Subject: Re: T-1450-15 Examination for Discovery of the Defendant
From: Radu Hociung <radu.cbsa@ohmi.org>
Date: 07/02/2017 12:42 PM
To: "Peterson, Eric" <Eric.Peterson@justice.gc.ca>, "Robinson, Donna" <Donna.Robinson@justice.gc.ca>

Good morning Mr. Peterson,

I have reviewed the remaining answers your client submitted on January 31st. In addition to the comments I made on Feb 2nd, here are the questions arising from those remaining answers. Please have your client address them at their earliest convenience, and serve an updated

Question 5. The document you provided in response to question 26, as well as the "legal opinions" and "legislative interpretation" of 1997 that you referred to in answer to question 10, appear to make statements to the effect that gold and silver coins are not currency. Question 5 asks about the date these two documents were first adopted/approved, and it asks that the two documents be provided as the answer. Please provide the two remaining documents, and include an affidavit of authenticity and genuineness all three, as required by the Canada Evidence Act.

To be clear, the document "Information Bulletin - Precious Metals - Bullion and Coin" discloses no author. Kindly state in the affidavit of authenticity who the author(s) of this document are, and the date it was first published/approved/issued.

Likewise state the authors for the "legal opinions" and "legislative interpretation" documents of 1997, as well as the date of first publication/approval/issuance in the respective authenticity affidavit.

The answer you gave to question 5 on Jan 31st has nothing to do with the question. The question clearly requests a date ("**when**"), a document ("include **the document**") and the **references**.

Question 6. The point of this question is the date of the first enforcement, whether it was challenged in any way (eg. Enforcement Appeal Form), and what was the final outcome. (Was the "terms of release" paid, was the Minister's decision to cancel the enforcement, was a Federal Court Action initiated, was it settled, etc... ie, how was the enforcement resolved in the end).

The answer you gave ("the CBSA does not have a specific policy...") does not answer the question. The other answer, that there was no challenge in a court of law, does not answer the question "was it challenged (in any way)".

Question 7. The point of this question is not when Mr. Strickland learnt of the position, but when he stated it himself, or when he endorsed this position, such as he did in the email to Terry Boudreau, Lesley McIntosh, and Danielle Lacroix on April 11, 2011. Presumably this email was in his email inbox since about August 31st, 2010, when Joanne Lepage responded to the Treasure Island ruling request (possibly he was blind copied by Joanne). How did Mr. Strickland come to be aware

of Ms. Lepage's August 31st, 2010 email?

Based the Defendant's affidavit of documents, it appears Mr. Strickland was introduced to the position on August 31st, 2010, or earlier, not in April 2011 as you stated. Explain if this is not correct.

In any case, once again, the question was not about Mr. Strickland learning about the position, but about advising others of it (ie, state or endorse).

Question 10. The question was not about Joanne's first learning about the position, but about the time she first advised others (ie, state or endorse). One example of her stating it is the email dated August 31st, 2010 to MMeyer@livingstonintl.com regarding "Treasure Island Coins - CBSA ruling request".

When was the earliest time that Joanne advised anyone else of this position in the 13 years between 1997 when she was introduced to it, and August 31st, 2010 when she clearly stated it?

Also please enter into evidence the Legal Opinions and the Legislative Interpretation of 1997 that you referred to, by attaching the documents to your reply, together with the respective affidavits of authenticity and genuineness.

Question 11. The CBSA was created on December 12, 2003. Explain how Joanne was employed with the CBSA since 1990 if the agency was created 13.5 years later? Was she perhaps employed with the Canada Customs and Revenue Agency prior to 2003? What was her first position and department within the CBSA? Was Joanne an officer of the CBSA Crown Corporation (ie, did she have the power to represent the corporation) on August 31st, 2010, or on the date she stated the position referred to in Question 10?

Question 14. I would like to change the question, by changing the phrase "**Enumerate all** the gold and silver coin types" to "**List any** gold and silver coin types..."

Question 22. Was the online rating provided at BSO Debski's request, and per his instructions with respect to amounts, goods descriptions and tariff classification? Were the instructions given after BSO Debski consulted with the Superintendent and learnt of how the coins are to be classified, or before? BSO Debski's narrative report states that the rating was provided as a courtesy. Who was extending this courtesy, if not BSO Debski? Did anyone else participate in the enforcement action taken by the CBSA on October 21st, 2014, and any related documentation created on that date in addition to BSO Debski?

Question 23. Is it routine practice for Customs officers to override the ratings given by the TEPS system, to lower the amount of tax payable to zero, or does a correction normally happen at a later time, when the importer submits a B2G form ("CBSA Informal Adjustment Request")? If overriding is routine practice, why does the rating show a 13% rating when clearly a 0% rate is more correct?

Question 24. The question concerns the tax that would have been charged on October 21, 2014,

had the coins been reported pursuant Customs Act section 12. If the plaintiff would have declared the coins, would the CBSA have required a 13% payment representing GST/HST tax, instead of a 25% payment representing terms of release? (Respecting the fact that neither officer Debski nor the officer who prepared the online rating were aware on October 21, 2014 that the coins were tax exempt)

Is it correct that officer Debski was not aware on October 21, 2014 that the coins were tax exempt (since he assessed a 25% terms of release rate)? Is it correct that zero-rated goods attract a 5% terms of release rate, while non-zero-rated goods attract a 25% rate?

Had the enforcement action not been necessary, and the 13% tax been paid at the time of importation, on October 21, 2014, would it have been refunded in full if the plaintiff later found out about the miscalculation and submitted a B2G form ("CBSA Informal Adjustment Request") ?

Question 26. Who is the vendor for the TEPS software, and who is responsible for providing the specifications on how the TEPS should operate? How are maintenance requests (bug reports, improvement requests) made and do they need approval of senior CBSA officers or legal opinion before they are implemented?

Please provide the bug report or document to that effect that requests the tax rating classification of precious metals be changed to not apply GST/HST to them. This bug report is mentioned in the 2nd paragraph of the first page of the "Infomation Bulletin - Precious Metals - Bullion and Coin". Include any additional documentation to show when the bug was filed, the description of the bug, when it was fixed, and which software release would include the bug fix, and any comments related to this bug. When did the fixed release enter service?

Question 36. The fifth paragraph on the second last page of the Case Synopsis and Reasons for Decision states the opposite of Mr Dancause's letter, as to contradict Mr. Dancause, but offers no rebuttal to Mr. Dancause's representations, which were backed up with underlined excerpts of the PCMLTFR and Currency Act. The letter is not even mentioned in the Case Synopsis. **Please explain** how Mr. Dancause's letter was considered even though it is not even mentioned, without being quoted, without a trace of any of its contents. After all, every other piece of correspondence is given a prominent heading in the Case Synposis in chronological order of its receipt, followed by comments of the adjudicator.

Seeing how Mr. Dancause's letter was sent only to Ann Kendall, and it was not mentioned in the Case Synopsis, was Martine Gagnon aware of this letter when she prepared the Case Synopsis ? Was Mr. Strickland aware of Mr. Dancause's advice on the issue (seeing how he and Mr. Dancause had discussed the issue at length, per 1st para of the Dancause letter)?

Please also see below my previous email dated Feb 2nd further questions arising from your Jan 31st answers.

Kindly re-serve the Answers to Written Examination for Discovery in affidavit form as required by

Federal Court Rule 99(3), along with the requested documents, with affidavits of authenticity and genuineness.

Sincerely
Radu Hociung.

Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): radu.cbsa@ohmi.org

On 02/02/2017 9:48 AM, Radu Hociung wrote:

> Good morning Mr. Peterson,
>
> Thank you for your fax dated January 31st, 2017, containing partial answers to the Written Examination for Discovery served to you on July 19, 2016.
>
> ## Objections
>
> I would like to point out to you that while your client is indeed permitted to make the objections listed under Rule 242 of the Federal Court Rules, the objections must be made in the form prescribed by Rules 94 (1), (2), 95 (1), (2) with respect to documents, and 99 (2) with respect to questions, that is to say your client must bring a motion to be relieved from the requirement to produce the documents, and to have the question struck out, respectively.
>
> An objection is not an answer, but rather a non-answer, and as such the answer affidavit you served does not answer the questions your client was asked, and thus your client's obligation to provide provide written answers by 31-JAN-2017 was not fulfilled. Thus once again, your client finds itself at risk of default judgment, respecting Rule 97, and separately Rule 210(1).
>
> If questions could be arbitrarily answered with "Objection", without the examining party having the opportunity to defend, all questions would be answered as such by the adverse party, and the entire process of Examination for Discovery would be an exercise in futility.
>
> I would like to point out, that while in case of Rule 210, a motion for default judgment may be brought by the plaintiff at his own discretion, Rule 97 is not so kind. In that case, a motion by the plaintiff is not necessary, and it is the Court that decides at its own discretion whether to order your client to answer of to give default judgment.
>
> ## Regarding answers to questions
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> You may have noticed that I love handling your motions, including getting paid for it. Nevertheless, I would like to make some further comments, hoping to avoid further waste of

time and expense:

With respect to the answers your client wishes to object to; Rule 95 gives your client the opportunity to avoid the expense associated with the motion by stating the objection and providing a preliminary answer, and having the propriety of the question determined at trial. It appears your client has missed this opportunity.

With respect to **questions 39 and 40**, where your client asserted solicitor-client privilege; your client has already disclosed the summary and content of these communications in letters to me dated March 9, 2015 and the Decision rendered on June 1, 2015, and thus, they are no longer covered by the requirement of being made in confidence, and therefore your client has lost privilege. In other words, express waiver of privilege occurs where the client voluntarily and intentionally discloses confidential communication, as has happened in your client's letters to me.

With respect to **question 35**, the author of the memo is not privileged information, it is metadata. Furthermore, the way this document is identified in your client's affidavit of documents is ambiguous. M. Lefebre may have received multiple memos on Feb 12, 2015.

With respect to the questions to which your client wishes to make a relevance objection, it should be clear from the Statement of Claim why they are relevant. For this reason, I will not explain them further here, but kindly make your motions, and I will be happy to elaborate in my (paid) reply.

With respect to the Informational Bulletin (**question 26**). The document requested is evidence, and as such it must be admissible as required by the *Canada Evidence Act*. Ie, you should provide an original or certified copy, and include a affidavit of authenticity and genuineness. Furthermore, on the date this document was used for enforcement, the document's author, Julia Cossitt, had been retired for more than a year. Who is the person that assumed authorship, ownership, and continued maintenance of this document following Mrs. Cossitt's retirement?

Questions arising from your client's answers

With respect to question 19, the following question arises from your client's answer:

> **Clarification of the question: During the interaction with the Plaintiff, officer Debski explained verbally that "serious offence" means a penalty of arrest. His words were "this is an arrestable offence". Why did officer Debski not report his "arrestable offense" in his narrative report, despite using this phrase three times during the interaction?**

With respect to question 6, the following question arises from your client's answer:

> **Clarification of the question: The question requested the date of the first enforcement/seizure of gold or silver coins pursuant to the CBSA's position or the Customs Act, whether this was challenged in any form (for instance by submitting an Enforcement Appeal Form), and what the outcome of that challenge/appeal was. The question is not limited to challenges in a court of law, which are public information.**

Closing

I would like to hereby give your client the opportunity to revise their answers, and completely answer all the questions, and thus avoid paying me once more to for handling your motions of objection. Or, enter your motions and put a smile on my pretty face.

Either way, you should handle this matter before the next CMC, or risk default judgment at the discretion of the Court. As much as I would love to bring your client to an epic trial rather than bring motions pursuant Rule 210, there is nothing I can do to avoid the Court's wrath pursuant Rule 97.

Lastly, I full-heartedly recommend you review the Rules of the Federal Court at your earliest convenience.

Sincerely,
Radu Hociung.

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