Act*. BSO Debski then offered the plaintiff terms of release in the amount of \$1,606.97 for the return of the coins, which the plaintiff refused. The plaintiff was advised of his appeal rights.
 13. The plaintiff appealed the seizure to the Minister of Public Safety and Emergency Preparedness. The Minister's delegate rendered a decision on June 1, 2015 which maintained the seizure of the coins, and reduced the terms of release owing for their return to \$321.39. In his decision, the Minister's delegate advised that the collector

31

- coins are not cash or currency but rather goods for the purposes of reporting under the *Customs Act*.
14. The plaintiff appealed the Ministerial Decision that a contravention had occurred, by way of this action brought pursuant to section 135 of the *Customs Act*.
15. From the outset of the seizure, the plaintiff has argued that the collector coins are not goods but rather currency, and as such, he was not obligated to report them under the *Customs Act* but rather the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMTLFA)*. However, because the value of the collector coins did not equal or exceed the threshold prescribed under the *PCMTLFA* or the *Cross-border Currency and Monetary Instruments Reporting Regulations (CCMIRRs)* (being \$10,000 CDN), the plaintiff argues that he was not obligated to report the collector coins at all.
16. The plaintiff testified at his examination for discovery that he had formed an intention in advance of crossing the border not to declare the collector coins to CBSA. He did not seek an advance ruling from CBSA, nor did he consult with a lawyer, prior to his trip to purchase the coins the United States. See Plaintiff's Discovery Transcript, questions 40-41, 85-88.

POINTS IN ISSUE

- 6 -

The only issues in this action are two issues of law, namely:

- (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
- (2) whether the collector coins are currency or goods for the purposes of the *Customs Act*.

In the context of summary judgment, the Court must decide whether these issues present any genuine issue for trial.

SUBMISSIONS

Summary Judgment

17. On a motion for summary judgment, if the Court is satisfied that there is no genuine issue for trial, the Court shall grant summary judgment accordingly: Rule 215(1).
18. If the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant summary judgment accordingly: Rule 215(2)(b).

The plaintiff cannot seek damages or mandamus herein

19. The plaintiff cannot seek damages in an action instituted under s. 135 of the *Customs Act*.
20. The only issue for the Court to determine in such proceedings is whether there was a contravention of the Act or its regulations.
21. An action pursuant to section 135 is not a regular civil action but rather a statutory appeal of a Ministerial Decision, by way of action. Parliament has provided persons affected by a Ministerial Decision with an opportunity for a trial de novo with the sole purpose of determining whether a contravention of the *Customs Act* had occurred. Actions pursuant to section 135 do not permit claims for damages or requests for mandamus.¹
22. A claim for damages or mandamus with respect to the performance of CBSA officers' duties can be brought by way of a separate action or judicial proceeding, as provided by section 106 of the *Customs Act*. A section 106 proceeding cannot be combined with a section 135 action. The limitation period for bringing a section 106 proceeding is three months.²
23. Parliament has chosen to separate actions under section 135 from proceedings under section 106 dealing with the performance of

¹ *Starway v. Canada*, 2010 FC 1208, at paragraphs 24 and 27; *Nguyen v. Canada*, 2009 FC 724, at paragraphs 19-22

² *Customs Act*, subsection 106(1): "No action or judicial proceeding shall be commenced against an officer for anything done in the performance of his duties under this or any other Act of Parliament or a person called on to assist an officer in the performance of such duties more than three months after the time when the cause of action or the subject-matter of the proceeding arose." (In the present case, the limitation period has expired.) See also *George Oriental Carpet Warehouse v. Canada*, 2011 FC 1291, at paragraph 12, per Mr. Justice Noël.

- 34
- duties by CBSA officers. The fact that Parliament has done so demonstrates that a section 135 action has a restricted scope and is not to be combined with claims for damages or mandamus or any other causes of action or requests for relief.
 - 24. The plaintiff's request for mandamus in the form of an order requiring the Minister to dismantle CBSA can be brought in a separate, regular civil action or application.³ Such a proceeding cannot be combined with a section 135 action, for the reasons discussed above.
 - 25. The objectives of proceedings under section 135 and section 106 are different. With respect to section 106 and the performance of duties by CBSA officers, the *Customs Act* oversees the movement of people and goods, and the collection of duties and taxes where applicable. This protects the Canadian economy and industries. In terms of section 135, the *Proceeds of Crime and Terrorist Financing Act* requires CBSA to enforce a reporting regime so as to allow FINTRAC the ability to monitor the cross-border movement of large quantities of funds and suspicious transactions.

Collector coins are goods, not currency

³ If the plaintiff were to bring such an action or application, it is more than likely that the Minister would move for an order striking the claim or application as being frivolous and vexatious. A claim or application will be struck as being frivolous and vexatious where it does not have the slightest chance of success.

26. All persons entering Canada are required to declare the goods purchased, or otherwise acquired abroad which they are importing into Canada in accordance with the section 12 of *Customs Act*.⁴
27. Also, at the time of entry into Canada, travellers must submit a report of currency or monetary instruments in their possession that are equal to or greater than the prescribed threshold of \$10,000.00 CAD in accordance with the *PCMLTFA* and the *CCM/RRs* respectively.
28. The plaintiff claims that the U.S. Treasury gold and silver coins are currency and as their total value was under \$10,000.00 CAD, he claims he was not obligated to report them.
29. Although the term "currency" is not defined in the *PCMLTFA*, the term "cash" is defined in the *PCMLTFR* as follows: "coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada, or coins or bank notes of countries other than Canada."⁵
[underlining added for emphasis]
30. The *PCMLTFR* specifically defines precious metals as "gold, silver, palladium or platinum in the form of coins, bars, ingots or granules

⁴ *Customs Act*, R.S.C., 1985, c.1 (2nd Supp.), section 12.

⁵ *PCMLTFR*, subsection 1(2), definition of "cash"

or in any other similar form".⁶ To be sure, there is an actual market for commodities such as precious metals and collector coins.

31. The *Oxford English Dictionary* defines "currency" as "[t]hat which is current as a medium of exchange; the circulating medium (whether coins or notes); the money of a country in actual use."⁷
32. It is beyond doubt that the term "currency" does not apply to collector gold and silver coins. These coins typically have a face value of one or two dollars, as is the case here. However, the real value is much higher and is a product of two factors: (1) the current market value of the precious metal (based on composition and level of purity), measured by weight, and (2) the degree to which the coin is prized among the collector community as rare and sought after. Collector coins are part of a limited issue produced by a government mint or treasury. A one-ounce gold collector coin is not worth its nominal face value of one or two dollars, but rather the market value of an ounce of gold, plus whatever rarity value applies to the limited issue. In comparison, in-circulation coins used as regular legal tender such as quarters, nickels and dimes, are mainly made from steel, nickel, copper and aluminum. Collector coins are meant to be acquired for coin collections. They are not part of the money of a country in actual

⁶ PCMLTFR, subsection 1(2), definition of "precious metal"

⁷ *Oxford English Dictionary*, "currency", 4.a.

use, and are not intended for circulation. No one in his or her right mind would use a gold coin with a two dollar face value to purchase a cup of coffee at the local coffee shop.

33. The *Royal Canadian Mint Act*⁸ deals with non-circulation coins produced by the Mint. Section 6 of the Act provides that “[t]he Governor in Council may authorize the issue of non-circulation coins of a denomination listed in Part 1 of the schedule.” Section 2 of the Act defines a “non-circulation coin as “a coin composed of base metal, precious metal or any combination of those metals that is not intended for circulation and that is listed in Part 1 of the schedule”.
34. The same principle applies to the U.S. Treasury Buffalo Gold Bullion Coins and silver coins at issue herein: They are not intended for circulation. The U.S. Treasury stipulates that its collector coins are legal tender. However, legal tender does not mean that these coins are currency.
35. In Canada, the *Currency Act* provides a good example of how collector coins cannot be considered as currency. Section 8 of the Act deals with legal tender. Subsection 8(2) provides for limitations on the use of coins as legal tender, to place a maximum amount on

⁸ Royal Canadian Mint Act, R.S.C., 1985, c. R-9.

the number of coins a person can tender at one time (instead of using notes):

- 8(2)** A payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:
- (a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;
 - (b) twenty-five dollars if the denomination is one dollar;
 - (c) ten dollars if the denomination is ten cents or greater but less than one dollar;
 - (d) five dollars if the denomination is five cents; and
 - (e) twenty-five cents if the denomination is one cent.
- (2.1) In the case of coins of a denomination greater than ten dollars, a payment referred to in subsection (1) may consist of not more than one coin, and the payment is a legal tender for no more than the value of a single coin of that denomination.⁹
36. These provisions of the *Currency Act* demonstrate that precious metal collector coins are not currency. No one would think to spend a gold coin with a two dollar face value, and worth several hundreds of dollars, as legal tender in the marketplace where the maximum amount available for tender would be forty dollars, as per section 8(2)(a) of the Act.

⁹ *Currency Act*, R.S.C., 1985, c. C-52, section 8

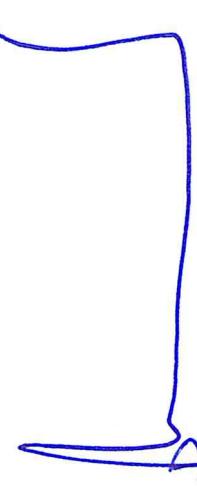
37. In this regard, it is worth bearing in mind that the plaintiff paid \$6,427.89 CAD (\$5,700.00 USD) for four \$50 USD Buffalo Gold Bullion coins and twenty \$1 USD Silver Eagles coins. The total face value of these coins is \$220 USD, a small fraction of the actual retail value which the plaintiff paid for them.
38. The plaintiff purchased the collector coins at a coin dealer, namely, Jack Hunt Coin Broker Inc., in Buffalo, and not at a financial institution such as a bank or money services business (such as a foreign currency retailer). This is a further indication that the collector coins are goods and not currency. If the coins were currency, the plaintiff could have gone to any bank branch in Buffalo to acquire them.
39. As well, if the collector coins were meant to be used as currency, the plaintiff would not have bought United States coins and then brought them into Canada to use here. On that mistaken logic, he would have bought Canadian coins to use in Canada.

ORDER SOUGHT

39. The Minister requests Summary Judgment:

- 40
- (a) dismissing the action in its entirety, on the basis of the statement of claim as it now stands and as it may be amended on the disposition of the motion to amend, with prejudice;
 - (b) his costs of this motion and the action; and
 - (c) such other relief as to this Honourable Court may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



DATE: February 28, 2017

Eric Peterson, Crown Counsel
DEPARTMENT OF JUSTICE
CANADA

TO:
The Registrar
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO:
Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3M1
Email: radu.cbsa@ohmi.org

PART I – LIST OF AUTHORITIES

Starway v. Canada, 2010 FC 1208, at paragraphs 24 and 27;
Nguyen v. Canada, 2009 FC 724, at paragraphs 19-22

APPENDIX A - STATUTES AND REGULATIONS

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

Oxford English Dictionary, "currency"

Royal Canadian Mint Act, R.S.C., 1985, c. R-9.

Currency Act, R.S.C., 1985, c. C-52; section 8