

ACTION

(Court File No.)

FEDERAL COURT

BETWEEN:

**Radu Hociung**

Plaintiff

and

**Minister of Public Safety and Emergency Preparedness**

Defendant

**STATEMENT OF CLAIM**

STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your

statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by: \_\_\_\_\_

(Registry Officer)

Address of local office: \_\_\_\_\_

TO: (Name and address of each defendant)

## CLAIM

This is an Action pursuant section 135 of the Customs Act. Re Ministerial Decision CS-74472/4273-14-0724

1. The plaintiff, Radu Hociung, claims against the Defendant, Minister of Public Safety and Emergency Preparedness:
  - a) On October 21, 2014, the Plaintiff entered Canada at the Queenston Bridge point of entry. Upon entry, he declared all goods brought into Canada, namely a pair of auto tires, several tablets of Advil medication and a bottle of water. These goods were declared pursuant section 12 of the Customs Act, and are not in dispute in this Action.
  - b) The Plaintiff also had United States Currency, in form of four \$50 Gold Buffalo coins, and twenty \$1 Silver Eagles coins, issued by the United States Mint pursuant United States Code Title 31, sections 5112(a)(11) and 5112(e) respectively. USC Title 31 also declares these coins Legal Tender in sections 5103 and 5112(h).
  - c) Being under the prescribed amount of C\$10,000, the plaintiff did not declare the currency pursuant to Section 12 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).
  - d) Upon a random secondary inspection, the CBSA officer Christopher DEBSKI (CBSA badge #11276) discovered the currency, and claimed it was unreported goods and thus would be seized and destroyed. This is unlawful, as currency cannot be used as anything other than currency, pursuant USC Title 31 Section 5111(d), as well as the Currency Act section 11. Both laws provide severe fine and imprisonment for any person melting or using otherwise than as currency any coin that is current and legal tender in Canada and the United States respectively.

- e) The Plaintiff informed officer Debski that the coins are United States legal tender currency issued by the United States government, and thus cannot be considered goods, but are financial instruments as defined by the Excise Tax Act. As such, they are not subject to declaration under the Customs Act, but under the PCMLTFA, subject to the prescribed amount requirement.
- f) Officer Debski's narrative report filed October 21, 2014 contains several material errors:
  - i. The officer requested the Plaintiff's WALLET, keys and passport, and coins not the "keys, passport, license, ownership and gold coins".
  - ii. As the Plaintiff turned the gold and silver currency to officer Debski, the officer asked "Where do you have so much money from?", to which the Plaintiff responded "It is my family's savings". This question and answer are not mentioned in the officer's narrative report.
  - iii. The officer threatened the Plaintiff with violence, raising his voice and saying three distinct times that "this is an arrestable offence", while assuming an aggressive posture with his gun prominently displayed. These threats were not mentioned in the narrative report.
  - iv. One of the questions the Plaintiff asked the officer was "How many such \$50 coins can I enter the country without declaring them under the PCMLTFA". The officer's answer was that there is no limit, and they need not be declared in accordance with PCMLTFA as long as they are declared under the Customs Act and the tax is paid. The officer omitted this question and his answer from his narrative report. His answer is incorrect, as bringing more than \$10,000 of currency into Canada would be required to be reported pursuant section 12 of the PCMLTFA.
- g) The GST/HST Memorandum 17.1 explicitly defines "financial instruments" to

include precious metal coins that have been issued by a government authority, and clarifies that they are thus exempt from tax.

- h) Officer Debski was informed by the CBSA superintendent of the contents of GST/HST Memorandum 17.1 and the officer even quoted the Memorandum verbatim in his narrative report, while claiming the opposite of the Memorandum's intent, that currency is "goods".
- i) Officer Debski furnished an "Online rating Report" showing that coins that are not legal tender are subject to 13% GST/HST. This report is unlawful, as it misrepresents legal tender currency as "not legal tender coins" in order to justify a tax claim. The report was generated by CBSA officer #17097.
- j) Officer Debski decided that the sum of \$1606.97 must be paid as terms of release of the Plaintiff's currency.
- k) While he was aware of the GST/HST memorandum 17.1, which clearly states foreign precious metal currency is not subject to tax, officer Debski conspired with agent #17097 to commit fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- l) Based on the interaction by officer Debski with the Plaintiff, it is clear that the officer:
  - i. Knew the coins are currency as he was requesting them to be turned over (question about the provenance of the money)
  - ii. Intended to confiscate the money under non-declaration section 12 of the PCMLTFA. For this he needed to establish either a reasonable suspicion of criminal provenance, as well as a sum exceeding \$10,000 (which is why he requested the wallet, in order to search for additional currency), without which arrest and confiscation could not be reasonably justified.
  - iii. Knew that the PCMLTFA applies to the coins, and not the Customs Act, when he threatened arrest. Arrest is not a possible outcome of violations of the

Customs Act, but it is an automatic outcome of violations of the PCMLTFA.

- iv. Willfully committed fraud by seizing and demanding payment for the return of currency, when he clearly understood that no violation of the Customs Act or the PCMLTFA had occurred.
- m) On October 23, the Plaintiff started the process of a request for Minister's decision pursuant Customs Act section 129, seeking to overturn officer Debski's seizure on the grounds that currency is not subject to declaration under section 12 of the Customs Act, and thus the Plaintiff had not contravened the Act.
- n) During the ensuing requests for additional documentation, the CBSA has made several false claims, misrepresenting the PCMLTFA
- o) On November 3, 2014, A Kendall, the Adjudicator assigned to the request, attempted the explanation that the seized coins are “collectable” [*sic*], and thus goods. She also misrepresented the PCMLTFA by stating it defines currency to exclude un-circulated coins. In fact, the PCMLTFA does not define currency. However, the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation (PCMLTFR) defines “cash” to include “coins or bank notes of countries other than Canada”, though it states no circulation qualifiers. As this misrepresentation was committed in support of the demand for payment of \$1606.97. Adjudicator Kendall's misrepresentation constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- i. The full definition of “cash” given by the PCMLTFR is:

““cash” means 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. (*espèces*)”

- ii. To be clear, the definition of “cash” does include the word “circulation”, used to qualify only “notes issued by the Bank of Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada”. The “circulation” qualifier originates from the Bank of Canada Act section 25(5), and it is used to make the distinction between bank notes used as currency and bank notes not used as currency, ie, promissory notes and bills of exchange, neither of which are currency, though they are bank notes issued by the Bank of Canada.
  - iii. It is clear from the definition's wording that “cash” includes foreign legal tender coins and bank notes, without limitation to their circulation status, as well as Canadian coin currency without limitation to its circulation status.
- p) On November 6, 2014 the Plaintiff responded and further clarified that neither is the circulation requirement stated in the PCMLTFA, nor does the PCMLTFA, include a definition of “currency”. Further, the US Code Title 31 explicitly states that uncirculated coins issued under its authority are current, legal-tender, and thus the adjudicator's view is an untruthful fabrication.
- q) On December 11, A Kendall responded, this time attempting a new explanation. She claimed that the coins are “commodities” and thus “goods” She also admitted that the PCMLTFA does not contain a definition for currency. The misrepresentation that currency is “commodities” once again is made in support of the demand for payment of \$1606.97, and thus constitutes fraud.
- r) On January 20, 2015, the Plaintiff wrote to the President of the CBSA, Mr. Luc Portelance, informing him of the fraud perpetrated by CBSA employee A Kendall, and requesting reassignment of the case to a law-abiding officer instead.

- s) On or about February 9, 2015, the President's secretary phoned the Plaintiff to acknowledge receipt of the request to reassign, that there appears something improper had taken place, and that the legal team had been informed and was investigating. She promised that an outcome of the lawyers investigation will be communicated to the Plaintiff in writing.
- t) Following two more phone calls from the Plaintiff to the President's office, requesting the written response or acknowledgment of the January 20<sup>th</sup> letter, the secretary promised a response will be given. However, as of August 27, no such letter was received by the plaintiff. It appears that the president of the CBSA is refusing to investigate the charge of fraud against A Kendall.
- u) On March 9, 2015, a new CBSA employee, M Gagnon wrote to the plaintiff and attempted the explanation that foreign coins are not "cash" as they are not "intended for circulation". This is a misrepresentation of the PCMLTFA in support of the demand for payment of \$1606.97 and thus also constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- v) As it follows the request of reassignment to the president of the CBSA, it is clear that this instance of fraud comes as a result of instructions given by the president to M Gagnon.
- w) On March 13, the Plaintiff responded to M Gagnon, clarifying that the wording of the "cash" definition applies the "intended for circulation in Canada" qualifier only to Canadian bank notes, and not to foreign currency, notes nor coins, nor Canadian coins.
- x) On May 26, M Gagnon responded with an attempt to once more change the explanation why the coins are "goods". She claimed that they are collector coins as their true value is not the same as their face value.
- y) On June 1, 2015, the Minister rendered his decision to the Plaintiff signed by Jeffrey Strickland for the Minister of Public Safety. In his decision, the



Minister also claims that there is a requirement for foreign currency to be intended for circulation in order to be considered “cash”, as provided by the PCMLTFA. In fact, as explained above, there is no circulation requirement for foreign coins, and the “intended for circulation in Canada” from the definition of “cash” applies exclusively to “bank notes issued by the Bank of Canada”, and not to Canadian coins, nor any coins or bank notes of countries other than Canada.

z) Further, in his decision, the Minister lowered the demand for payment from \$1606.97 to \$321.39 as terms for release, without reference to any legal basis to support such a change. As such, the \$321.39 sum represents nothing but ransom.

2. The Plaintiff also claims:

- a) Since the PCMLTFA came into effect in 2000, the CBSA has routinely classified gold and silver legal-tender currency, both Canadian and foreign as “goods” in order to collect tax, duty and/or non-declaration fines.
- b) This policy of the CBSA subverts the intent of the PCMLTFA, which is to report large currency amounts transiting Canada's borders to the FINTRAC for analysis. The CBSA's actions thus impairs the ability of FINTRAC to detect criminal and terrorist activity, and therefore puts the safety of Canada.
- c) It is a well publicized fact that gold currency is treated as goods at Canada's borders, and it is reasonable to conclude that criminals and terrorists use this method of money transfer in order to make payments across Canada's border without scrutiny by authorities. While not all transfers of gold across the border are connected to criminal activities, it would be unreasonable to assume that all such transfer are innocent. Currently about \$133,000,000 in gold and silver currency are imported into Canada annually, and about \$1,800,000,000 are exported annually (2013 statistics from Industry Canada).

- d) Therefore the Minister of Public Safety, and the CBSA are, as a matter of policy, supporting and facilitating crime and terrorism.

3. The plaintiff requests the following from the Honourable Court:

- a) Damages of \$15000 from the CBSA for the threats of violence by officer Debski and the fraud attempted by the same, as well as CBSA employee 17097, A Kendall, M Gagnon, and for the instructions leading to fraud given by the president of the CBSA, Luc Portelance.
- b) Damages of \$2000 for accusing the Plaintiff of smuggling and violating the Customs Act, which resulted in non-eligibility to US Nexus Trusted Traveller program.
- c) Costs incurred by the Plaintiff in relation to this incident, including travel to court and travel to the Queenston Bridge CBSA location to recover the currency.
- d) Punitive and exemplary damages of \$5,000,000 from the Ministry of Public Safety for the sustained policy of aiding crime and terrorism in Canada, while deriving profits from it since 2000.
- e) Clearing the Plaintiff's legal record that would result in heightened scrutiny and baggage searches, at border crossing beyond normal border procedures that would apply to a citizen in good standing.

4. The plaintiff further requests from the Honourable Court:

- a) A declaration that all US coinage listed within 31 USC as currency of the United States is considered as foreign currency and financial instruments in Canada, as provided by the Excise Tax Act, and not "goods", and thus not subject to any provision of the Customs Act, which deals exclusively with "goods", explicitly naming currencies such as commemorative issues and precious metal issues that the CBSA may be

unfamiliar with and thus declare to be “goods”.

- b) A declaration that all Canadian Coins issued by the Royal Canadian Mint pursuant to section 7 of the *Currency Act*, specifically including all the commemorative issues, gold, silver and platinum denominations specified in the *Royal Canadian Mint Act* are currency of Canada for the purposes of the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act [PCMLTFA], to reinforce the Minister's of Finance sworn and signed affidavit to the same effect.
- c) A declaration that all currency is not subject to declaration under the Customs Act, regardless of its circulation, commemorative, base metal, age, or collectible factor.
- d) A declaration that although all currency domestic and foreign may collectible, this does not mean it is “goods”. I.e, currency cannot arbitrarily be declared “goods”. This is also provided in the Currency Act and USC Title 31, which states currency may not be used for any other purpose than as currency.
- e) A declaration that even though some currency, including older notes and coins, and gold, silver and platinum coins, is worth more than its face value as collectible items, it does not mean it is “goods”, and remains “currency” as provided by the Currency Act sec. 11, and also 31 USC Sec. 5111. Even the Royal Canadian Mint directly sells many such coins for more than their face value, without charging GST/PST, implying they are exempt from tax under ETA. Even these collector coins are currency and may be used for circulation and thus are not “goods”. Other examples of contemporary, current Canadian coins worth more than their face value:
  - f) 2012 25-cent coin uncirculated “war of 1812” Brock Colour, with a collector fair market value [FMV] of \$17,
  - g) 2012 circulated version of the 25-cent colour Brock quarter FMV \$1.24,
  - h) 1957 circulated 25-cent quarters FMV \$4.38,

- i) 1957 \$20 circulated note FMV \$60,
- j) 2006 \$5 uncirculated note, FMV \$72
- k) A declaration of the value of collectable currency (which really is any currency someone might want to keep rather than spend) for the purposes of the PCMLTFA even if this value is different than face value. The Currency Act provides that the gold \$50 coins are worth their face value as legal tender. The Bank of Canada redeems them for face value. The Currency Act prohibits melting all coins, including precious metal coins, and using them for purposes other than currency. Thus a \$50 coin cannot be legally melted and manufactured into jewelry or for industrial use. Thus whatever value the underlying metal may be, that value is unavailable for use.
- l) A declaration of the value of gold, silver and platinum currency domestic and foreign for the purposes of PCMLTFA, whether this value is the face value or another value. Due to melt restrictions on US currency, it appears the only possible value a US\$50 coin is US\$50.
- m) An order to the Minister's Public to immediately release the Plaintiff's currency without encumbrance.
- n) An order to the Minister of Public Safety to implement a phased plan of changing the CBSA policy to follow the intent of the PCMLTFA by considering all currencies domestic and foreign as "cash". As it is current practice to ship gold and silver currency across the border without PCMLTFA declaration, this needs to be a phased plan in which the travelling public as well as precious metals dealers be informed of the change, and a transitional period be allowed for.
- o) An order to the Prime Minister to create an oversight body to ensure lawful implementation of the PCMLTFA by the Minister of Public Safety.
- p) An order to the Minister of Public Safety to refund all taxes, duties, and any fines obtained by the CBSA in relation to shipments of gold and silver coins, foreign and

domestic, since the PCMLTFA was enacted.

The plaintiff proposes that this action be tried at Kitchener, or if not possible, Toronto.

August 27, 2015

Sincerely,

A handwritten signature in black ink, appearing to read 'R Hociung', written in a cursive style.

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(Signature of solicitor or plaintiff)

Radu Hociung

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SOR/2004-283, s. 35