

 Canada Border
Services Agency Agence des services
Reçu Direction Frontaliers du Canada
1686 Woodward Dr Ottawa, ON, K1A 0L8

REGISTERED

Radu Sebastian Hociumg
226 Willowdale Avenue
Waterloo, ON
N2J 3M1

June 1, 2015

Subject: Request for a Ministerial Decision - CS-74472/4273-14-0724

I am writing to inform you of the ministerial decision on the above-noted appeal.

I have reviewed the enforcement action, the evidence and the law as it applies to your case. I have fully considered the documentation you provided as well as the reports from the issuing office.

Decision

After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, that there has been a contravention of the *Customs Act* or the Regulations in respect of the goods that were seized;

Under the provisions of section 133 of the *Customs Act*, the goods under seizure shall be returned to the appellant upon receipt of an amount of \$321.39 to be held as forfeit. If release of the goods is not taken on the foregoing terms, within 90 days from the date of this notice, they will be forfeited and disposed of.

Reasons

On October 21, 2014, you presented yourself to Canada Border Services Agency (CBSA) officials at the Queenston Bridge in Niagara-on-the-Lake, ON where you failed to report the importation of United States (US) gold and silver coins. It was determined that you had purchased these coins in the United States the same day as your return to Canada at a value of \$5,700 USD. As you failed the report the importation of the coins as required by section 12 of the *Customs Act*, they were seized and offered for release upon payment of \$1,606.97 CAD.



You ealed the enforcement action on the basis that the coins are legal tender qualifying as monetary instruments and the importation did not need to be reported as their value was less than \$10,000 CAD. Additionally, as you were not questioned about the amount of currency of monetary instruments in your possession, you were not obliged to disclose the value of the currency or monetary instruments in your possession.

However, after a thorough review of the information, evidence, legislation and regulations applicable to these circumstances, it has been concluded that the coins in your possession on October 21, 2014 seized by CBSA officials were required to be reported pursuant to the *Customs Act*.

I have reached this conclusion with careful consideration given to the definition of "cash" as it appears in the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR)*, and the relationship between the definition of "cash" in the Regulations and the term "currency" in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. In the French versions of the *Act* and the *Regulations*, the terms "cash" and "currency" are both represented as "espèces". As such, it is accepted that the definition for "cash" in the *Regulations* is the definition for "currency" in the *Act*.

The common denominator for the definition of currency is that the bank notes and coins must be intended for circulation to be considered as such. In the circumstances of this enforcement action, the coins were not intended for circulation. Consequently, they are not considered to be currency subject to the reporting requirements of the *PCMLTFA*, but are considered goods subject to the reporting requirements of the *Customs Act*.

All goods entering Canada, including gold and silver coins, must be reported to the CBSA in accordance with the *Customs Act*. The onus to do so falls upon the individual bringing the goods into the country whether or not prompted by a CBSA officer.

With respect to the supporting documentation you provided during the appeal process, that is the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, the *US Public Law* document on 'Buffalo Gold Bullion Coins' and the *US Code Title 31* all relate to different applications for currency and not to the *Customs Act* or the *PCMLTFA*. Thus, while considered, these documents were given no weight in support of your appeal. As the latter two documents relate to US currency, they have no bearing on the *Customs Act*, the *PCMLTFA* or Canadian currency laws.

The information available to me confirms that the coins in question was acquired outside of Canada and were not properly reported to the CBSA. Consequently, a contravention of the *Customs Act* did occur and the coins in question were lawfully subject to seizure and forfeiture. However, the terms of release have been reduced to \$321.39 to better reflect the circumstances of this enforcement action.

Should you have any questions concerning the release of your goods, please contact the CBSA officials at the Queenston Bridge, Niagara-On-The-Lake, Ontario at (905) 354-9478.

To appeal the decision made pursuant to section 131, you may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*. You must file your action within 90 days of the date of the mailing of this decision.

To appeal the decision made pursuant to section 133, you may appeal this decision by way of an application for judicial review under subsection 18.1(1) of the *Federal Courts Act*. An application to the Court must normally be filed within 30 days of the date of the mailing of this decision.

I trust that this letter satisfactorily explains the ministerial decision in this matter. If you have any questions, please contact the adjudicator, Martine Gagnon, at (343) 291-7223.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Jeff Strickland', with a long horizontal line extending to the right.

Jeffrey Strickland
Senior Program Advisor
Appeals Division
Recourse Directorate
For the Minister of Public Safety and Emergency Preparedness

JS/bh

Attachment

Sections 131, 133, and 135 of the *Customs Act*

Decision of Minister

31. (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

(b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so contravened; or

(c) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

Judicial Review

31. (3) The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1).

Contravention

33. (1) Where the Minister decides, under paragraph 131(1)(a) : (b), that there has been a contravention of this Act or the regulations in respect of the goods or conveyance referred to in at paragraph, and, in the case of a conveyance referred to in paragraph 131(1)(b), that it was used in the manner described in at paragraph, the Minister may, subject to such terms and conditions as the Minister may determine,

(a) return the goods or conveyance on receipt of an amount of money of a value equal to an amount determined under subsection (2) or (3), as the case may be;

(b) remit any portion of any money or security taken; and

(c) where the Minister considers that insufficient money or security was taken or where no money or security was received, demand such amount of money as he considers sufficient, not exceeding an amount determined under subsection (4) or (5), as the case may be.

1. If the Minister decides under paragraph 131(1)(c) that the person failed to comply, the Minister may, subject to any terms and conditions that the Minister may determine,

(a) remit any portion of the penalty assessed under section 109.3; or

(b) demand that an additional amount be paid.

an additional amount is demanded, the total of the amount assessed and the additional amount may not exceed the maximum penalty that could be assessed under section 109.3.

Goods may be returned under paragraph (1)(a) on receipt of amount of money of a value equal to

(a) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto

(i) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2), or (5) or if duties or additional duties have become due on the

goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies, or

(ii) at the time the goods were accounted for under subsection 32(1), (2), or (5), in any other case; or

(b) such lesser amount as the Minister may direct.

(3) A conveyance may be returned under paragraph (1)(a) on receipt of an amount of money of a value equal to

(a) the value of the conveyance at the time of seizure, as determined by the Minister; or

(b) such lesser amount as the Minister may direct.

(4) The amount of money that the Minister may demand under paragraph (1)(c) in respect of goods shall not exceed an amount equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rate applicable thereto,

(a) at the time of seizure or of service of the notice under section 124, if the goods have not been accounted for under subsection 32(1), (2), or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies; or

(b) at the time the goods were accounted for under subsection 32(1), (2) or (5), in any other case.

(5) The amount of money that the Minister may demand under paragraph (1)(c) in respect of a conveyance shall not exceed an amount equal to the value of the conveyance at the time of seizure or of service of the notice under section 124, as determined by the Minister.

(6) for the purpose of calculating the amount of money referred to in subsection (2) or (4), where the value for duty of goods cannot be ascertained, the value of the goods at the time of seizure or of service of the notice under section 124, as determined by the Minister, may be substituted for the value for duty thereof.

(7) If an amount of money is demanded under paragraph (1)(c) or (1.1)(b), the person to whom the demand is made shall pay the amount demanded together with interest at the prescribed rate for the period beginning on the day after the notice is served under subsection 131(2) and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount. However, interest is not payable if the amount demanded is paid in full within thirty days after the notice is served.

Federal Court

135. (1) A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant.

(2) The *Federal Courts Act* and the *Federal Court Rules* applicable to ordinary actions apply in respect of actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

Section 18 of the *Federal Courts Act*

Application for Judicial Review

18.1(1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

As the Judicial Review and Federal Court appeal are more formal processes, you may want to get legal advice or hire a lawyer to make these appeals. The Recourse Directorate is unable to provide advice to you.

For information on how to appeal to the Federal Court, call the Registry office nearest you:

Calgary, AB	(403) 292-5920
Charlottetown, PE	(902) 368-0179
Edmonton, AB	(780) 495-4651
Fredericton, NB	(506) 452-3016
Halifax, NS	(902) 426-3282
Iqaluit, NU	(867) 873-2044
Montréal, QC	(514) 283-4820
Ottawa, ON	(613) 992-4238
Quebec, QC	(418) 648-4920
Regina, SK	(306) 780-5268
Saint John, NB	(506) 636-4990
Saskatoon, SK	(306) 975-4509
St. John's, NF	(709) 772-2884
Toronto, ON	(416) 973-3356
Vancouver, BC	(604) 666-3232
Whitehorse, YT	(867) 667-5441
Winnipeg, MB	(204) 983-2509
Yellowknife, NT	(867) 873-2044

c.c. 273

Queenston Bridge - Traffic Operations
P.O. Box 126
Niagara Falls, Ontario L2E 6T1

P.S. As the coins are silver/gold and are from the US (UST), they are duty free and tax exempt. The penalty was reduced to 5% of the undeclared value from the Level 1 (Group 2) of 25% originally assessed. Thank you for your assistance and cooperation in this matter.

c.c. File