

File number: _____

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

RADU HOCIUNG

Applicant
(Appellant)

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent
(Respondent)

APPLICATION FOR LEAVE TO APPEAL

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FORM 25

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

(pursuant Supreme Court Act, section 40)

TAKE NOTICE that Radu Hociung applies for leave to the Supreme Court of Canada, under Supreme Court Act s. 40, from the judgment of the Federal Court of Appeal files A-101-18 and A-102-18 made on August 7, 2018 and for an order dismissing the motion for summary judgment, an order granting the motion to amend the statement of claim, and costs on the appeals, motions and this appeal, or any other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. the appeals judgments are patently unjust.

Dated at Kitchener, Ontario this 30th day of September, 2019.

SIGNED BY



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NOTICE TO THE RESPONDENT : A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the [*Supreme Court Act*](#).



Date: 20180315

Docket: T-1450-15

Citation: 2018 FC 298

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The defendant has brought a motion in writing, pursuant to Rules 221 and 369 of the *Federal Court Rules*, SOR/98-106 [Rules] seeking summary judgment. Specifically the defendant seeks:

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] The Court has separately considered the plaintiff's motion for leave to amend the statement of claim by: (1) adding defendants; (2) pleading criminal activities; (3) amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*]; (4) pleading for additional relief; and (5) updating the plaintiff's contact information. That motion has been denied by way of separate Order. This motion for summary judgment has therefore been considered on the basis of the original statement of claim.

II. Background

[3] This action arises from the Canada Border Services Agency's [CBSA] seizure of United States Treasury gold and silver coins from the plaintiff upon his return to Canada from the United States. The coins, purchased in the United States at a cost of \$5,700 USD, consisted of four \$50 USD Buffalo Gold Bullion coins and twenty \$1 USD Silver Eagle coins. CBSA seized the coins as forfeit for contravention of section 12 of the *Customs Act* on the basis that the plaintiff failed to declare the coins as "goods" upon entry into Canada.

[4] Pursuant to section 129 of the *Customs Act* the plaintiff requested a decision of the Minister on the issue of whether the *Customs Act* had been contravened. The plaintiff maintains that: (1) the coins are money or currency, not goods, and therefore do not need to be declared under the *Customs Act*; and (2) the currency in his possession, including the gold and silver

coins, had a face value of less than \$10,000 and therefore did not trigger the reporting obligation under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [*Proceeds Act*].

[5] After reviewing the enforcement action the Minister’s delegate determined that “[a]ll goods entering Canada, including gold and silver coins, must be reported to CBSA in accordance with the Customs Act.” The Minister’s delegate concluded, as provided for at section 131 of the *Customs Act*, there had been a contravention of this reporting requirement. The Minister’s delegate further found, as provided for at section 133 of the Act, that upon the payment of \$321.39, to be held as forfeit, the coins would be returned to the plaintiff.

[6] The plaintiff commenced an action pursuant to section 135 of the *Customs Act*, appealing the contravention decision.

III. Position of the Parties

A. *Defendant’s Submissions (the moving party on the motion for summary judgment)*

[7] In seeking summary judgment, the defendant submits that only two issues are raised in the plaintiff’s action:

1. Whether the plaintiff may claim damages and seek *mandamus* in an appeal of a Ministerial decision by way of action brought under section 135 of the *Customs Act*; and
2. Whether collector coins are currency or goods for the purpose of the *Customs Act*.

[8] The defendant submits that on a motion for summary judgment, where the Court is satisfied there is no genuine issue for trial, the Court shall grant summary judgment. The defendant further submits that where the Court is satisfied the only genuine issue is a question of law the Court may determine the issue and grant summary judgment pursuant to Rule 215(2)(b) of the Rules.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action brought under section 135 of the *Customs Act*.

[9] The defendant submits that the sole issue before the Court in an action instituted under section 135 of the *Customs Act* is whether there was a contravention of the Act or its regulations. An action under section 135 does not permit a plaintiff to make claims for damages arising from CBSA officers' performance of their duties, nor does it allow for other damages or the extraordinary remedies available under section 18.1 of the *Federal Courts Act*, RSC, 1985, c. F-7. These remedies, the defendant submits, are available by way of separate action but that separate proceeding cannot be combined with a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[10] The defendant submits that the coins in issue are collector coins and as such they are goods rather than currency, and must be declared under the *Customs Act*. The defendant states that although the *Proceeds Act* requires currency over \$10,000 to be reported at the border, "currency" is not defined in the *Proceeds Act*. The defendant submits that collector coins have a market value far beyond their face value, are not intended for circulation, and therefore are not "currency" for the purposes of the *Proceeds Act*.

B. *Plaintiff's Submissions*

[11] The plaintiff submits the summary judgment motion is unnecessary and vexatious because it is identical to a prior failed motion to strike the plaintiff's pleadings and is simply an attempt to stall discovery.

[12] Although the plaintiff does not challenge the issues as identified by the defendant on this motion, the plaintiff submits there are additional issues identified in the statement of claim. These generally include whether the coins in issue are intended for circulation and the scope of an action and available remedies under section 135 of the *Customs Act*. The plaintiff invites the Court to determine any issues on this motion that may be determined based on the evidence.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action pursuant to section 135 of the *Customs Act*

[13] The plaintiff argues that he is not seeking *mandamus* in this matter and submits that section 135 of the *Customs Act* allows for a full action in the Federal Court. He further submits that all remedies otherwise available in actions before the Federal Court are available in a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[14] The plaintiff submits that the coins in issue are "currency," not "goods," and therefore need not be reported pursuant to subsection 12(1) of the *Customs Act* on importation to Canada.

He further submits that even if the coins are characterized as goods they are exempt from tax pursuant to the *Excise Tax Act*, RSC, 1985, c E-15.

[15] The plaintiff submits that whether the coins are collectable or in circulation does not affect their status as currency. He further argues that refusing to treat collector coins as currency is inconsistent with, and defeats the purposes and intent of, the *Proceeds Act*.

IV. Are there genuine issues for trial?

[16] The plaintiff does not dispute that the issues identified by the defendant are genuine issues. However, the plaintiff submits there are additional issues raised in the statement of claim to be addressed in the course of the action. I disagree.

[17] The claim does raise numerous allegations of general misconduct, including allegations of criminal misconduct in relation to various officers and officials. The statement of claim seeks the payment of damages in relation to the alleged misconduct. In addition the statement of claim seeks to have this Court direct specific action be taken by both the Prime Minister and the Minister of Public Safety and Emergency Preparedness.

[18] In my view these are all matters that fall within the scope of the defendant's first stated issue, "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*." However, to better reflect the true issue to be decided, I would reframe the defendant's issue statement as

“whether an action brought under section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act*.”

[19] The plaintiff also submits that there are numerous issues relating to the interpretation of the legislation that has been relied upon by the parties in advancing their respective positions. The parties have cited and relied on a number of different legislative provisions in advancing their positions, but these submissions all seek to resolve a single core issue in dispute as it relates to the contravention finding: “are collector coins “currency” or “goods”?”

[20] I am satisfied that the two issues identified by the defendant are genuine issues to be determined in this matter, and are the only issues to be determined.

V. Is the Court in a position to address the genuine issues and grant summary judgment?

[21] Determining whether an action commenced pursuant to section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act* involves interpretation of that Act. The plaintiff has not disputed the characterization of this matter as being a question of law. I also note there is no factual dispute relating to this discrete issue.

[22] I am of the opinion that “whether collector coins are currency or goods for the purpose of the *Customs Act*” is also a question of law. The core issues to be determined are: (1) are precious-metal coins “currency” that must be reported under section 12 the *Proceeds Act*; and (2) are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*? The defendant acknowledges in written submissions that the gold and silver coins in issue are issued

by the US Treasury, which “stipulates that its collector coins are legal tender.” Thus no findings of fact are required to determine the core issues.

[23] I am satisfied that both issues can be dealt with by way of summary judgment.

VI. Issues

[24] Having considered the submissions of the parties and the issues identified by the defendant, I have framed the issues as follows:

1. Is an action commenced pursuant to section 135 of the *Customs Act* limited to a determination of whether there has been a contravention of the *Customs Act*?
2. Are the precious-metal coins in question “goods” pursuant to the *Customs Act* and/or “currency” pursuant to the *Proceeds Act*? This issue requires addressing the following two sub-issues:
 - i. Are precious-metal coins “currency” that must be reported under section 12 the *Proceeds Act*? and
 - ii. Are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*?

VII. Analysis

- A. *Is an action pursuant to section 135 of the Customs Act limited to a determination of whether there has been a contravention of the Customs Act?*

[25] Subsection 106(1) and sections 131 and 135 of the *Customs Act* state:

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.

[...]

131 (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

106 (1) Les actions contre l'agent, pour tout acte accompli dans l'exercice des fonctions que lui confère la présente loi ou toute autre loi fédérale, ou contre une personne requise de l'assister dans l'exercice de ces fonctions, se prescrivent par trois mois à compter du fait générateur du litige.

[...]

131 (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :

a) le motif d'infraction à la présente loi ou à ses règlements pour justifier soit la saisie des marchandises ou des moyens de transport en cause, soit la signification à leur sujet de l'avis prévu à l'article 124;

b) le motif d'utilisation des moyens de transport en cause dans le transport de marchandises ayant donné lieu à une infraction aux mêmes loi ou règlements, ou le motif de cette infraction, pour justifier soit la saisie de ces moyens de transport, soit la signification à leur sujet de l'avis prévu à l'article 124;

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.

c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a réellement eu non-conformité.

(1.1) A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.

(1.1) La personne à qui a été signifié un avis visé à l'article 130 peut aviser par écrit le ministre qu'elle ne produira pas de moyens de preuve en application de cet article et autoriser le ministre à rendre sans délai une décision sur la question.

(2) The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.

(2) Dès qu'il a rendu sa décision, le ministre en signifie par écrit un avis détaillé à la personne qui en a fait la demande.

(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).

(3) La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).

[...]

[...]

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

135 (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette

<p>the Federal Court in which that person is the plaintiff and the Minister is the defendant.</p>	<p>décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.</p>
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<p>(2) The <i>Federal Courts Act</i> and the rules made under that Act 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.</p>	<p>(2) La demande se fait par remise d'un avis au ministre par écrit, ou sous toute autre forme prévue par celui-ci.</p>
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[26] The plaintiff submits that subsection 135(1) allows for a full action in this Court including the joinder of claims. I am not persuaded.

[27] A decision of the Minister pursuant to section 131 relates solely to the question of whether there has been a contravention of the *Customs Act*. As Justice Michel Shore explained in *Nguyen v Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 [Nguyen] at para 19:

Subsection 131(3) of the Act is a privative clause within the *Customs Act* that requires decisions made pursuant to s. 131 of the Act be subject to review only as described in s. 135(1) of the Act. Subsection 135(1) of the Act requires that a Minister's decision made under s. 131 of the Act be appealed by way of an action.

[Emphasis in original]

[28] Although this type of situation has been described as “awkward and inconvenient” (*Dokaj v Canada (Minister of National Revenue)*, 2005 FC 1437 at para 39) and “anomalous” (*ACL Canada Inc v MNR* (1993), 107 DLR (4th) 736, 68 FTR 180 (TD) at para 55), the

subsection 135(1) statutory right of appeal has been consistently found to be limited to the section 131 decision.

[29] The jurisprudence has held that penalties imposed pursuant to section 133 and resulting from a subsection 131(1) contravention finding are not reviewable in a subsection 135(1) action (*Starway v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 23 [*Starway*]). Similarly, a subsection 131(1) decision has been found not to be reviewable in a proceeding challenging a penalty imposed under section 133 (*Nguyen* at para 20).

[30] The plaintiff argues that *Starway* does not stand for the principle that the exclusive issue to be determined in a subsection 135(1) action is a contravention of the *Customs Act*. I disagree. In *Starway* Justice Harrington states at para 27 that “[i]n accordance with section 135 of the Act, this is an ordinary action. The only special rule imposed is that the issue is limited to whether Mr. Starway made an untrue statement.” In other words although a section 135 action is in all other respects an ordinary action before this Court, it is an action that is limited to addressing whether there has been a *Customs Act* contravention. I agree with Justice Harrington.

[31] In reaching this conclusion I note that the limited scope of a subsection 135(1) action does not prevent a plaintiff from advancing broader claims or seeking broader relief in other proceedings. The *Customs Act* itself contemplates proceedings being brought against officers for acts done in the performance of their duties (subsection 106(1)); judicial review of some decisions (for example, penalties imposed under section 133) is available under the *Federal Courts Act*.

[32] I conclude that an action brought pursuant to subsection 135(1) of the *Customs Act* is limited to determining a single issue, whether there has been a contravention of that Act, and that this is the sole issue before the Court in the action. This action differs from judicial review as the Court is to make a *de novo* determination of the issue (*Starway* at para 24).

B. *Are the plaintiff's coins "goods" pursuant to the Customs Act and/or "currency" pursuant to the Proceeds Act?*

[33] In making the decision under appeal, the Minister's delegate found that circulation was a key factor in concluding the US Treasury coins were goods rather than currency:

In the context 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 [*Proceeds Act*], but they are considered goods subject to the reporting requirements of the *Customs Act*.

[34] In advancing their respective positions, the parties in this action have similarly adopted the view that the coins in issue are to be characterized in a binary fashion. They are either "goods" under the *Customs Act*, as the defendant has argued, or "currency" pursuant to the *Proceeds Act*, as the plaintiff has argued.

[35] For the reasons that follow, I am of the view that, regardless of their circulation status or collectability, US Treasury-issued legal tender collector coins are both "goods" under the *Customs Act* and "currency" under the *Proceeds Act*. If I am correct in this view then reporting obligations under both the *Customs Act* and the *Proceeds Act* apply where such coins are imported.

- (1) Are the coins at issue “currency” that must be reported under section 12 of the *Proceeds Act*?

[36] The *Proceeds Act* imposes an obligation on every person to report the importation or exportation of currency or monetary instruments that equal or exceed a prescribed value:

<p>12 (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.</p>	<p>12 (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l’agent, conformément aux règlements, l’importation ou l’exportation des espèces ou effets d’une valeur égale ou supérieure au montant réglementaire.</p>
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[37] The *Proceeds Act* in concert with the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [*Reporting Regulations*] prescribe an amount of \$10,000 as triggering the obligation to report the importation or exportation of currency or monetary instruments.

[38] Neither party takes the position that the coins are “monetary instruments”, a term that is defined at subsection 1(1) of the *Reporting Regulations*. The dispute arises in respect of the meaning of “currency,” which is not defined in the *Proceeds Act* or any of its regulations.

[39] Both parties rely on the definition of “cash” set out at subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*Proceeds Regulations*] to assist in interpreting the meaning of “currency”. However, such reliance is misplaced.

[40] Not all definitions in the *Proceeds Regulations* apply to its enabling Act. The *Proceeds Regulations* set out definitions at subsection 1(1) that “apply in the Act and these Regulations,” whereas the definitions at subsection 1(2) only “apply in these Regulations.” Cash is defined at subsection 1(2) and therefore the definition is of no application when interpreting the *Proceeds Act*. This conclusion is reinforced by the *Proceeds Regulations* definition of “funds,” also found at subsection 1(2), which distinguishes between “cash” and “currency.” Were this distinction to be extended to the *Proceeds Act* the requirement to report currency pursuant to subsection 12(1) would not include a requirement to report cash; such a result would undermine the purpose of the *Proceeds Act*. I am of the view that the *Proceeds Regulations*’ definition of cash is of no assistance in this matter.

[41] The defendant also points to the Oxford English Dictionary definition of currency to support its position: “[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”. Relying on this definition the defendant notes the market value of non-circulation collector coins, coupled with the value placed upon them by collectors, renders them much more valuable than their face value. As such they are not intended for circulation and are not “money of a country in actual use”.

[42] The defendant similarly relies on section 2 of the *Royal Canadian Mint Act*, RSC, 1985, c R-9, [*Mint Act*] which defines both circulation and non-circulation coins, and section 8 of the *Currency Act*, RSC, 1985, c. C.52, [*Currency Act*] which limits the legal tender value of coins.

[43] The defendant's argument might be best summarized as follows: (1) collector coins are significantly more valuable in the market place than the face value of the coins or the maximum value provided for such coins at section 8 of the *Currency Act*; (2) as a result a rational person would not tender collector coins to pay for goods and services; (3) the coins are non-circulation coins and therefore cannot be characterized as money in actual use even though "[t]he U.S. Treasury stipulates that its collector coins are legal tender;" and (4) as a result collector coins are not "currency" as that term is used in the *Proceeds Act*.

[44] The parties have cited Canadian legislation relating to non-circulation coins in support of their respective positions on whether such coins are "currency". The parties have also taken the position that the U.S. Treasury coins in issue would be characterized in the same manner as Canadian legal tender non-circulation coins. Having considered the legislation cited and relied upon by the parties I am of the view that Canadian legal tender non-circulation coins are "currency" and would extend this conclusion to include the coins that are the subject of this dispute.

[45] The *Currency Act*, at section 7, describes "Current Coins" as:

7 (1) A coin is current for the amount of its denomination in the currency of Canada if it was issued under the authority of

(a) the *Royal Canadian Mint Act*; or

(b) the Crown in any province of Canada before it became part of Canada and if the coin

7 (1) Ont cours légal, pour la valeur faciale qui y figure en monnaie canadienne, les pièces émises :

a) sous le régime de la *Loi sur la Monnaie royale canadienne*;

b) dans le cadre des attributions de la Couronne dans une province avant que

was, immediately before October 15, 1952, current and legal tender in Canada.

(2) No coin that is bent, mutilated or defaced, or that has been reduced in weight otherwise than by abrasion through ordinary use, shall pass current.

[Emphasis added]

celle-ci ne fasse partie du Canada et qui, avant le 15 octobre 1952, avaient cours légal et pouvoir libératoire au Canada.

(2) Les pièces tordues, mutilées ou défigurées, ou dont le poids a été réduit autrement que par le frottement, n'ont pas cours légal.

[Non souligné dans l'original]

[46] According to paragraph 7(1)(a) of the *Currency Act*, a coin issued under the *Mint Act*, is current for its face value in the currency of Canada. There is no distinction made between circulating and non-circulating coins, both of which are issued under the *Mint Act*.

[47] Non-circulation coins are defined in the *Mint Act* as follows:

non-circulation coin means 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;

monnaie hors circulation Les pièces de monnaie composées de métal commun ou de métal précieux, ou d'une combinaison de ces métaux, qui ne sont pas destinées à la circulation et sont énumérées à la partie 1 de l'annexe.

[48] Section 6 of the *Mint Act* provides for the issuance of non-circulation coins and section 6.31 states the following:

6.31 Non-circulation coins of the currency of Canada in the denomination of \$350 that are dated 1999, 2000, 2001, 2002, 2003, 2004, 2005 or 2006 are current and legal tender in

6.31 Toute pièce de monnaie hors circulation dont la valeur faciale est de trois cent cinquante dollars et sur laquelle figure l'année 1999, 2000, 2001, 2002, 2003, 2004,

Canada as of the year that they are dated.	2005 ou 2006 a cours légal et pouvoir libératoire au Canada depuis l'année qui y figure.
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[49] The *Mint Act* describes the coins of Canada, encompassing non-circulation coins addressed at sections 6 – 6.31 and circulation coins addressed at sections 6.4 – 6.6. Section 7 describes non-circulation coins and circulation coins collectively as “coins of the currency of Canada”:

<p>7 (1) All <u>coins of the currency of Canada</u> that are produced at or supplied by the Mint shall be delivered to the Minister of Finance or such person as the Minister of Finance may designate.</p> <p>(2) The Mint shall comply with such instructions as the Minister of Finance may give respecting the storage of <u>coins of the currency of Canada</u> or the preparation and movement of shipments of such coins to or from the Mint.</p> <p>(3) Payments for the production, storage, preparation or movement of <u>coins of the currency of Canada</u> shall be made out of the Consolidated Revenue Fund on the authorization of the Minister of Finance.</p> <p>[Emphasis added]</p>	<p>7 (1) Toutes <u>les pièces de monnaie canadienne</u> fabriquées ou fournies par la Monnaie sont remises au ministre des Finances ou à la personne désignée par celui-ci.</p> <p>(2) La Monnaie est tenue de se conformer aux instructions du ministre des Finances concernant l'entreposage <u>des pièces de monnaie canadienne</u> ou la préparation de chargements de ces pièces et leur acheminement au départ ou à destination de l'établissement.</p> <p>(3) Les fonds requis pour la production, l'entreposage, la préparation ou le transport <u>des pièces de monnaie canadienne</u> sont prélevés sur le Trésor avec l'autorisation du ministre des Finances.</p> <p>[Non souligné dans l'original]</p>
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[50] Returning now to the *Currency Act*, section 8 describes when the payment of money is legal tender:

8 (1) <u>Subject to this section, a tender of payment of money is a legal tender if it is made</u>	8 (1) <u>Sous réserve des autres dispositions du présent article, ont pouvoir libératoire :</u>
(a) <u>in coins that are current under section 7; and</u>	a) <u>les pièces qui ont cours légal en vertu de l'article 7;</u>
(b) in notes issued by the Bank of Canada pursuant to the <i>Bank of Canada Act</i> intended for circulation in Canada.	b) les billets destinés à circuler au Canada et émis par la Banque du Canada aux termes de la <i>Loi sur la Banque du Canada</i> .
(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:	(2) Les offres de paiement effectuées avec des pièces visées au paragraphe (1) ont pouvoir libératoire jusqu'à concurrence des montants suivants :
(a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;	a) les pièces de deux à dix dollars : quarante dollars;
(b) twenty-five dollars if the denomination is one dollar;	b) les pièces de un dollar : vingt-cinq dollars;
(c) ten dollars if the denomination is ten cents or greater but less than one dollar;	c) les pièces de dix cents et plus mais de moins d'un dollar : dix dollars;
(d) five dollars if the denomination is five cents; and	d) les pièces de cinq cents : cinq dollars;
(e) twenty-five cents if the denomination is one cent.	e) les pièces de un cent : vingt-cinq cents.
(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	(2.1) Dans le cas des pièces de plus de dix dollars, toutefois, l'offre ne peut consister en plus d'une pièce; son pouvoir libératoire correspond alors à

the payment is a legal tender for no more than the value of a single coin of that denomination.	la valeur faciale de la pièce.
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(3) For the purposes of subsections (2) and (2.1), where more than one amount is payable by one person to another on the same day under one or more obligations, the total of those amounts is deemed to be one amount due and payable on that day.	(3) Pour l'application des paragraphes (2) et (2.1), plusieurs paiements à faire le même jour par la même personne au même créancier, qu'il s'agisse ou non de la même créance, sont réputés constituer un paiement unique.
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[Emphasis added]

[Non souligné dans l'original]

[51] In sum: (1) section 7 of the *Currency Act* provides that a “coin is current for the amount of its denomination in the currency of Canada” if issued under the authority of the *Mint Act*; (2) non-circulation coins are issued under the *Mint Act* and are therefore current under section 7 of the *Currency Act*; (3) section 8 of the *Currency Act* provides that payment in coins that are current is a legal tender; and (4) section 6.31 of the *Mint Act* explicitly acknowledges the existence of “[n]on-circulation coins of the currency of Canada.”

[52] While it may be irrational to use non-circulation collector coins to purchase goods and services, section 7 of the *Currency Act* does not prevent one from doing so. The defendant has, in my view, conflated the concept of “the money of a country in actual use” with the concept of “money of a country in frequent or regular use”. While non-circulation collector coins are not frequently or regularly used as currency, they are legal tender and as such are, in my opinion, in actual use in Canada.

[53] In the context of Canadian-issued coins, considering the relevant provisions of the *Mint Act* and the *Currency Act*, I am satisfied that non-circulation coins that are legal tender are “currency” as that term is used in the *Proceeds Act*. The reporting obligations provided for at section 12(1) of the *Proceeds Act* are therefore triggered where, on import or export, the denominational or face value of the non-circulation coins together with any other currency or monetary instruments being imported or exported is of a value that is equal to or greater than the prescribed amount at section 2 of the *Reporting Regulations*.

[54] So what then, of the plaintiff’s coins? The defendant acknowledges in its submissions that the principles in respect of non-circulation coins as set out in the *Mint Act* are the principles that apply in respect of US Treasury Buffalo Gold Bullion Coins and silver coins. They too, the defendant acknowledges, are legal tender.

[55] I therefore conclude that the plaintiff’s US Treasury-issued, legal tender coins are currency that is subject to the reporting requirements set out in the *Proceeds Act*. However as the face or denominational value of the coins was \$220 USD, the plaintiff was under no obligation to report the importation of this currency under the *Proceeds Act*. The currency in his possession was well below the amount at section 2 of the *Reporting Regulations*.

(2) Are the coins at issue “goods” that must be reported under section 12 of the *Customs Act*?

[56] The plaintiff also submits that he had no obligation to report the collector coins having a face value of \$220 USD as goods despite having paid \$5,700 USD to a coin broker to acquire the

coins. He submits that they are currency, not “goods” as that term is defined in the *Customs Act*. I disagree. As stated above, I am of the opinion that the legal tender non-circulation collector coins are both “currency” and “goods”.

[57] The plaintiff further submits that even if the coins are “goods” they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act*, RSC, 1985 c. E-15, [Excise Tax Act] due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. As discussed below, there is a difference between goods being “exempt from taxes” under the *Excise Tax Act* and “exempt from reporting” under the *Customs Act*.

(a) *Goods under the Customs Act*

[58] Goods are very broadly defined at subsection 2(1) of the *Customs Act*:

<p>goods, for greater certainty, includes conveyances, animals and any document in any form; (<i>marchandises</i>)</p>	<p>marchandises Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support. (<i>goods</i>)</p>
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[59] This broad declaratory definition does not seek to exclude items from its scope but rather ensures items that might not normally be viewed as goods, including conveyances, animals and documents are captured within the scope of the definition.

[60] The *Customs Act* definition of goods is adopted at Part IX, subsection 123(1) of the *Excise Tax Act* where “money” is also defined as follows:

money includes any currency, **argent** Y sont assimilés la

cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value; (*argent*)

[Emphasis added]

monnaie, les chèques, les billets à ordre, les lettres de crédit, les traites, les chèques de voyage, les lettres de change, les bons de poste, les mandats-poste, les versements postaux et tout autre effet, canadien ou étranger, de même nature. La présente définition exclut la monnaie dont la juste valeur marchande dépasse la valeur nominale dans le pays d'origine et celle fournie ou détenue pour sa valeur numismatique. (*money*)

[Non souligné dans l'original]

[61] For the purpose of Part IX of the *Excise Tax Act*, currency with a fair market value higher than its face value is no longer money. Its status as currency does not change, but its treatment under the law does.

[62] Although I have found collector coins may be proffered as legal tender in exchange for goods or services on the basis of their denominational or face value, it is accepted by the parties that the plaintiff's non-circulation legal tender collector coins have a market value far in excess of their face value. It is this unique characteristic, coupled with the *Customs Act*'s broad definition of "goods" that leads me to conclude the plaintiff's coins are goods that must be reported under that Act. I also note that treating currency whose fair market value exceeds its face value as "goods" under the *Customs Act* is consistent with the definition of "money" at Part IX of the *Excise Tax Act*: fair market value establishes the line at which those instruments we normally think of as "money" may become "goods."

(b) *Exemption from tax*

[63] The plaintiff argues that even if the coins in issue are found to be goods, they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act* due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. This seems to be true. The Minister's delegate acknowledged in a postscript to the decision in issue that the coins were "duty free and tax exempt."

[64] However, the issue raised in this action is not whether taxes or duties are payable but whether the plaintiff had contravened the *Customs Act*. In that respect section 12(1) imposes a duty to report goods that are imported:

12 (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.

12 (1) Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions réglementaires, toutes les marchandises importées doivent être déclarées au bureau de douane le plus proche, doté des attributions prévues à cet effet, qui soit ouvert.

[65] The plaintiff has not argued that the coins, if found to be goods, are exempt from the reporting requirement set out at subsection 12(1). In addition, he does not dispute that he purchased the coins in the United States, was importing them into Canada, and failed to report them to customs officials.

[66] My conclusion that non-circulation legal tender collector coins are “goods” recognizes the unique characteristics of this form of “currency” and reflects the broader purpose and scheme of the *Customs Act* and subsection 12(1) in particular. All “goods” subject to prescribed circumstances and conditions are to be reported on importation. There are no reasons to exclude highly valuable collector coins from this reporting obligation.

[67] Tax-exempt or not, the plaintiff was required to report the importation of these coins. I conclude that the plaintiff’s failure to do so did, as found by the Minister’s delegate, contravene the *Customs Act*.

VIII. Overlapping Legislative Provisions

[68] Having concluded both the *Customs Act* and the *Proceeds Act* apply concurrently to non-circulation legal tender coins I will address the issue of overlapping legislative provisions.

[69] Where two or more legislative schemes apply to the same set of facts, the common law presumes legislative coherence. There is a presumption that “the legislature knows its own statute book and intends all additions to that statute book to produce consistent rules and coherent schemes” (Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law, 2016) at 317 [Sullivan]).

[70] The courts have recognized that the scope and application of different legislative provisions may conflict and overlap. This circumstance was addressed by Justice Cromwell,

writing for the majority of the Supreme Court of Canada in *Thibodeau v Air Canada*, 2014 SCC 67, where he states at paras 89 and 92:

[89] Courts presume that legislation passed by Parliament does not contain contradictions or inconsistencies and only find that they exist when provisions are so inconsistent that they are incapable of standing together. Even where provisions overlap in the sense that they address aspects of the same subject, they are interpreted so as to avoid conflict wherever this is possible.

[...]

[92] The legal framework that governs this question is not complicated. First, courts take a restrictive approach to what constitutes a conflict in this context. Second, courts find that there is a conflict only when the existence of the conflict, in the restrictive sense of the word, cannot be avoided by interpretation. Overlap, on its own, does not constitute conflict in this context, so that even where the ambit of two provisions overlaps, there is a presumption that they both are meant to apply, provided that they can do so without producing absurd results. This presumption may be rebutted if one of the provisions was intended to cover the subject matter exhaustively. Third, only where a conflict is unavoidable should the court resort to statutory provisions and principles of interpretation concerned with which law takes precedence over the other. This case turns on the first two of these principles and I will explore them in somewhat more detail.

[71] In effect it is presumed that Parliament does not intend contradictions or inconsistencies between legislative provisions and that a restrictive approach is to be taken to what constitutes a conflict. A true conflict between legislative provisions arises “only if it would be impossible or contradictory or would defeat the legislature’s purpose if both provisions were applied” (Sullivan at 319). Overlap on its own does not constitute a conflict.

[72] In this case no true conflict arises. Treating non-circulation legal tender collector coins as “goods” for the purposes of the *Customs Act* is not inconsistent with treating them as “currency”

under the *Proceeds Act*. It is neither impossible nor contradictory to impose a dual reporting requirement in those circumstances where both the *Customs Act* and the *Proceeds Act* reporting obligations are triggered. In my opinion this result ensures both the *Customs Act* and the *Proceeds Act* are interpreted and applied in a manner that best ensures the attainment of their objects and the intent of legislature.

IX. Conclusion

[73] Having concluded that the coins in issue are “goods” and subject to the duty to report at subsection 12(1) of the *Customs Act*, the plaintiff’s appeal of the section 131 determination that there was a *Customs Act* contravention is dismissed. However, in dismissing the appeal, I have also found the plaintiff’s position to have merit.

[74] In light of the mixed result the parties shall each bear their own cost.

[75] In addressing the plaintiff’s motion seeking leave to amend the Statement of Claim, I ordered that costs were to be determined in the cause. My conclusion that costs are to be borne by each party applies equally to the motion seeking leave to amend the Statement of Claim.

JUDGMENT IN T-1450-15

THIS COURT'S JUDGMENT is that:

1. The motion for summary judgment is granted and the action is dismissed.
2. The parties are to bear their individual costs including their costs relating to the plaintiff's motion for leave to amend the statement of claim.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1450-15

STYLE OF CAUSE: RADU HOCIUNG v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT
TO RULE 369 OF THE *FEDERAL COURTS RULES***

REASONS AND JUDGMENT: GLEESON J.

DATED: MARCH 15, 2018

WRITTEN REPRESENTATIONS BY:

Radu Hociung

FOR THE PLAINTIFF
(SELF-REPRESENTED)

Eric O. Peterson

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE DEFENDANT

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-102-18

Citation: 2019 FCA 214

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Toronto, Ontario, on May 23, 2019.

Judgment delivered at Ottawa, Ontario, on August 7, 2019.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**WEBB J.A.
RIVOALEN J.A.**

Federal Court of Appeal



Cour d'appel fédérale

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**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Hociung appeals from the judgment of the Federal Court (per Gleeson J.) granting the respondent's motion for summary judgment and dismissing his action (2018 FC 298).

[2] In a companion appeal in file A-101-18, Mr. Hociung appeals the order of the Federal Court (per Gleeson J.) dismissing his motion for leave to amend the statement of claim.

Although two notices of appeal were filed, these two decisions are linked and the findings in respect of the motion for summary judgment may have an impact on the merits of the proposed amendments.

I. Background

[3] The Canada Border Services Agency (the CBSA) seized four \$50 USD Buffalo Bullion coins and twenty \$1 USD Silver Eagle coins when Mr. Hociung failed to declare these precious metal coins as “goods” upon his entry into Canada from the United States allegedly in contravention of section 12 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) (the *Customs Act*).

[4] Mr. Hociung purchased the coins in the United States at a cost of \$5,700 USD, although their denomination or face value is \$220 USD. Mr. Hociung had been traveling to the United States for the day only (same day traveler); he was not questioned about the amount of “cash” or “currency” in his possession by the CBSA officer and the seizure did not relate to a failure to declare the coins under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2000, S.C. c. 17 (the Proceeds of Crime Act)* or the *Cross-border Currency and Monetary Instruments Reporting Regulations, S.O.R./2002-412 (the Reporting Regulations)*. The coins were discovered after Mr. Hociung was asked to present himself to the CBSA’s office for inspection after he declared having bought two new tires for his car in the United States (declared value \$500). There is no indication in the record that he was asked to pay any duties or taxes on the tires.

[5] Mr. Hociung contested the seizure and requested a decision from the Minister of Public Safety and Emergency Preparedness (the Minister) on the issue of whether the *Customs Act* had been contravened. Pursuant to section 131 of the *Customs Act*, the Minister's delegate found that there had indeed been a contravention of section 12 of the *Customs Act*, but as he was entitled to do pursuant to section 133 of the *Customs Act*, he reduced the penalty for the release of the seized coins from \$1,606.97 to \$321.39 (section 133 of the *Customs Act*). He dismissed Mr. Hociung's argument that the coins were "currency" as opposed to "goods" and therefore he did not need to declare them under the *Customs Act*. It is in this context that Mr. Hociung contested the CBSA's interpretation of the word "currency" in the *Proceeds of Crime Act* that contributed in his view to a misapplication of the *Customs Act* and the *Proceeds of Crime Act*, as well as the relevant regulations adopted under the latter statute.

[6] The denomination value of the coins (\$220 USD) if used as legal tender in the United States was less than \$10,000 CAD. Even if held to be currency within the meaning of the *Proceeds of Crime Act*, Mr. Hociung was not required to declare the coins under that statute as their value was below the limit set out in the *Reporting Regulations*. There is no dispute about this.

[7] The Minister's delegate issued his decision on May 28, 2015. On August 28, 2015, Mr. Hociung filed his action before the Federal Court. Although his action includes an appeal pursuant to section 135 of the *Customs Act*, it does include other claims and seeks additional relief, including damages based on alleged torts committed during the interaction between CBSA employees and Mr. Hociung, such as threats of violence and fraudulent misrepresentations.

[8] In his statement of claim, Mr. Hociung, a self-represented litigant, describes the seizure and the alleged misinterpretation of the *Customs Act*, the *Proceeds of Crime Act* and the *Currency Act*, R.S.C., 1985, c. C-52 (the *Currency Act*) by the CBSA as fraudulent and designed to (i) aid crime and terrorism in Canada, and (ii) make illegal profits from the taxation of “currency” as “goods”. He alleges that various employees involved in the seizure and his contestation of it are guilty of criminal conduct. Among the other relief sought are damages and various declarations, such as a declaration that Canadian and foreign precious metal coins fall within certain provisions of the *Proceeds of Crime Act* as opposed to the *Customs Act*. Mr. Hociung also seeks an order directing the Prime Minister to create an oversight body to ensure the lawful implementation of the *Proceeds of Crime Act*, as well as an order directing the refund of all taxes, duties, and any fines obtained by the CBSA in relation to shipments of gold and silver coins, foreign and domestic, since the *Proceeds of Crime Act* was enacted.

[9] In his motion to amend his statement of claim (the subject of the appeal in file A-101-18), Mr. Hociung seeks to add two defendants, including Her Majesty the Queen (vicarious liability), as well as claims against other employees of the CBSA involved in the process leading to the Minister’s final decision (see e.g., paragraphs 3(a)(4), 3(a)(4)(g), 5 and 6 of the proposed amended statement of claim). He also wishes to include various factual details, particularly with respect to the so-called “money laundering scheme run by the CBSA” (such as paragraphs 9, 10 and 11 of the proposed amended statement of claim), references to internal bulletins, and previous instances involving the alleged “misapplication” of the *Proceeds of Crime Act* and other statutes by the CBSA, of which he became aware after filing his action. Mr. Hociung also sought to amend his statement of claim to refer to section 469 of the *Criminal Code*, R.S.C. 1985, c. C-

46, which grants the power to every court of criminal jurisdiction to deal with certain types of offences, and to include additional relief such as an order directing the Minister of Public Safety to dismantle the present CBSA and to implement a new Agency that conforms to the requirements of the *Canada Border Services Agency Act*.

[10] In August 2016, after filing a brief statement of defence, the respondent filed a motion in writing seeking an order striking out the statement of claim in its entirety without leave to amend. In her order dismissing the said motion, Prothonotary Milczynski made it clear that the respondent had not relied on an alternative approach of challenging each type of claim and relief sought so that at least some portions of the statement of claim could be struck. Having found that it was not clear that the appeal pursuant to section 135 of the *Customs Act* was without merit and that Mr. Hociung had to institute a separate action for his other causes of action, the Prothonotary dismissed the motion. That said, she expressly noted that the respondent would not be prevented from seeking an order striking out portions of the statement of claim at a later stage, once Mr. Hociung filed the motion to amend he alluded to in his representations before her.

[11] On February 20, 2017, Mr. Hociung filed a motion in writing to amend his statement of claim. On March 1, 2017, the respondent filed the motion for summary judgment that resulted in the decision under appeal in this file. Despite the Prothonotary's comments, once again, rather than relying on arguments targeted at each type of claim and relief sought, the respondent asked for the dismissal of the entire action, even in its amended form based on what the respondent considered the only genuine issues. These consisted of two questions of law: (i) whether, in an action brought under section 135 of the *Customs Act*, a plaintiff may claim damages or seek

mandamus, and (ii) whether collector coins are “currency” or “goods” for the purpose of the *Customs Act*.

[12] It is not disputed that in an appeal pursuant to section 135 of the *Customs Act*, a plaintiff cannot contest decisions such as the imposition of a penalty made under other provisions of the *Customs Act*, for generally such decisions must be contested by an application for judicial review to be filed within 30 days of the decision, rather than an ordinary action filed within the 90 days from the notification of the ministerial decision (see for example *Nguyen v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 724; *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208) and very recently *Chen v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para. 9).

[13] Relying on the jurisprudence referred to in the Federal Court’s reasons (the Reasons) at paragraphs 27 to 29, the respondent sought to exclude any other claims or relief from the statement of claim on the basis that these were also outside the scope of section 135. Presumably, rather than dealing with the numerous legal issues arising from the nature of those allegations including jurisdiction and standing, this offered an easier way to dispose of the numerous claims and relief sought by Mr. Hociung.

[14] Obviously, unless the respondent succeeded on the first question of law, the answer as to the second question of whether Mr. Hociung’s collector coins were “goods” or “currency” could not warrant the dismissal of the statement of claim in its entirety (see Reasons at paras. 16 to 20). Indeed, as acknowledged by the respondent’s counsel at the hearing before us, unless a joinder of

causes of action is precluded, the answer to the second question clearly could not justify the dismissal of the claim for damages based on threats of violence by a CBSA officer.

[15] I ought to note that there are obvious difficulties arising when a party is self-represented and may lack legal knowledge and some or all of his claims may be without merit. Despite this reality, defendant's counsel has the duty to put before the court a motion including all of the appropriate grounds and authorities that will enable the Court to efficiently strike out or dismiss a claim on the basis that it has no merit. Efficiency and proportionality do not justify undue legal shortcuts.

[16] The Federal Court dismissed the action after reformulating the first question as follows: "Is an action commenced pursuant to section 135 of the *Customs Act* limited to a determination of whether there has been a contravention of the *Customs Act*?" It found that anything other than whether or not Mr. Hociung had contravened section 12 of the *Customs Act* was beyond the scope of a section 135 action and must be pursued in other proceedings (Reasons at paras. 25 to 32). Except for a brief mention at paragraph 26 of the Reasons that it had not been persuaded by Mr. Hociung that section 135 allows for a joinder of various causes of action, the Federal Court did not explain why it excluded the application of Rules 101 and 106 of the *Federal Courts Rules*, S.O.R./98-106 (the *Rules*), from the ambit of subsection 135(2) of the *Customs Act* (See paragraph 21 below).

[17] In respect of the second question, it held that the collector coins at issue are “goods” within the meaning of section 12 of the *Customs Act* and had to be declared. Thus, Mr. Hociung had contravened the *Customs Act* and his collector coins could be seized on that basis.

[18] Furthermore, the Federal Court found that even if in its view these type of coins may also have to be declared when their denomination value was over the limit of \$10,000 CAD or its equivalent in foreign currency (section 12 of the *Proceeds of Crime Act* and section 2 of the *Reporting Regulations*), the fact that these coins are also “goods” under the *Customs Act* does not create a true conflict between the relevant legislative provisions (Reasons at paras. 68 to 72).

[19] Importantly, the Federal Court also noted that the question of whether duties were payable on these “goods” was not the issue in the action, as the obligation to declare under section 12 of the *Customs Act* was not limited to “goods” on which duties are actually payable (Reasons at paras. 63 to 66).

II. Issues

[20] This appeal raises the following main issues:

- A. Did the Federal Court make a reviewable error in answering the two questions raised in the respondent’s motion?
- B. Is there a reasonable apprehension of bias as alleged by Mr. Hociung?

III. Relevant Statutory Provisions

[21] Subsection 12(1) and section 135 of the *Customs Act* read as follows:

12 (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.

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.

Ordinary action

(2) The *Federal Courts Act* and the rules made under that Act 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.

12 (1) Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions réglementaires, toutes les marchandises importées doivent être déclarées au bureau de douane le plus proche, doté des attributions prévues à cet effet, qui soit ouvert.

135 (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

Action ordinaire

(2) La *Loi sur les Cours fédérales* et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), sous réserve des adaptations occasionnées par les règles particulières à ces actions.

[22] Rules 101 and 106 as well as some of the other relevant provisions referred to herein are reproduced in Annex 1.

IV. Analysis

[23] It is well established that on a motion for summary judgment, the standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33, apply (*Hryniak v. Mauldin*, 2014 SCC 7 at paras. 81

and 84). Thus, the standard of correctness applies to questions of law, while questions of fact and of mixed fact and law are reviewed on the standard of palpable and overriding error.

A. *Did the Federal Court err in concluding that Mr. Hociung could not join any other cause of action in an action involving his appeal pursuant to section 135 of the Customs Act?*

[24] As mentioned earlier, Mr. Hociung's main argument is that Rule 101(1) allows him to request relief in his action in respect of more than one claim. Pursuant to Rule 101(3), not all parties to the action need have an interest in all relief claimed in the said proceeding. Mr. Hociung submits that if Parliament intended to exclude the application of this Rule to actions instituted pursuant to section 135 of the *Customs Act*, it would have used explicit language similar to the one used in subsection 81.28(3) of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the *Excise Tax Act*), which deals with actions brought under that section. The relevant portion of the provision reads as follows:

(3) An appeal to the Federal Court under this Part is deemed to be an action in the Federal Court to which the *Federal Courts Act* and the rules made under that Act applicable to an ordinary action apply, except as varied by special rules made in respect of such appeals and except that

(a) the rules concerning joinder of parties and causes of action do not apply except to permit the joinder of appeals under this Part;

[...]

(3) Un appel à la Cour fédérale en vertu de la présente partie est réputé être une action devant celle-ci à laquelle la *Loi sur les Cours fédérales* et les règles établies conformément à cette loi s'appliquent comme pour une action ordinaire, sauf dans la mesure où l'appel est modifié par des règles spéciales établies à l'égard de tels appels, sauf que :

a) les règles concernant la jonction d'instances et de causes d'action ne s'appliquent pas, sauf pour permettre la jonction d'appels en application de la présente partie;

[...]

[25] Subsection 135(2) of the *Customs Act* clearly indicates that the *Rules* apply to an action instituted under subsection 135(1), except as varied by special rules made in respect of such actions. The *Customs Act* does contain some specific provisions such as its subsection 106(3), which deals with stays of actions and other proceedings that could be viewed as special rules within the meaning of subsection 135(2). However, the respondent did not direct us to any provisions of the *Customs Act* setting a special rule that could preclude the application of Rules 101 and 106. I have not found any.

[26] The case law holding that in an action pursuant to section 135, a party cannot seek judicial review of decisions other than whether there has been a contravention to the *Customs Act* is of no help here. None of the decisions relied upon by the Federal Court and the respondent deal with the issue before us or rely on reasoning that could be relevant to the interpretation of the current issue.

[27] The Rules are very liberal in their treatment of joinders of parties and causes of action. However, this right is subject to the overriding discretion and power of the Court to sever claims as provided by Rule 106. Before severing claims pursuant to that provision, the Court must carefully weigh the prejudice to the plaintiff, if any. Severing claims pursuant to Rule 106 is not the same as dismissing an action for summary judgment. It is a procedural order that is usually followed by appropriate directions detailing how to sever the claims. Certainly, it should be done in a manner that would not preclude a party from pursuing an otherwise valid claim because it would now be time-barred.

[28] In the same manner that the respondent's motion, which refers to Rule 221 as opposed to Rule 215, was considered a proper motion for summary judgment by the Federal Court, despite this error, Mr. Hociung's action must be considered for what it is – an action where he has included more than one cause of action and where he seeks more than an appeal of the Minister's decision under section 135 of the *Customs Act*.

[29] Because the Federal Court erred in its conclusion in respect of this first question, it could not simply dismiss the action in its entirety on the sole basis that there had been a contravention to the *Customs Act* without examining if and how all the causes of action and relief sought were affected by such determination.

[30] I will comment further on what order could be granted on this motion and in this appeal in section V of these reasons after reviewing whether the Federal Court erred in concluding that the coins at issue were "goods" that had to be declared under subsection 12(1) of the *Customs Act*.

B. *Are the coins at issue "goods" that must be reported under section 12 of the Customs Act?*

[31] Before us, Mr. Hociung argues that as the purpose of the *Customs Act* is to collect custom duties, the obligations set out in section 12 of the *Customs Act* can only apply to goods on which duties are payable. Even if his coins were "goods", a conclusion that he also contests, because they were either exempted from taxes or subject to a zero custom duty rate, there was no obligation to report them. I will deal with this argument first. If I find that the obligation to report

applies regardless of whether duties are payable, I will review whether as argued by Mr. Hociung, his coins fall outside of the ambit of “goods” as this word is used in section 12.

[32] Having considered the wording of section 12 in its context, harmoniously with the purpose and object of the scheme of the *Customs Act* and of this particular provision, I agree with the Federal Court that the obligation to declare is distinct from the obligation to pay duties which is dealt with under the title “Duties” starting at section 17 of the *Customs Act*. The obligation to report is not limited to goods that attract the payment of duties or other taxes.

[33] There is nothing in the ordinary meaning of the wording of subsection 12(1) that would justify such a limitation.

[34] When one considers the wording of subsection 12(1) in the context of section 12 as a whole, subsection 12(7) becomes relevant. It provides that subject to three cumulative conditions, goods described in tariff item 9813.00.00 or 9814.00.00 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, S.C. 1997, c. 36 may not be seized as forfeit by reason only that they were not reported under subsection 12(1). It is telling that “goods” that fall within the description of the aforementioned tariff items will only be exempted from such seizure if “their importation is not prohibited under the Customs Tariff or prohibited, controlled or regulated under any act of Parliament, other than this act or the Customs Tariff.” This is so, even if those goods are not charged with duties (see text of this provision in Annex 1).

[35] Moreover, I cannot agree that the interpretation suggested by Mr. Hociung is mandated by the main purpose of the *Customs Act*. The officers of the CBSA are the persons charged with determining whether or not duties are payable and whether or not goods can be imported into Canada without any restrictions under other statutes. They cannot fulfill their statutory responsibilities unless goods are reported to them. To claim the benefit on an exemption or a zero rate of duty, one must first report the goods.

[36] Section 13 of the *Customs Act* also creates another obligation quite distinct from the payment of duties. It is an obligation to answer questions about the goods imported and to present those goods for inspection to an officer of CBSA when required to do so. This obligation arises whether or not duties or other taxes are due.

[37] Then, the *Customs Act* provides at section 18 who is liable to pay the duties as defined in section 2(1) of the *Customs Act* (see also The *Excise Tax Act*, section 212 which refers to persons liable under the *Customs Act* to pay duties on imported goods confirming that such an obligation arises from the provisions of the *Customs Act* itself).

[38] There is no ambiguity, an exemption from the payment of taxes under the *Excise Tax Act*, or a zero custom duty rate in the *Customs Tariff* is not an exemption to report under subsection 12(1) of the *Customs Act*.

[39] It appears from the case synopsis (Appeal Book, Volume 4 at page 655 and 658) that in the CBSA's view, subsection 12(7) of the *Customs Act* did not apply to Mr. Hociung's coins,

which were imported for the first time into Canada. Mr. Hociung did not contest this particular finding. From my review of the description of the tariff items referred to in that provision, it is evident that he indeed had no basis to do so.

[40] Having determined that the obligation to report or declare all goods imported in Canada is not limited to “goods” which are subject to the payment of duties or other taxes, it is clear from the wording of the motion for summary judgment and the respondent’s written representations that the only other question that had to be determined is whether the actual coins seized were “goods” within the meaning of section 12 of the *Customs Act*.

[41] There is no need, and it would be unwise for this Court to attempt to give an exhaustive definition of the word “goods”, considering the *Customs Act* does not contain such an exhaustive definition. Indeed at section 2, it simply states:

goods, for greater certainty, includes conveyances, animals and any document in any form;
(*marchandises*)

marchandises Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support.
(*goods*)

[42] The word “goods” is intended to be used in the broadest sense possible considering that in its ordinary meaning; it would not usually be understood to include “any document in any form”.

[43] Neither party relied on any case law dealing with the ambit of section 12 of the *Customs Act* or on the legislative evolution of that section. However, Mr. Hociung and the respondent have referred to several statutes, including the *Customs Tariff*, the *Excise Tax Act*, the *Proceeds*

of *Crime Act*, the *Currency Act*, the *Royal Mint Act*, R.S.C., 1985, c. R-9 and related regulations.

Although I have considered them, I need not refer to all of them for I find that the *Customs Tariff* provides the most useful indication of the legislator's intention as to whether coins that have legal tender such as those under consideration are included in the word "goods".

[44] Pursuant to section 4 of the *Customs Tariff*:

<p>Unless otherwise provided, words and expressions used in this Act and defined in subsection 2(1) of the <i>Customs Act</i> have the same meaning as in that subsection</p>	<p>Sauf indication contraire, les termes et expressions utilisés dans la présente loi et définis au paragraphe 2(1) de la Loi sur les douanes s'entendent au sens de ce paragraphe.</p>
---	---

[45] Nothing in the *Customs Tariff* provides otherwise in respect of the word "goods". It is quite clear when one reads, for example, the definition of "Tariff Item" which basically is a description of "goods", and section 10 of the *Customs Tariff* (See Annex 1) which deals with the classification of "goods" in the List of Tariff Provisions, that generally something listed under a Tariff item is within the ambit of the word "goods" in the *Customs Act*, particularly as used in section 12.

[46] As explained in *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 2 S.C.R. 80 (*Igloo Vikski*), the *Customs Tariff* "implements Canada's obligation as a party to the International Convention Governing the Harmonized Commodity Description and Coding System... The Convention governs the Harmonized Commodity Description and Coding System (The "Harmonized System") by which approximately 5,000 commodity groups of imported goods are classified" (*Igloo Vikski* at para. 3) (my emphasis). This system was developed to foster predictability and stability in classification practices internationally. "The Harmonized System

uses an eight-digit classification system for tariff classifications, which is incorporated into the Schedule to the Customs Tariff” (*Igloo Vikski* at para. 5). Rather than using the example (Live Animals; Animal Products) used in *Igloo Vikski*, I will refer to some classification items related to what one would ordinarily consider “money” or “currency” such as issued banknotes that are legal tender (Tariff item No. 4907.00.00.12, see Annex 1), coins (Tariff item No. 71.18) including gold coins that are legal tender (Tariff item No. 7118.90.00.10 – see Annex 1), and silver or other metal coins (Tariff item No. 7118.90.00.99). There are other relevant Tariff items, but my point here is that the words “money” and “currency” are not used in the *Customs Tariff* or in the *Customs Act* except when a sum of money needs to be paid or value is considered (see for example sections 55, 132 and 133 of the *Customs Act*). Indeed the Harmonized System is a much more precise classification for imported goods. It is therefore not particularly useful to look at various statutory definitions of “money” or “currency” to construe section 12 of the *Customs Act*. It is also unnecessary to examine whether coins could be “financial instruments” under the *Excise Tax Act*.

[47] However, in light of Mr. Hociung’s argument that it would be contradictory to include anything falling within the definition of “currency” under the *Proceeds of Crime Act* in the definition of “goods” under the *Customs Act*, I must agree with the Federal Court that the interpretation of the *Proceeds of Crime Act* it adopted, even if it was not required in my view to do so to answer the question raised in the motion before it, does not result in a conflict between the *Proceeds of Crime Act* and the *Customs Act*. Those two statutes can both be applied without contradiction or conflict. The fact that under the *Proceeds of Crime Act* the obligation to report is more limited – it only applies to currency and monetary instruments over the limit set out in the

Reporting Regulations, cannot justify restricting the proper interpretation of section 12 of the *Customs Act* which Parliament clearly did not see fit to amend when it adopted the *Proceeds of Crime Act* in 2000.

[48] I therefore conclude that the Federal Court did not err in law when it concluded that the coins were “goods” subject to the obligation to declare provided for in section 12 of the *Customs Act*.

[49] As mentioned, to determine this appeal, it is not necessary for this Court to deal with the issue of whether or not the subject coins could fall within the definition of “currency” of the *Proceeds of Crime Act* in other cases. That said, I note that the respondent did not challenge the findings of the Federal Court in that respect, particularly those found at paragraphs 35 and 53 of the reasons.

C. *Reasonable apprehension of bias*

[50] Mr. Hociung alleges that the Federal Court judge was biased against him. He points specifically to paragraph 16 of the Reasons where the Federal Court states “the plaintiff does not dispute that the issues identified by the defendant are genuine issues. However, the plaintiff submits that there are additional issues raised in the statement of claim to be addressed in the course of the action. I disagree.”

[51] Mr. Hociung also indicates that bias can be inferred from the fact that the Federal Court relied on “evidence” that was not relied upon by the parties in paragraphs 58 and 60 of the

Reasons. At paragraph 58 of the Reasons, the Federal Court refers to the definition of “goods” at subsection 2(1) of the *Customs Act* and at paragraph 60 to section 123 of the *Excise Tax Act* where the word “money” is defined.

[52] The applicable standard here is a reasonable apprehension of bias (*Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at page 394). The apprehension must be a reasonable one and the test is: what would an informed person, viewing the matter realistically and practically – in having thought the matter through – conclude. This is a difficult test to meet. There is a strong presumption that judges are performing their duties in an unbiased way, and cogent evidence must be adduced to support such a serious allegation.

[53] I have no hesitation in concluding that Mr. Hociung’s allegation is baseless. Unfortunately, as is often the case with self-represented litigants, it appears to be the result of a misunderstanding of the law and the task to be performed by a court when required to construe legislation before it.

[54] The fact that the Federal Court may have reached the wrong conclusion at paragraph 16 is in no way evidence of a bias, real or apprehended. Otherwise all decisions reversed in appeal or quashed on an application for judicial review based on an error of law or any other reviewable error would raise such an apprehension. This is simply not so.

[55] Statutory provisions, including definitions in statutes put in play by the issues before a court, are not “evidence”. When asked to construe a statute, a court may refer to the provisions

that are clearly relevant as they are part of the context it must consider to reach its decision. I also note that there would have been no benefit to seek the parties' views on those legislative provisions which they allegedly fail to expressly refer to, for they are quite unambiguous, and were clearly relevant to the issues raised by them.

[56] In fact, when one considers the decision as a whole, especially the fact that the Federal Court dealt with the issue of whether collector coins could be included in the definition of "currency" under the *Proceeds of Crime Act*, it becomes clear that the Federal Court did not do what an allegedly bias decision maker would be expected to do. It did not accept the interpretation proposed by the respondent. It clearly endeavoured to answer Mr. Hociung's preoccupation with the CBSA's restrictive interpretation. Although Mr. Hociung may not agree with the interpretation of the Federal Court, the fact remains that he got more in that respect than he might otherwise have been entitled to on this motion.

D. *Could the Federal Court dismiss the action in its entirety and can this Court simply dismiss the motion for summary judgment and "order that the proceeding continue to trial" as requested by Mr. Hociung?*

[57] Having correctly concluded that there was a contravention to section 12 of the *Customs Act*, the Federal Court had the power, pursuant to Rule 215(3), to dismiss all the allegations relating to the appeal pursuant to section 135 of the *Customs Act* as it involves no other genuine issue. Its legal conclusion in respect of section 12 could also be sufficient to justify dismissing the claims for damages based on the allegations that the seizure constituted a fraud and a misapplication of the *Customs Act* in this case. On the other hand, as mentioned, it could not dismiss the claim based on alleged threats of violence.

[58] Although Mr. Hociung has attempted to summarize his various claims at paragraph 14 and again on page 15 of his memorandum of fact and law, I do not consider that this Court had the benefit of sufficient representations by the parties to render the decision that the Federal Court should have rendered had it properly exercised its power under section 215(3) of the *Rules*. Obviously, this Court cannot simply dismiss the motion for summary judgment, given its conclusion that there was a contravention to section 12 of the *Customs Act*. Thus, there is little choice but to return the matter to the Federal Court, who will be in a better position to deal with this issue after seeking additional written representations by the parties as this motion was made in writing pursuant to Rule 369.

[59] That said, before concluding, I ought to add some comments for the benefit of Mr. Hociung. Now that it is clear that his appeal pursuant to section 135 of the *Customs Act* and his claims based on fraud and misrepresentations as to the right of the CBSA to seize his coins do not raise any genuine issue for trial, I urge him to seek legal advice so that he may seriously reassess whether he wishes to pursue whatever claims or allegations may remain in his statement of claim.

[60] The fact that this appeal may be granted in part should not be construed in any manner as meaning that whatever claims or relief ultimately remaining have any chance of success. Clearly at this stage, this Court is not in a position to make such a finding, especially not having heard arguments from either side on the numerous legal issues raised by the melting pot of claims that may remain.

[61] Mr. Hociung is a well-educated and intelligent man who clearly devoted much effort to researching the law. However, the fact remains that the issues raised in his action are highly technical and complex.

[62] For example, he may not appreciate that the Federal Court does not have any inherent criminal jurisdiction to deal with offences under s. 469 of the *Criminal Code* or to impose penalties under the said *Code*. Also, in *S.A. Metro Vancouver Housing Corp.*, 2019 SCC 4, the Supreme Court of Canada recently reiterated at paragraph 60 that:

[d]eclaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought [...].

[63] It is certainly not clear to me at this stage, given that the only basis on which Mr. Hociung's coins were seized was a contravention to the *Customs Act*, that there is any real, as opposed to a theoretical dispute left, and that Mr. Hociung has a genuine interest (in the legal sense) in its resolution. This is why, among other things, legal advice at this stage would be most appropriate. It would also ensure that Mr. Hociung does not unduly expose himself to the payment of court costs should his remaining claims ultimately fail.

V. CONCLUSION

[64] The appeal should be granted in part; the judgment of the Federal Court dismissing the action in its entirety should be quashed. The matter should be returned to the Federal Court for determination of which claims and relief can properly be dismissed on the basis of the Federal

Court's finding that Mr. Hociung has contravened section 12 of the *Customs Act* and the CBSA was legally entitled to seize his coins under the *Customs Act*. Obviously, this should not be construed as limiting any other order the Federal Court may choose to issue under Rule 215(3).

[65] Given that success was divided on the issues raised in this appeal, I propose that each party pay their own costs.

“Johanne Gauthier”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
Marianne Rivoalen J.A.”

Annex 1

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

Interpretation

Definitions

2(1) In this Act,

[...]

duties means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the *Excise Tax Act*; (droits)

[...]

Report of Goods

Report

Certain goods not subject to seizure

12(7) Goods described in tariff item No. 9813.00.00 or 9814.00.00 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*

Définitions et champ d'application

Définitions

2(1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

droits Les droits ou taxes imposés, en vertu de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les mesures spéciales d'importation*, du *Tarif des douanes* ou de toute autre loi fédérale, sur les marchandises importées. En sont exclues, pour l'application du paragraphe 3(1), des alinéas 59(3)b) et 65(1)b), des articles 69 et 73 et des paragraphes 74(1), 75(2) et 76(1), les taxes imposées en vertu de la partie IX de la *Loi sur la taxe d'accise*. (duties)

[...]

Déclaration

Déclaration

Marchandises soustraites à la saisie-confiscation

12(7) Ne peuvent être saisies à titre de confiscation en vertu de la présente loi, pour la seule raison qu'elles n'ont pas fait l'objet de la déclaration prévue au présent article, les marchandises, visées aux nos tarifaires 9813.00.00 ou 9814.00.00 de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*, pour lesquelles les conditions suivantes sont réunies :

- | | |
|---|--|
| <p>(a) that are in the actual possession of a person arriving in Canada, or that form part of his baggage, where the person and his baggage are being carried on board the same conveyance,</p> | <p>a) elles sont en la possession effective ou parmi les bagages d'une personne se trouvant à bord du moyen de transport par lequel elle est arrivée au Canada;</p> |
| <p>(b) that are not charged with duties, and</p> | <p>b) elles ne sont pas passibles de droits;</p> |
| <p>(c) the importation of which is not prohibited under the <u>Customs Tariff</u> or prohibited, controlled or regulated under any Act of Parliament other than this Act or the <u>Customs Tariff</u></p> | <p>c) leur importation n'est pas prohibée par le <u>Tarif des douanes</u>, ni prohibée, contrôlée ou réglementée sous le régime d'une loi fédérale autre que la présente loi ou le <u>Tarif des douanes</u>.</p> |

may not be seized as forfeit under this Act by reason only that they were not reported under this section.

[...]

[...]

Obligation to answer questions and present goods

Obligations du déclarant

13 Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall

13 La personne qui déclare, dans le cadre de l'article 12, des marchandises à l'intérieur ou à l'extérieur du Canada, ou qu'un agent intercepte en vertu de l'article 99.1 doit :

(a) answer truthfully any question asked by an officer with respect to the goods; and

a) répondre véridiquement aux questions que lui pose l'agent sur les marchandises;

(b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.

b) à la demande de l'agent, lui présenter les marchandises et les déballer, ainsi que décharger les moyens de transport et en ouvrir les parties, ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

[...]

[...]

Presumption of importation

Présomption d'importation

18 (1) For the purposes of this section, all goods reported under section 12 shall be deemed to have been

18 (1) Pour l'application du présent article, toutes les marchandises déclarées conformément à l'article 12

imported.

sont réputées avoir été importées.

Liability of person reporting goods short landed

Solidarité du déclarant et de son mandant

(2) Subject to subsections (3) and 20(2.1), any person who reports goods under section 12, and any person for whom that person acts as agent or employee while so reporting, are jointly and severally or solidarily liable for all duties levied on the goods unless one or the other of them proves, within the time that may be prescribed, that the duties have been paid or that the goods

(2) En cas d'application de l'article 12, le déclarant et son mandant ou employeur sont, sous réserve des paragraphes (3) et 20(2.1), solidairement responsables de tous les droits imposés sur les marchandises, sauf si, dans le délai réglementaire, l'un d'eux établit le paiement des droits ou, à propos des marchandises, l'un des faits suivants :

(a) were destroyed or lost prior to report or destroyed after report but prior to receipt in a place referred to in paragraph (c) or by a person referred to in paragraph (d);

a) elles ont été soit détruites ou perdues avant la déclaration, soit détruites entre le moment de la déclaration et leur réception en un lieu visé à l'alinéa c) ou par la personne visée à l'alinéa d);

(b) did not leave the place outside Canada from which they were to have been exported;

b) elles n'ont pas quitté le lieu de l'extérieur du Canada d'où elles devaient être exportées;

(c) have been received in a customs office, sufferance warehouse, bonded warehouse or duty free shop;

c) elles ont été reçues dans un bureau de douane, un entrepôt d'attente, un entrepôt de stockage ou une boutique hors taxes;

(d) have been received by a person who transports or causes to be transported within Canada goods in accordance with subsection 20(1);

d) elles ont été reçues par une personne qui fait office de transitaire conformément au paragraphe 20(1);

(e) have been exported; or

e) elles ont été exportées;

(f) have been released.

f) elles ont été dédouanées.

Rates of duties

Taux des droits

(3) The rates of duties payable on goods under subsection (2) shall be the rates applicable to the goods at the time they were reported under section

(3) Le taux des droits payables sur les marchandises conformément au paragraphe (2) est celui qui leur est applicable au moment où elles font

12.

l'objet de la déclaration prévue à l'article 12.

Regulations

(4) The Governor in Council may make regulations prescribing the circumstances in which such bonds or other security as may be prescribed may be required from any person who is or may become liable for the payment of duties under this section.

Rèlements

(4) Le gouverneur en conseil peut, par règlement, fixer les cautions ou autres garanties susceptibles d'être souscrites par les personnes effectivement ou éventuellement redevables de droits au titre du présent article et déterminer les circonstances de la souscription.

Federal Courts Rules, S.O.R./98-106

Joinder of claims

101 (1) Subject to rule 302, a party to a proceeding may request relief against another party to the same proceeding in respect of more than one claim.

Causes d'action multiples

101 (1) Sous réserve de la règle 302, une partie à une instance peut faire une demande de réparation contre une autre partie à l'instance à l'égard de deux ou plusieurs causes d'action.

Separate capacity

(2) A party may request relief in a separate capacity in respect of different claims in a single proceeding.

Réparation à titre distinct

(2) Une partie peut demander réparation à titre distinct pour diverses causes d'action faisant l'objet d'une instance.

Interest in all relief not essential

(3) Not all parties to a proceeding need have an interest in all relief claimed in the proceeding.

Réparation ne visant pas toutes les parties

(3) Il n'est pas nécessaire que chacune des parties à l'instance soit visée par toutes les réparations demandées dans le cadre de celle-ci.

[...]

[...]

Separate determination of claims and issues

106 Where the hearing of two or more claims or parties in a single proceeding would cause undue

Instruction distincte des causes d'action

106 Lorsque l'audition de deux ou plusieurs causes d'action ou parties dans une même instance compliquerait

complication or delay or would prejudice a party, the Court may order that	indûment ou retarderait le déroulement de celle-ci ou porterait préjudice à une partie, la Cour peut ordonner :
(a) claims against one or more parties be pursued separately;	a) que les causes d'action contre une ou plusieurs parties soient poursuivies en tant qu'instances distinctes;
(b) one or more claims be pursued separately;	b) qu'une ou plusieurs causes d'action soient poursuivies en tant qu'instances distinctes;
(c) a party be compensated for, or relieved from, attending any part of the proceeding in which the party does not have an interest; or	c) qu'une indemnité soit versée à la partie qui doit assister à toute étape de l'instance dans laquelle elle n'a aucun intérêt, ou que la partie soit dispensée d'y assister;
(d) the proceeding against a party be stayed on condition that the party is bound by any findings against another party.	d) qu'il soit sursis à l'instance engagée contre une partie à la condition que celle-ci soit liée par les conclusions tirées contre une autre partie.

Customs Tariff, S.C. 1997, c. 36

PART 1
Interpretation and General
Interpretation

Definitions

2 (1) The definitions in this subsection apply in this Act.

[...]

tariff item means a description of goods in the List of Tariff Provisions and the rates of customs duty and the accompanying eight-digit number in that List and, if applicable, in the "F" Staging List. (*numéro tarifaire*)

[...]

Words and expressions in Act

4 Unless otherwise provided, words and expressions used in this Act and

PARTIE 1
Définitions et dispositions générales

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

numéro tarifaire Dénomination de marchandises, figurant sur la liste des dispositions tarifaires, marquée d'un numéro à huit chiffres et les taux figurant sur cette liste et, le cas échéant, au tableau des échelonnements. (*tariff item*)

[...]

Termes de la Loi sur les douanes

4 Sauf indication contraire, les termes et expressions utilisés dans la présente

defined in subsection 2(1) of the Customs Act have the same meaning as in that subsection.

loi et définis au paragraphe 2(1) de la Loi sur les douanes s'entendent au sens de ce paragraphe.

...

[...]

Classification of goods in the List of Tariff Provisions

Classement des marchandises dans la liste des dispositions tarifaires

10 (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

10 (1) Sous réserve du paragraphe (2), le classement des marchandises importées dans un numéro tarifaire est effectué, sauf indication contraire, en conformité avec les Règles générales pour l'interprétation du Système harmonisé et les Règles canadiennes énoncées à l'annexe.

Classification of “within access commitment” goods

Classement de marchandises « dans les limites de l'engagement d'accès »

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the Export and Import Permits Act and in compliance with the conditions of the permit.

(2) Des marchandises ne peuvent être classées dans un numéro tarifaire comportant la mention « dans les limites de l'engagement d'accès » que dans le cas où leur importation procède d'une licence délivrée en vertu de l'article 8.3 de la Loi sur les licences d'exportation et d'importation et en respecte les conditions.

Customs Tariff – Schedule

Section X: Pulp of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles Thereof

Section X : Pâtes de bois ou d'autres matières fibreuses cellulosiques; Papier ou carton à recycler (déchets et rebuts); Papier et ses applications

49 PRINTED BOOKS, NEWSPAPERS, PICTURES AND OTHER PRODUCTS OF THE PRINTING INDUSTRY; MANUSCRIPTS, TYPESCRIPTS AND PLANS

49 PRODUITS DE L'ÉDITION, DE LA PRESSE OU DES AUTRES INDUSTRIES GRAPHIQUES; TEXTES MANUSCRITS OU DACTYLOGRAPHIÉS ET PLANS

4907.00.00 Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title.

Banknotes being legal tender:

4907.00.00.12 Issued

[...]

Section XIV

Chapter 71: Natural or Cultured Pearls, Precious or Semi-precious Stones, Precious Metals, Metals Clad with Precious Metal, and Articles Thereof; Imitation Jewellery; Coin

7118 Coin

[...]

7118.90.00 Other

7118.90.00.10 Gold coin

7118.90.00.91 Canadian coin

[...]

7118.90.00.99 Other

4907.00.00 Timbres-poste, timbres fiscaux et analogues, non oblitérés, ayant cours ou destinés à avoir cours dans le pays dans lequel ils ont, ou auront, une valeur faciale reconnue; papier timbré; billets de banque; chèques; titres d'actions ou d'obligations et titres similaires.

Billets de banque, ayant cours légal :

4907.00.00.12 Émis

[...]

Section XIV

Chapitre 71 : Perles fines ou de culture, pierres gemmes ou similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie; monnaies

7118 Monnaies.

[...]

7118.90.00 Autres

7118.90.00.10 Pièces de monnaie d'or

7118.90.00.91 Monnaie canadienne

[...]

7118.90.00.99 Autres

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2000, c. 17

Currency and monetary instruments

12 (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

Limitation

(2) A person or entity is not required

Déclaration

12 (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l'agent, conformément aux règlements, l'importation ou l'exportation des espèces ou effets d'une valeur égale ou supérieure au montant réglementaire.

Exception

(2) Une personne ou une entité n'est

to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that those conditions have been met.

pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Sending reports to Centre

(5) The Canada Border Services Agency shall send the reports they receive under subsection (1) to the Centre. It shall also create an electronic version of the information contained in each report, in the format specified by the Centre, and send it to the Centre by the electronic means specified by the Centre.

Transmission au Centre

(5) L'Agence des services frontaliers du Canada fait parvenir au Centre les déclarations recueillies en application du paragraphe (1) et établit, dans la forme prévue par le Centre, une version électronique des renseignements contenus dans chaque déclaration qu'elle transmet au Centre par les moyens électroniques prévus par celui-ci.

Cross-border Currency and Monetary Instruments Reporting Regulations, S.O.R./2002-412

Minimum Value of Currency or Monetary Instruments

2 (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is \$10,000.

(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on

(a) the official conversion rate of the Bank of Canada as published in the Bank of Canada's Daily Memorandum of Exchange Rates that is in effect at the time of importation or exportation; or

(b) if no official conversion rate is set out in that publication for that

Valeur minimale des espèces ou effets

2 (1) Pour l'application du paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 \$.

(2) La valeur de 10 000 \$ est exprimée en dollars canadiens ou en son équivalent en devises selon :

a) le taux de conversion officiel de la Banque du Canada publié dans son Bulletin quotidien des taux de change en vigueur à la date de l'importation ou de l'exportation;

b) dans le cas où la devise ne figure pas dans ce bulletin, le taux de

currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

conversion que le déclarant utiliserait dans le cours normal de ses activités à cette date.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE GLEESON

DATED MARCH 15, 2018, NO. T-1450-15

DOCKET:

A-102-18

STYLE OF CAUSE:

RADU HOCIUNG v. MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

MAY 23, 2019

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

WEBB J.A.
RIVOALEN J.A.

DATED:

AUGUST 7, 2019

APPEARANCES:

Radu Hociung

FOR THE APPELLANT
ON HIS OWN BEHALF

Eric Peterson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin
Deputy Attorney General of Canada

FOR THE RESPONDENT

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-102-18

Ottawa, Ontario, August 7, 2019

CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.

BETWEEN:

RADU HOCIUNG

Appellant

and

MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Respondent

JUDGMENT

The appeal is granted in part as follows: the judgment of the Federal Court dismissing the action in its entirety is quashed. The matter is returned to the Federal Court for determination of which claims and relief can be properly dismissed on the basis that Mr. Hociung had contravened section 12 of the *Customs Act* and the CBSA was entitled to seize these goods under the said Act, and any other order the Federal Court may choose to issue under Rule 215(3).

"Johanne Gauthier"

J.A.

Federal Court



Cour fédérale

Date: 20180315

Docket: T-1450-15

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER

UPON MOTION by the plaintiff for leave to amend the Statement of Claim by adding Canada Border Services Agency and Her Majesty the Queen in Right of Canada as defendants, pleading criminal activities carried out by the proposed new defendants and their employees, amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*], pleading for additional relief, and updating the plaintiff's contact information;

UPON CONSIDERING the submissions of the parties concerning the proposed amendments;

AND UPON NOTING that the plaintiff's action is brought pursuant to section 135 of the *Customs Act* which states at subsection 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";

AND UPON CONSIDERING that a decision of the Minister under section 131 of the *Customs Act* is limited to a determination by the Minister as to whether or not there has been a contravention of that Act and any other plea for relief must be pursued separately (*Customs Act*, subsection 131(1), *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 22, *Nguyen v. Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 at paras 19 and 20).

AND UPON CONSIDERING that the substantive aspects of the plaintiff's proposed amendments consist of pleas for criminal penalties, damages, and for extraordinary remedies pursuant to section 18.1 of the *Federal Courts Act* ;

AND UPON CONSIDERING the relief sought through the proposed amendments is beyond the scope and intent of section 135 of the *Customs Act*;

AND UPON CONSIDERING that a claim for damages arising from officers' performance of their duties under the *Customs Act* must be brought within the limitation period set out at subsection 106(1) of the *Customs Act*;

AND UPON CONSIDERING that the limitation period for the commencement of a proceeding pursuant to subsection 106(1) of the *Customs Act* has passed;

AND UPON CONSIDERING that the absence of a reasonable prospect of success is a valid basis upon which a Court may dismiss a motion for leave to amend (*Bauer Hockey Corp. v. Sport Maska Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 at para 16; *Teva Canada Limited v. Gilead Sciences Inc.*, 2016 FCA 176);

AND UPON CONSIDERING that while elements of the proposed amendments (see for example the proposed amendments at para 1(i) and para 2) supplement the original claim by adding some factual detail to the matter or update the plaintiff's contact information, these elements of the proposed amendments do not substantively update or change the claim;

AND UPON CONCLUDING that the proposed amendments expanding the plaintiff's claims do not demonstrate a reasonable chance of success in an action brought pursuant to section 135 of the *Customs Act* and therefore it cannot be said that it is in "the interests of justice" to allow the motion for leave to amend (*Maximova v. Canada (Attorney General)*, 2017 FCA 230 at para 15, citing *AbbVie Corp. v. Janssen Inc.*, 2014 FCA 242 at para 3);

THIS COURT ORDERS that:

1. The motion to amend is dismissed.
2. Costs in the cause.

"Patrick K. Gleeson"

Judge

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-101-18

Citation: 2019 FCA 215

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

And

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Toronto, Ontario, on May 23, 2019.

Judgment delivered at Ottawa, Ontario, on August 7, 2019.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**WEBB J.A.
RIVOALEN J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Dockets: A-101-18

Citation: 2019 FCA 215

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Hociung appeals the order of the Federal Court (per Gleeson J.) dated March 15, 2018 (T-1450-15) dismissing his motion to amend his statement of claim made in writing pursuant to Rule 369 of the Federal Courts Rules, SOR/98-106.

[2] In a companion appeal in file A-102-18, this Court dealt with Mr. Hociung's appeal in respect of the judgment of the Federal Court granting the respondent's motion for summary judgment and dismissing Mr. Hociung's action.

[3] As noted in our reasons granting the appeal in part in file A-102-18 (2019 FCA 214), the findings of our Court in that file have an impact on the merits of some of the proposed amendments. The factual background and the general nature of the amendments are described in paragraphs 1 to 11 of our reasons. I need not repeat them here (see also paragraph 1 of the order of the Federal Court).

[4] The Federal Court dismissed Mr. Hociung's motion on the following bases:

- 1) The action brought pursuant to section 135 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), is limited to whether or not a contravention of that statute and any other plea for relief must be pursued separately. The substantive aspects of Mr. Hociung's proposed amendments consist of pleas for criminal penalties, damages and for extraordinary remedies pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, and are beyond the scope and intent of section 135 of the *Customs Act*.
- 2) The claim for damages arising from the performance by officers of their duties under the *Customs Act* must be brought within the limitation period set out at subsection 106(1) of the *Customs Act*, and in this case, the limitation period has passed.

- 3) The absence of a reasonable prospect of success is a valid basis upon which a court may dismiss a motion for leave to amend. While elements of the proposed amendments (see for example the proposed amendments at paras 1(i) and 2) supplement the original claim by adding some factual details or update the plaintiff's contact information, these elements do not substantially update or change the claims.

[5] In file A-102-18, this Court held that Mr. Hociung's action was not limited to an appeal under section 135 of the *Customs Act* and that Rule 101, allowing for joinder of causes of action applied. That said, our Court also confirmed that the allegations relating to the appeal under section 135 could be dismissed. This confirmation made it obvious that the officers involved in the seizure of Mr. Hociung's coins, as well as the prosecution of his opposition to the said seizure, were acting in the performance of their duties when they concluded that Mr. Hociung had contravened section 12 of the *Customs Act* when he failed to report these goods upon re-entering Canada after his day trip to the United States.

[6] This also means that any amendments to new claims in tort relating to the said seizure, or the fact that Mr. Hociung contravened section 12 (see for example the proposed amendment at paras 6 c) to g)) were properly dismissed for they clearly have no chance of success.

[7] Furthermore, the Federal Court has no inherent criminal jurisdiction, and I agree that any amendments, such as the references to courts having jurisdiction under section 469 of the *Criminal Code*, R.S.C. 1985, c. C-46 (C.C.), to deal with allegations of fraud as defined under

the C.C., to criminal conduct (such as indictable offences as per section 467.11 of the C.C., and to criminal penalties were also properly dismissed.

[8] That said, this Court did not agree with the Federal Court that the action based on alleged threats of violence could be dismissed simply on the basis referred to in the motion for summary judgment. This means that amendments relating to this claim such as the addition of the Crown as a defendant (section 3 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50) could not be dismissed on the Federal Court's interpretation of section 135 of the *Customs Act*.

[9] Thus, although the majority of the amendments could be dismissed by the Federal Court, it could not dismiss them all.

[10] Should Mr. Hociung decide to pursue his action further, the parties may be able to agree on which amendments are still in play, and they should have an opportunity to present submissions should they not be able to do so. Furthermore, Mr. Hociung may have to clarify certain things such as what portion of the damages are claimed solely as a result of the alleged threats of violence (see for example paragraph 17(a)) Whatever they may agree on should be submitted to the Federal Court.

[11] Thus, in my view, the matter should be remitted to the Federal Court to enable it to reassess whatever amendments are still sought after considering our reasons in file A-102-18 and the parties' additional representations, if any.

[12] I conclude that I would grant the appeal in part, quash the order of the Federal Court and remit the matter back for reconsideration. As in file A-102-18, I believe that each party should bear their own costs. I will note for the benefit of Mr. Hociung that disbursements arising from the fact that he now lives outside of Canada would not have been granted in any event.

“Johanne Gauthier”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
Marianne Rivoalen J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE GLEESON DATED
MARCH 15, 2018, NO. T-1450-15**

DOCKET:

A-101-18

STYLE OF CAUSE:

RADU HOCIUNG v. MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

MAY 23, 2019

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

WEBB J.A.
RIVOALEN J.A.

DATED:

AUGUST 7, 2019

APPEARANCES:

Radu Hociung

FOR THE APPELLANT
ON HIS OWN BEHALF

Eric Peterson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin
Deputy Attorney General of Canada

FOR THE RESPONDENT

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-101-18

Ottawa, Ontario, August 7, 2019

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT

The appeal is granted in part as follows: the order of the Federal Court is quashed. The matter is returned to the Federal Court for reconsideration.

"Johanne Gauthier"

J.A.

7. Applicant's Memorandum of Argument

Part I. Overview and Facts

1. The Canada Border Agency (CBSA) seized four \$50 USD gold coins and twenty \$1 USD silver coins in the currency of the United States, on the basis that the Appellant failed to report the coins upon his entry into Canada allegedly in contravention of Section 12 of the Customs Act, R.S.C. 1985, c. 1 (2nd Supp).
2. Mr. Hociung requested a Ministerial Decision, appealing the seizure, and a Minister's Delegate issued his decision on May 28, 2015, confirming the seizure.
3. Mr. Hociung then filed an appeal with the Federal Court, in docket T-1450-15 on August 28, 2015, pursuant Customs Act s. 135, requesting judicial review of the decision, and including other claims, seeking additional relief, including damages based on alleged torts committed during the decision making process, as well as during the initial decision to seize the currency.
4. During discovery of the Defendant, Mr. Hociung discovered evidence of fraud and facilitating money laundering by the Minister and the CBSA organization, and promptly filed a motion to amend the statement of claim, such that discovery on the new evidence could continue.
5. In response to the motion to amend, the Defendant filed a motion for summary judgment, seeking to dismiss the action in its entirety, and refused to provide further answers to written discovery questions.
6. The two motions were decided by Judge Gleeson of the Federal Court, denying the amendment motion, and dismissing the action in its entirety.
7. Mr Hociung appealed both motions to the Federal Court of Appeal, in dockets A-101-18 and A-102-18 respectively, and were heard together on May 23, 2019. Both appeals were allowed partially, although they largely agreed with the Federal Court, however recommended that the Federal Court reword its reasons. The reasons given are intertwined and make reference to each other.
8. This appeal appeals both Federal Court of Appeal in the present appeal.

Part II. *Statement of Issues*

(1) Minister of Public Safety is Facilitating Money Laundering

9. If the Minister of Public Safety is facilitating money laundering, which is a crime, this means Canada as a whole is a victim of this crime, and this makes it an issue of national importance. Further, the Minister is also tasked with running other law enforcement agencies, such as the RCMP. It can be concluded that all of such law enforcement agencies are compromised by the Minister's criminal interests, and as a result, Canada does not presently have a functioning law enforcement infrastructure. This is an issue of public importance.
10. The Minister's money laundering scheme relies on illegal treatment of currency, which gives rise to his seizure of the Applicant's currency under the Customs Act, and the subsequent Ministerial Decision that is under appeal. The Minister's Decision is a symptom of the Minister's money laundering efforts.

1. Can the Federal Courts Refuse to Review Minister's Decision?

11. Judicial review is the process by which an impartial court supervises administrative decisions made by partial tribunals. In this case, the decision maker is the Minister of Public Safety, and he has the power to collect duties on behalf of Her Majesty, and a vested interest in collecting “terms of release”, which he has the discretion of setting. The judicial review process ensures that the Minister doesn't overstep his statutory powers and that he makes decisions that are just.
12. In the case of the Customs Act, Parliament provided that decisions of the Minister are subject to judicial review in the Federal Court.
13. If the Federal Court may refuse its statutory obligation, it would mean the Minister may make any arbitrary decisions, not constrained by principles of justice.
14. Whether the Minister has absolute powers, or his powers are reviewable by the Federal Court, is a matter of public importance.

(2) Can Federal Court strike claims in a motion for summary judgment?

15. If the Federal Court can strike claims without hearing them, of its own accord without submissions from the parties, it can choose to not hear matters, which violates the person's Right to be heard. Whether the Federal Court has the power to violate Rights guaranteed by the Charter, it is an issue of national importance.

(3) Does Federal Court lack criminal jurisdiction?

16. When Parliament formed the Federal Courts, it gave them civil as well as criminal jurisdiction over matters where the Defendant is the Federal Crown. Parliament did not give original jurisdiction over the Federal Crown to any other Court. If the Federal Court does not have criminal jurisdiction over the Federal Crown, then the Crown can commit any crimes it sees fit, without any Court to reign it in. This is not what Parliament wanted, it is not compatible with a democratic society, and thus this is an issue of national importance.

Part III. Statement of Argument

(1) Minister of Public Safety is Facilitating Money Laundering

17. In an CBSA internal memo titled “Information Bulletin – Precious Metals – Bullion and Coin” (page 101 below), the CBSA creates an exemption from reporting requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* for precious metals currency and financial instruments. The explanation in the memo relies on circular logic that can be summarised as follows: “Gold currency is more valuable than its face value, therefore, is to be treated as goods and not as currency. Since it is not currency, a Cross-Border Currency or Monetary Instrument Report is not required”. No statutory provisions are given to justify this interpretation.
18. The circular logic that “currency is not currency”, by itself, would raise more questions than it answers, and to address this, the memo sets that the currency is “goods” instead, to be reported with a “B15 Casual Goods Import Document”.
19. The Memo also instructs that enforcement action is to allege the travellers failed to report “goods”, seize the currency and to set “terms of release”. This is exactly what happened

to the Applicant, who then appealed the seizure to the Minister, and lead to the Minister's Decision confirming that the currency should have been reported as “goods”

20. At the hearing of A-102-18 at the Federal Court of Appeal, J Gauthier explicitly asked the Respondent whether it had any money laundering concerns in case someone would enter Canada with \$100,000 in gold currency, and did not report them pursuant the *Proceeds Act*, to which the Respondent answered clearly that he is not concerned with such events.

21. The Minister of Public Safety, and the CBSA is thus facilitating money laundering, which is a criminal act.

(2) Can Federal Courts Refuse to Review Minister's Decision?

22. The FCA correctly determined that the Federal Court had committed a palpable error in concluding that an action commenced under Customs Act s. 135 can only contain one claim, and that claim was a judicial review of the Minister's Decision. However, the FCA committed its own palpable error in overlooking that a judicial review is required. The Federal Court did not conduct a review of the Minister's Decision, and neither did the Federal Court of Appeal.

23. The necessary elements of a judicial review are:

- the standard of review must be established for the Decision (correctness or reasonableness)
- answering whether reasons were given that would allow the person affected by the Decision and the Court to understand the decision, and to review it.
- Answering whether all the evidence before the decision maker was given appropriate consideration. Even on a correctness standard of review, it would make little sense for the issue to be re-decided without explaining why the evidence does not apply.

24. In the present case, the Minister decided that a contravention occurred because the coins “were not intended for circulation” (see “Minister's Decision”, page 104 below), and for this reason they are considered “goods” and not “currency”. The evidence before the Minister plainly demonstrated the coins are “currency” intended for circulation. Also, the

Minister provided no explanation or statutory reference to support the conclusion that “circulation” is a determining factor with respect to currency. The origin of the “circulation” term is the *Currency Act*, s. 8 (, and its purpose is to differentiate notes issued Bank of Canada for circulation from other notes issued by the bank such as promissory notes, which were not intended for circulation. The point is that only notes issued for circulation by the Bank of Canada are legal tender. However, all coins are legal tender.

25. A judicial review should have examined whether the Minister's “non-circulation” argument holds true given the *Currency Act* s.8, which was evidence before him. Instead, if the Federal Court and the Federal Court of Appeal's treatment of the decision can be construed as a judicial review, they both supplanted the reason given by the Minister (“coins are not currency because they are not for circulation”). Per *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 (CanLII), [2018] 1 S.C.R. 6 [Lukács]:

26. “In other words, while a reviewing court may supplement the reasons given in support of an administrative decision, it cannot ignore or replace the reasons actually provided. Additional reasons must supplement and not supplant the analysis of the administrative body. “

27. Furthermore, the *Currency Act* states at s.11 that no coin may be used otherwise than as currency. The judicial review should have examined whether this provision of the *Currency Act* supports the Minister's conclusion that some coins are not currency.

28. On a standard of correctness, a judicial review should have explained how the Minister's Decision is correct, even though there is no evidence to support it, and ample evidence to the contrary.

29. On a standard of reasonableness, a judicial review should have first analyzed whether the reasons given allow the Court to review the decision making process. There are no statutory provisions given to explain how “currency” is not “currency” but “goods”, a fact later confirmed by the respondent at the appeal hearing, that such evidence does not

exist. A reasonableness review should have found the decision unintelligible, as per Dunsmuir para 47-.

30. In fact, the Federal Court did analyze the Currency Act, and found that the coins are indeed currency. However, it also found that the coins were simultaneously “goods”, as it not consider the “may not be used as other than currency” provision of the Currency Act.
31. The FCA did not agree with the Federal Court's determination that the currency is “goods” and “currency” simultaneously, nor with the reasons. The Federal Court relied on the definition of “money” at Part IX, subsection 123(1) of the *Excise Tax Act* (see paras 51-62 of Federal Court's Reasons) to conclude that the currency in question is “goods” as defined by the *Customs Act*. The Appellant refuted this conclusion in the appeal to FCA, and the FCA offered an alternative explanation at paras 45-46 of its Reasons, claiming that the *Customs Tariff* and the *List of Tariff Provisions* is what makes currency reportable as “goods”. In its view, every “tariff item” is a “good” within the meaning of the “*Customs Act*” and must therefore be reported on importation. The very fact that even the FCA cannot agree with the FC as to what makes currency “goods” should have indicated to the FCA that there is a genuine issue for trial.
32. Unfortunately, the FCA omitted two critical provisions of the *Customs Tariff* and the *List of Tariff Provisions*, and these omissions are fatal to its argument. First, the List provides that coins that are legal tender (tariff items 7118.90.00.10 and 7118.90.00.91), carry a tariff rate of “Free”, ie, no tariff imposed. Second, section 20(1) of the Customs Tariff does require that where customs duties are imposed, they be paid in accordance with the *Customs Act*, it does not require any action pursuant the *Customs Act* where no customs duties are imposed.
33. Furthermore, at the appeal hearing, the FCA heard from the respondent that some goods are indeed exempt from reporting under the *Customs Act*, specifically those of the tariff items 9804.10.00 and 9804.20.00. The FCA did not mention this submission in its reasons, and it contradicts its conclusion that all goods listed in the *List of Tariff Provisions* must be reported. Indeed, the 9804.10.00 and 9804.20.00 items are marked with a tariff rate of “Free”, just as 7118.90.00.10 and 7118.90.00.91. If should follow that any reporting requirements that apply to the 9804 goods should apply equally to the

7118 goods. To conclude otherwise would mean the provisions are applied inconsistently.

34. Ultimately, the Court should see it as suspect that the FCA and the FC cannot agree on what makes currency “goods” and subject to the reporting provisions of the *Customs Act*. Even more so as the Minister himself has no intelligible explanation.
35. By way of illustrative example, suppose someone imported a bicycle. Where does the requirement to report per *Customs Act* come from? What would a Minister's Decision look like if the bicycle were not reported properly?
36. The appellant submits that the proper decision would be something like this: “Under the Excise Tax Act s50(1)(b) the bicycle is imposed a sales tax on the sale price of goods imported into Canada, at a rate of thirteen and one half percent, per ETA s. 50(1.1)(d), payable in accordance with the provisions of the *Customs Act*”. It is a straightforward explanation, requiring no guess-work. There is no doubt from the reading of the quoted provisions, that there is a tax imposed, and that it must be paid according to provisions of the *Customs Act*. Since paying duties is a 4-step process (report, account, payment, release) under the *Customs Act*, it follows that the *Excise Tax Act* requires the report step be completed.
37. Further, in its Reasons, para 32, the FCA concludes that the obligation to report (declare) is distinct from the obligation to pay duties. This is untrue, as evidenced plainly by s.18 of the *Customs Act*: “any person who reports goods under section 12 [...] is liable for all duties levied on the goods”.
38. Furthermore, it is clear from s.18, that the “goods” on which duties are levied are the same as the “goods” that are being reported, that is to say, the only interpretation of the word “goods” is to mean “those things upon which a duty is imposed and levied”, and not “goods” as defined by dictionary. It would make no rational sense for section 18 to talk about goods which are exempt from duties, and then to assign liability for those non-imposed duties.

Duty-paid goods not subject to seizure

39. Further, the FCA argues at para 34 that subsection 12(7) of the Customs Act (see Statutory Provisions, page 96) provides an explanation as to why goods described in tariff item 9813.00.00 or 9814.00.00 must be reported under section 12 regardless if they are charged with duties or not. The FCA completely missed the point and spirit of subsection 12(7).
40. The Notes for tariff chapter 98 sets that (a) the provisions of the chapter are not subject to the rule of specificity, and (b) that for the purpose of the chapter, “duties” means all duties and taxes levied and imposed under any Act of Parliament relating to customs, in other words, not only the tariffs imposed under the *Customs Tariff*. The two tariff items, 9813.00.00 and 9814.00.00 represent items of any classification, for which all taxes and duties have already been paid.
41. The purpose of subsection 12(7) is to clarify the purpose of report under section 12. It says that, all else being equal, items for which all duties and taxes have already been paid, may not be seized for reason of non-report. Identical items, for which some or all duties or taxes remain outstanding, may be seized (as they do not qualify for the 9813.00.00 or 9814.00.00 classifications). In other words, Parliament's intention is to seize items for which taxes are outstanding, but items where no taxes are outstanding, must not be seized. In other words, the goal of the *Customs Act* is to ensure the collection of taxes, by seizing goods where necessary to accomplish this goal.
42. Contrary to FCA's interpretation, the point of 12(7) is not to give customs officers the authority to seize prohibited, controlled or regulated goods. That authority is given under the respective regulations, and is not limited to tariff items 9813.00.00 and 9814.00.00.
43. A case can be made that for the purpose of tax collection, there is no difference between items that are fully duty paid, and items which are exempt from all duties. Exempt items can be thought of as “all duties that were due have been paid, no duties are outstanding”. However, this technicality is not necessary, as Parliament has quite clearly illustrated that the purpose of the *Customs Act* is to ensure collection of duties. Also, there are no provisions in the *Customs Act* dealing with goods that are exempt from all duties. It could be concluded that this is a major oversight on behalf of Parliament, but it is not. Every

Act of Parliament that invokes the *Customs Act*, in relation to importation of goods, does so with consistently similar wording: “taxes payable **in accordance** with the *Customs Act*”. Having already already specified that the *Customs Act* sets out the manner in which taxes must be paid, it would be superfluous to include provisions relating to instances where no taxes are payable.

Who is responsible for correct and complete reports?

44. At paragraph 35, the FCA argues, without reference to any statutory provision, that the responsibility for “determining whether or not duties are payable, and whether or not goods can be imported into Canada without restrictions under other statutes” belongs to the officers of the CBSA. The FCA also argues that the CBSA officers cannot fulfill their statutory responsibilities until goods are reported to them, and that to claim the benefit of an exemption or a zero rate of duty, one must first report the goods.
45. Further, at paragraph 36, the FCA argues, referencing section 13 of the *Customs Act*, that there is an obligation to answer questions about the goods imported and to present those goods for inspection to an officer, which is distinct from the payment of duties. The FCA omitted that pursuant section 13, this obligation belongs to “every person who reports goods under section 12 inside or outside Canada, or is stopped by an officer in accordance with section 99.1”
46. The FCA overlooked section 11 of the Customs Act, which requires every person arriving in Canada to enter only at a customs office, “without delay present himself or herself to an officer, and answer truthfully any questions asked by the officer in the performance of his or her duties under this or any other Act of Parliament”
47. The FCA likewise overlooked sections 11.4(1), 11.4(1.1), which also require “every person” who is leaving a customs controlled area, or who is in a customs controlled area.
48. Section 159 describes smuggling: “Every person commits an offence who smuggles or attempts to smuggle into Canada, whether clandestinely or not, any goods subject to duties, or any goods the importation of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament.”

49. Section 160(1) provides for punishment: “Every person who contravenes section 11, 12, 13, 15 or 16, [...] or commits an offence under section 159 [...] (a) is guilty of an offence punishable on summary conviction [...] or (b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years [...]”
50. The obvious conclusion is that the responsibility to provide information truthfully and completely belongs solely to the person importing goods, under severe criminal penalties. Also, the requirement to answer to officer's questions and to submit to search and inspection is clearly stated multiple times, each in various settings (for persons reporting, for persons in a controlled area, for persons leaving a controlled area, for persons entering Canada).
51. The position of the courts has consistently been that ignorance is not a defence to non-compliance with reporting requirements, nor has language barrier, or other such excuses.
52. The consistent message from both Parliament and the Courts is that the importer is responsible for correct, complete and accurate reports. The applicant believes this includes knowledge of instances where report is not required, such as acknowledged by the Federal Court (the applicant had \$220 and was under no obligation to report under Cross Border Currency Reporting Regulations).
53. The FCA assertions that CBSA officers “cannot fulfill their statutory responsibilities unless goods are reported to them” is simply untrue, and unsupported by the evidence. The Customs Act provides them ample tools to fulfill their duties.
54. Furthermore, section 159 (smuggling), explicitly states that smuggling only refers to “goods subject to duties”, and goods which are prohibited, controlled or regulated. However, no such language exists about good not subject to duties, and not prohibited, controlled or regulated. Section 160 provides that every person who contravenes sections 12 or 159, among others, is guilty of a criminal offence. If not reporting goods that are duty exempt is a contravention, subject to section 160, why did Parliament choose to not include it in the smuggling definition? This apparent inconsistency can only mean one thing. Not reporting goods that are exempt is not a contravention of either section 12 or 159. A person who makes a truthful, complete and correct report, based on their statutory

obligation to be informed, would know that importing exempt goods is not subject to collection of duties, through the well established 4-step process (report, accounting, payment, release). It is not a lie or misinformation to not report for payment goods that are exempt from duties.

55. Since officers have ample tools to do their jobs, and are backed up by severe criminal consequences for persons who do not comply, it cannot be said that reporting goods under section 12 serves to help them do their jobs. The only apparent role of a section 12 report is to establish who is the person liable for the payment of duties that are due to be paid, and it is quite obvious that this step is an integral part of the method for payment of duties.

56. The FCA is trying to construct an explanation that is simply not supported by the language of the *Customs Act*, and the taxing statutes which require payments be done in accordance with the *Customs Act*.

(3) Can Federal Court strike claims in a motion for summary judgment?

57. At paragraph 57 of its reasons, the FCA states that “the Federal Court had the power, pursuant to Rule 215(3), to dismiss all the allegations relating to the appeal pursuant to section 135 of the Customs Act as it involves no other genuine issue”.

58. Rule 215 provides that the Court must be satisfied that there is no genuine issue with respect to each claim before granting summary judgment with respect to that claim.

59. It defies logic to read Rule 215 that if one claim fails, the other (related) claims automatically involve to genuine issue.

60. By way of illustrative example, consider the following imaginary scenario: The Minister wants to help his brother, who is a widget dealer, to stomp out his competition. He decided to do this by seizing as forfeit all widget importations by the competitors, but allowing the brother's importations. The competitors would be forced to undertake a 6-month long Ministerial Decision process. At the end of the process, the Minister would

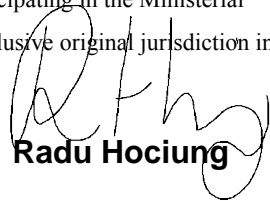
decide that there was no contravention, and return the widgets. In effect, the Minister is delaying all competitor's imports to give his brother an advantage. The fact that his ultimate decision was correct, and contains no genuine issue, does not excuse the anti competitive conduct by the Minister, and to the extent that the competitors are able to discover the true motivations of the Minister, their claims of anti-competitive conduct have full merit, and are genuine issues.

61. In the case at bar, even if the Minister's Decision is correct (the Applicant does not accept this finding), the claims that are related to the decision, that the minister's motive is fraud and money laundering, cannot justly be dismissed without considering them on their merits.

(4) Does Federal Court lack criminal jurisdiction?

62. At paragraph 62 of its reasons, the FCA stated that “the Federal Court does not have any inherent jurisdiction to deal with offences under s.469 of the *Criminal Code*”, and on this basis refused declaratory relief. Also on the same basis it concluded that in the motion to amend the Statement of Claim, the Federal Court correctly dismissed proposed amendments dealing with allegations of fraud under the *Criminal Code*, and other criminal conduct.
63. The FCA is incorrect on the matter of jurisdiction. Both Federal Courts have criminal jurisdiction as provided by sections 3 and 4 respectively of the *Federal Courts Act* (see Statutory Provisions, page 99).
64. At the same time, the criminal allegations are against customs officers that were participating in the Ministerial Decision making process, and pursuant *Customs Act* s.135, the Federal Court has exclusive original jurisdiction in the action at bar.

Part IV. Submission with respect to Costs



Radu Hociung

65. The applicant requests a cost award for the both Summary Judgment and Amendment motions, as well as their respective appeals, and also for the present appeal.

Part V. *Order Sought*

The Applicant seeks an Order:

- quashing the Minister's decision on grounds that it is unintelligible, as it does not disclose reasons that would allow a Court to review the decision.
- Dismissing the Defendant's motion for Summary Judgment, and allowing the action to proceed to trial.
- Awarding costs to the applicant for both FCA appeals, which have been successful, and for Defendant's Motion for Summary Judgement, which has been unsuccessful in having the action dismissed in its entirety.

Part VI. *Table of Authorities*

<i>Authority</i>	<i>Para/s ection</i>
Customs Act	
Customs Tariff	20
Customs Tariff – Schedule Chapter 98	
Customs Tariff – Schedule Chapter 71	
Federal Courts Act	3,4
https://laws-lois.justice.gc.ca/eng/acts/c-52/page-1.html	
<i>Delta Air Lines Inc. v. Lukács</i> , 2018 SCC 2 (CanLII) , [2018] 1 S.C.R. 6 [Lukács]	24
<i>Dunsmuir v. New Brunswick</i> , [2008] 1 SCR 190, 2008 SCC 9 (CanLII)	47

Part VII. *Statutory Provisions*

Customs Tariff, S.C. 1997, c.36

Imposition of customs duty

20 (1) Unless otherwise indicated in Chapter 98 or 99 of the List of Tariff Provisions, in addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there shall be levied on all goods set out in the List of Tariff Provisions, at the time those goods are imported, and paid in accordance with the *Customs Act*, a customs duty at the rates set out in that List, the “F” Staging List or section 29 that are applicable to those goods.

Droits de douane

20 (1) Sauf disposition contraire des Chapitres 98 et 99 de la liste des dispositions tarifaires, est perçu — en plus des autres droits imposés en vertu de la présente loi et des autres lois fédérales en matière douanière — sur les marchandises énumérées dans cette liste, au moment de leur importation, un droit de douane, payable en conformité avec la *Loi sur les douanes*, aux taux applicables figurant à cette liste, au tableau des échelonnements ou à l’article 29.

Customs Tariff – Schedule

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
7117.90.00	00	-Other	-	8.5%	CCCT, LDCT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free GPT: 5%
71.18		Coin.			
7118.10.00	00	-Coin (other than gold coin), not being legal tender	-	6.5%	CCCT, LDCT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free GPT: 3%
7118.90.00		-Other		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
10	----	-Gold coin	-		
	----	-Other:			
91	-----	-Canadian coins	-		
99	-----	-Other	-		

Chapter 98

SPECIAL CLASSIFICATION PROVISIONS - NON COMMERCIAL

Notes.

1. The provisions of this Chapter are not subject to the rule of specificity in General Interpretative Rule 3 (a). Goods which are described in any provision of this Chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.
2. Goods which may be classified under the provisions of Chapter 99, if also eligible for classification under the provisions of Chapter 98, shall be classified in Chapter 98.
3. For each tariff item of this Chapter, the General Tariff rate is the Most-Favoured-Nation Tariff rate.
4. For the purpose of this Chapter, "duties" means duties or taxes levied or imposed on imported goods under Part 2 of this Act, the *Excise Act, 2001* (other than section 54), the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs.
5. Goods entitled to be classified under heading 98.01, 98.02, 98.03, 98.04 (other than tariff item No. 9804.30.00) or 98.05 shall be relieved from all duties, other than the customs duties imposed under Part 2 of this Act with respect to tariff item No. 9804.30.00, notwithstanding the provisions of this or any other Act of Parliament.

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
98.04		Goods acquired abroad by a resident or temporary resident of Canada or by a former resident who is returning to Canada to resume residence, for the personal or household use of that person or as souvenirs or gifts, but not bought on commission or as an accommodation for any other person or for sale, and reported by that person at time of return to Canada.			
9804.10.00	00	-Valued at not more than eight hundred dollars and included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than forty-eight hours. For the purpose of this tariff item, goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, and tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
9804.20.00	00	-Valued at not more than eight hundred dollars, whether or not included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than seven days. For the purpose of this tariff item: (a) goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, and tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, if included in the baggage accompanying the person at the time of return to Canada; and (b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item if they are reported by the person at time of return to Canada.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
[...]					
9813.00.00		Goods, including containers or coverings filled or empty, originating in Canada, after having been exported therefrom, if the goods are returned without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. For the purpose of this tariff item: (a) goods on which a refund of customs duty or drawback of customs duty has been made shall not be classified under this tariff item except upon payment of the customs duty equal to the refund or drawback allowed; and (b) goods manufactured in bond or under excise regulations in Canada and exported shall not be classified under this tariff item except upon payment of the customs duty to which they would have been liable had they not been exported from Canada.		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
9814.00.00		Goods, including containers or coverings filled or empty, which have once been released and accounted for under section 32 of the <i>Customs Act</i> and have been exported, if the goods are returned without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. For the purpose of this tariff item: (a) goods on which a refund of customs duty or drawback of customs duty has been made shall not be classified under this tariff item except upon payment of the customs duty equal to the refund or drawback allowed; and (b) goods manufactured in bond or under excise regulations in Canada and exported shall not be classified under this tariff item except upon payment of the customs duty to which they would have been liable had they not been exported from Canada.		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free

Currency Act, R.S.C. 1985, c. C-52

	LEGAL TENDER	POUVOIR LIBÉRATOIRE	
Legal tender	<p>8. (1) Subject to this section, a tender of payment of money is a legal tender if it is made</p> <p>(a) in coins that are current under section 7; and</p> <p>(b) in notes issued by the Bank of Canada pursuant to the <i>Bank of Canada Act</i> intended for circulation in Canada.</p>	<p>8. (1) Sous réserve des autres dispositions du présent article, ont pouvoir libératoire :</p> <p>a) les pièces qui ont cours légal en vertu de l'article 7;</p> <p>b) les billets destinés à circuler au Canada et émis par la Banque du Canada aux termes de la <i>Loi sur la Banque du Canada</i>.</p>	Pouvoir libératoire

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

	PROVISION OF INFORMATION	FOURNITURE DE RENSEIGNEMENTS	
Obligation to provide accurate information	<p>7.1 Any information provided to an officer in the administration or enforcement of this Act, the <i>Customs Tariff</i> or the <i>Special Import Measures Act</i> or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, shall be true, accurate and complete.</p> <p>2001, c. 25, s. 6.</p>	<p>7.1 Les renseignements fournis à un agent pour l'application et l'exécution de la présente loi, du <i>Tarif des douanes</i> ou de la <i>Loi sur les mesures spéciales d'importation</i>, ou sous le régime d'une autre loi fédérale prohibant, contrôlant ou réglementant l'importation ou l'exportation de marchandises doivent être véridiques, exacts et complets.</p> <p>2001, ch. 25, art. 6.</p>	Obligation de fournir des renseignements exacts

(a) that are in the actual possession of a person arriving in Canada, or that form part of his baggage, where the person and his baggage are being carried on board the same conveyance,

(b) that are not charged with duties, and

(c) the importation of which is not prohibited under the Customs Tariff or prohibited, controlled or regulated under any Act of Parliament other than this Act or the Customs Tariff

may not be seized as forfeit under this Act by reason only that they were not reported under this section.

a) elles sont en la possession effective ou parmi les bagages d'une personne se trouvant à bord du moyen de transport par lequel elle est arrivée au Canada;

b) elles ne sont pas passibles de droits;

c) leur importation n'est pas prohibée par le Tarif des douanes, ni prohibée, contrôlée ou réglementée sous le régime d'une loi fédérale autre que la présente loi ou le Tarif des douanes.

LIABILITY FOR DUTIES ON GOODS REPORTED	RESPONSABILITÉ DU PAIEMENT DES DROITS SUR LES MARCHANDISES DÉCLARÉES
<p>Presumption of importation</p> <p>18. (1) For the purposes of this section, all goods reported under section 12 shall be deemed to have been imported.</p>	<p>18. (1) Pour l'application du présent article, toutes les marchandises déclarées conformément à l'article 12 sont réputées avoir été importées.</p> <p>Présomption d'importation</p>
<p>Liability of person reporting goods short landed</p> <p>(2) Subject to subsections (3) and 20(2.1), any person who reports goods under section 12, and any person for whom that person acts as agent or employee while so reporting, are jointly and severally or solidarily liable for all duties levied on the goods unless one or the other of them proves, within the time that may be prescribed, that the duties have been paid or that the goods</p> <p>(a) were destroyed or lost prior to report or destroyed after report but prior to receipt in a place referred to in paragraph (c) or by a person referred to in paragraph (d);</p> <p>(b) did not leave the place outside Canada from which they were to have been exported;</p> <p>(c) have been received in a customs office, sufferance warehouse, bonded warehouse or duty free shop;</p> <p>(d) have been received by a person who transports or causes to be transported within</p> <p>Canada goods in accordance with subsection 20(1);</p> <p>(e) have been exported; or</p> <p>(f) have been released.</p>	<p>(2) En cas d'application de l'article 12, le déclarant et son mandant ou employeur sont, sous réserve des paragraphes (3) et 20(2.1), solidairement responsables de tous les droits imposés sur les marchandises, sauf si, dans le délai réglementaire, l'un d'eux établit le paiement des droits ou, à propos des marchandises, l'un des faits suivants :</p> <p>a) elles ont été soit détruites ou perdues avant la déclaration, soit détruites entre le moment de la déclaration et leur réception en un lieu visé à l'alinéa c) ou par la personne visée à l'alinéa d);</p> <p>b) elles n'ont pas quitté le lieu de l'extérieur du Canada d'où elles devaient être exportées;</p> <p>c) elles ont été reçues dans un bureau de douane, un entrepôt d'attente, un entrepôt de stockage ou une boutique hors taxes;</p> <p>d) elles ont été reçues par une personne qui fait office de transitaire conformément au paragraphe 20(1);</p> <p>e) elles ont été exportées;</p> <p>f) elles ont été dédouanées.</p> <p>Solidarité du déclarant et de son mandant</p>
<p>Rates of duties</p> <p>(3) The rates of duties payable on goods under subsection (2) shall be the rates applicable to the goods at the time they were reported under section 12.</p>	<p>(3) Le taux des droits payables sur les marchandises conformément au paragraphe (2) est celui qui leur est applicable au moment où elles font l'objet de la déclaration prévue à l'article 12.</p> <p>Taux des droits</p>
<p>Regulations</p> <p>(4) The Governor in Council may make regulations prescribing the circumstances in which such bonds or other security as may be prescribed may be required from any person who is or may become liable for the payment of duties under this section.</p> <p>R.S., 1985, c. 1 (2nd Supp.), s. 18; 2001, c. 25, s. 15.</p>	<p>(4) Le gouverneur en conseil peut, par règlement, fixer les cautions ou autres garanties susceptibles d'être souscrites par les personnes effectivement ou éventuellement redevables de droits au titre du présent article et déterminer les circonstances de la souscription.</p> <p>Règlements</p> <p>L.R. (1985), ch. 1 (2^e suppl.), art. 18; 2001, ch. 25, art. 15.</p>

The Courts

Federal Court — Appeal Division continued

3 The division of the Federal Court of Canada called the Federal Court — Appeal Division is continued under the name “Federal Court of Appeal” in English and “Cour d’appel fédérale” in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.

R.S., 1985, c. F-7, s. 3; 1993, c. 34, s. 68(F); 2002, c. 8, s. 16.

Federal Court — Trial Division continued

4 The division of the Federal Court of Canada called the Federal Court — Trial Division is continued under the name “Federal Court” in English and “Cour fédérale” in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.

R.S., 1985, c. F-7, s. 4; 2002, c. 8, s. 16.

Les cours

Maintien : section d’appel

3 La Section d’appel, aussi appelée la Cour d’appel ou la Cour d’appel fédérale, est maintenue et dénommée « Cour d’appel fédérale » en français et « Federal Court of Appeal » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d’équité et d’amirauté du Canada, propre à améliorer l’application du droit canadien, et continue d’être une cour supérieure d’archives ayant compétence en matière civile et pénale.

L.R. (1985), ch. F-7, art. 3; 1993, ch. 34, art. 68(F); 2002, ch. 8, art. 16.

Maintien : Section de première instance

4 La section de la Cour fédérale du Canada, appelée la Section de première instance de la Cour fédérale, est maintenue et dénommée « Cour fédérale » en français et « Federal Court » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d’équité et d’amirauté du Canada, propre à améliorer l’application du droit canadien, et continue d’être une cour supérieure d’archives ayant compétence en matière civile et pénale.

L.R. (1985), ch. F-7, art. 4; 2002, ch. 8, art. 16.

8. Documents Relied Upon



Information Bulletin

Planning and Program Integration Division – Program Services

PRECIOUS METALS – BULLION AND COIN TARIFF CLASSIFICATION AND HST EXEMPTION

In recent months, there has been an increase in the buying and selling of precious metals with many people looking to this commodity as an investment strategy, a "hedge" or safe haven against economic, political, social or currency issues. Gold is the most popular metal with silver, platinum and palladium the other major investment metals. All have risen in price over the past several years as demand has increased around the globe.

When imported into Canada, precious metals in certain forms are **duty-free** and **GST/HST exempt**. They will be duty-free by the application of the proper tariff classification and tax exempt by means of the Non-Taxable Imported Goods (GST/HST) Regulations (paragraph 3(a)). Please note: currently, the Travelers Entry Processing System (TEPS) is applying GST/HST to imported precious metals. This error is due to be corrected with the next release but until this takes place, the TEPS user can change the default GST/HST field. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed for precious metals importation at this time.

The purpose of this bulletin is to provide information to port-of-entry personnel that will assist them in identifying, classifying and documenting goods made of precious metals.

What is a Precious Metal?

A metal is deemed to be precious if it is rare. A precious metal is defined in the Excise Tax Act as:

...a bar, ingot, coin or wafer that is composed of gold, silver or platinum and that is refined to a purity level of at least:

- (a) 99.5% in the case of gold and platinum, and
- (b) 99.9% in the case of silver.

A precious metal in the form of a bar, ingot or wafer at the required purity levels must be recognized and accepted for trading on Canadian financial markets. They will bear markings indicating their purity level and will also have an identification mark of the issuing financial institution or refinery. With respect to coins, only those metals at the required purity levels that have been issued by a government authority and that may be used as currency will qualify. (Although not specifically named in the Excise Tax Act, the accepted purity level for palladium is 99.5%.)

Is There a Difference Between 'Bullion' and 'Coin'?

The bulk quantity of precious metals are referred to as **bullion** which describes a precious metal formed into bars, ingots or other forms, generally as distinguished from coins. Bullion is assessed by weight and purity level, and is traded on its intrinsic metal value. The weight of bullion is usually measured in troy ounces, where one troy ounce is equal to approximately 31g. A recognized bullion bar is one that was minted by a major, well-known refinery, such as the Royal Canadian Mint or Johnson-Matthey, and is accepted for trading on Canadian financial markets.



A coin is a piece of metal intended for use as legal tender and stamped with marks or inscriptions which show that it was issued by an authority that guarantees its weight and purity. The word 'bullion' is also used to refer to coins and many mints issue bullion in coin form. Although a precious metal coin is produced with a negotiable face value (also known as the denomination), the bullion content is typically much higher than the face value and such coins are bought and sold based on how much bullion they contain and the current market rates for the metal.

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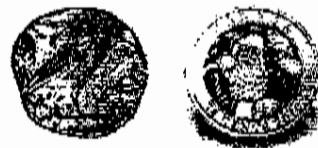
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Bullion coins are not to be confused with numismatic coins which are old or rare currencies that are collected for their historical significance and aesthetic quality. A numismatic coin can be a regular-issue coin or commemorative coin, token or trade dollar. Examples of this would be antique coins, such as the Greek coin or special Christmas issue of a Canadian 50-cent piece, pictured at right. They are collectible but the worth of these coins is generally determined by the finish, rarity, and design. Although numismatic coins can include precious metal coins that were once legal tender, the market is quite different than that for bullion coins which is based entirely on the value of the precious metal itself.



Identifying Precious Metals

- **Manufacturer** – The entity that casts the bullion is identified on the surface. On bars, this is usually a company or government. On coins, it is a country's government mint.
- **Weight** – The weight of the bullion is listed in either ounces or grams. The weight refers to the weight of the metal contained in the bullion and not the overall weight of the coin or bar.
- **Purity** – The purity is listed as a decimal. For example, gold is shown as .9999 pure, or in karats like 24K, both of which are considered pure gold. If the gold bullion purity is not marked, it is 22K gold or 91.3 percent gold. Platinum will also show .9999 while silver and palladium will be marked from .995 (minimum) to .9999.
- **Date** – The year a bullion coin is minted is usually stamped on it. Most bullion bars do not have dates.
- **Identification** – Many bars have identification numbers stamped on them. Most coins do not.



Examples of precious metal. Left to right: Canadian \$50 gold coin; silver bullion bar; Royal Canadian Mint gold ingot; Credit Suisse platinum wafer.

Tariff Classification

When imported, precious metals in bar, ingot or wafer forms are to be treated as goods for customs purposes and classified accordingly. Coins are also to be treated as goods and not as currency. Although the coins technically have legal tender status in Canada, the face value of a gold, silver or platinum bullion coin is purely symbolic and much lower than its actual market value. Only those coins minted with metals at the required purity levels and issued by a government authority qualify. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed by an importer or exporter at this time.

The following tariff classifications are recommended:

Silver bullion	7106.91.00.11	Silver bullion, unwrought forms, containing by weight 92.5% or more of silver
Gold bullion	7108.12.00.11	Gold bullion, unwrought forms, containing by weight not less than 99.95% of gold
Platinum bullion	7110.11.00.00	Platinum, unwrought or in powder form
Palladium bullion	7110.21.00.00	Palladium, unwrought or in powder form
Gold coins	7118.90.00.10	Gold coin, being legal tender
Silver or Platinum Canadian coins	7118.90.00.91	Canadian coins, other than gold, being legal tender
Silver, Platinum or Palladium coins	7118.90.00.99	Coin, other than gold or Canadian, being legal tender

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Document Completion and Applying Tax Exemption

It is advisable to complete a B15 Casual Goods Import Document for declared importations of precious metals. Given the values of such importations, it is in the importer's best interests to have documentation of such goods.

When completing a B15, go to the TEPS screen and select a commodity or enter a tariff item. When the calculation page opens up, the selected commodity or tariff item will be shown, along with the appropriate rate of duty (which should be nil) and an HST rate of 13%. At the bottom of the screen, it will say "Do you need to update any of the above information?" Enter Y for yes. Tab over to the GST/HST and enter zero. Tab down until the Declared Value box comes up, at which time a value should be entered and the process can continue as usual. (Please note that all B15s that are overridden in this manner will appear on the end of day report.)

For enforcement actions, in the Allegation area, select the appropriate allegation (i.e. non-report) and level then click Continue to proceed to the Commodity screen. From the drop-down commodity menu, select **Unconditionally Duty Free & Tax Exempt Goods**. At this time, this is the selection that will apply the appropriate Terms of Release for precious metals of this type, as outlined in the Enforcement Manual – Part 5, Chapter 2, section 101. Selecting the Metal Products, Precious Metals commodity will apply the grouping principle of calculating terms of release based on a percentage of combined rates of duty and taxes.

In the event of a seizure of precious metals, Border Services Officers and Superintendents are requested to contact the Intelligence Unit at 905-354-6595, or after hours by using the duty-pager 1-800-263-1420, unit 352801.

Determining Value in the Absence of Receipts or Documentation

Legitimate importers of precious metals will most likely have sales receipts showing the purchase price of their goods, as well as full descriptions that will aid in classification. However, it does happen that receipts are lost or, in the case of undeclared goods, that documentation is not available or expected.

Should a receipt or other documentation not be available, it is suggested that an Internet search for current prices of precious metals be conducted. Such prices will not be available from the Bank of Canada as this agency does not provide them, unlike the daily currency exchange rates. It will, therefore, be necessary to rely on commercially-based websites. Some websites that are currently available and can be used for research are shown below. These sites report daily market quotes but it is suggested that more than one website be checked to determine an accurate and/or average price.

www.scotiamocatta.com

Scotia-Mocatta is the global bullion banking division of the Bank of Nova Scotia, formed in 1997 by the bank's acquisition of Mocatta Bullion from Standard Chartered Bank in London. Currently, up-to-the-minute prices for gold, silver, platinum and palladium are shown in a bar at the top of the home page. Prices are also available by going to Tools then Precious Metals Pricing and selecting the desired metal.

<http://www.kitco.com/market>

Kitco is an American-based precious metals retailer, with a location in Montreal. On the home page, a precious metals chart provides a Canadian dollar link to a one-page summary of current gold, silver, platinum and palladium prices.

<http://goldprice.org/>

Goldprice is an Australian website providing free gold information – they do not buy or sell precious metals. Prices for other types of precious metals can be accessed by clicking on the appropriate links on the website's home page or using their affiliated addresses: <http://silverprice.org/> - <http://platinumprice.org/> - <http://palladiumprice.org/>

Further Information

For additional information or guidance, please contact Julia Cossitt, Program Services at 905-354-6595, ext. 241.

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October 2010



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Recourse Directorate

1686 Woodward Dr Ottawa, ON, K1A 0L8

REGISTERED

Radu Sebastian Hociung
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.

.../3

Canada

You appealed 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 black 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

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

MOTION RECORD

Radu Hociung
246 Southwood Drive
Kitchener, Ontario
N2E 2B1
Tel: (519) 883-8454
Fax: (226) 336-8327
email: radu.cbsa@ohmi.org

TO:

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

AND TO:

Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

AND TO:

Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

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TAB 1

**FORM 359 - Rule 359
NOTICE OF MOTION**

T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the plaintiff will make a motion to the Court in writing under Rule 75 of the Federal Courts Rules.

THE MOTION IS FOR:

1. Leave to amend the Statement of Claim to add and substitute a new cause of action arising from substantially the same facts in respect of which the Plaintiff has already claimed relief in the action;

THE GROUNDS FOR THE MOTION ARE:

1. New evidence was discovered by the Plaintiff during Examination of Discovery of the Defendant, in addition to new evidence discovered independently since the filing of the Statement of Claim.
2. The CBSA being a servant of the Crown, the Crown is liable for damages in respect of torts committed by the CBSA, a servant of the Crown, as per *Crown Liability and Proceedings Act* s.3(b)(i)
3. Rules 75(1), 75(2)(a) and 201 of the Federal Court Rules.
4. The defendant has not yet conducted Discovery in accordance to the Federal Court Rules, and the Plaintiff does not require further Discovery of the Defendant with respect to the Amended Statement of Claim, thus no prejudice to the Defendant exists.

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

1. The Amended Statement of Claim attached as Schedule "A"

DATE: February 20, 2017



Radu Hociung
246 Southwood Drive
Kitchener, Ontario
N2E 2B1
Tel: (519) 883-8454
Fax: (226) 336-8327
email: radu.cbsa@ohmi.org

TO:
Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

AND TO:

Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

SOR/2004-283, s. 35

TAB 2

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

WRITTEN REPRESENTATIONS

1. The Plaintiff has initiated Written Examination for Discovery of the Defendant on July 19, 2016.
2. The Defendant used multiple tactics of delaying answering the written questions, including a failed motion to strike the statement of claim in its entirety. Presently the examination is on-going.
3. On August 30th, 2016, the Plaintiff requested from the Court that the proceeding be continued as a Specially Managed Proceeding.
4. On September 31st, 2016, the request for case management was granted.

5. A case management judge was appointed and on December 22nd, 2016, a case management conference was held in chambers by teleconference with Prothonotary Kevin Aalto
6. At the case management conference, Prothonotary Aalto ordered that the Defendant serve written answers to the examination questions by January 31st, 2017
7. At 2pm EST on January 31st, 2017, the Defendant served partial answers to the Written Examination Questions. Out of 40 questions asked, 10 were responded with an objection statement, and no preliminary answer; 5 were non-responsive, where the answer did not relate to the question, 5 answers gave rise to further questions, and the rest were answered completely.
8. The Defendant has not made motions of objection seeking to strike out questions he did not answer, and the Plaintiff pointed out that these objections must be made properly, so they can be argued, and requesting answers for the other questions that were non-responsive or incomplete.
9. The answers that were completely answered contained evidence that gave rise to the further claims in the Amended Statement of Claim that makes the object of this motion.
10. Furthermore, independent research by the Plaintiff since the initial filing of Statement of Claim lead to discovery of further evidence, to support the new claims. This evidence is summarized in Claim 12. of the amended Statement of Claim, in order to provide the Defendant with particulars he will need to properly defend his case at trial.
11. Furthermore, as the new cause of action seeks the shutdown of the CBSA, the CBSA was also

named as an added party, pursuant *Crown Liability and Proceedings Act*, s 23(1)

12. As the CBSA is a servant of the Crown, the Crown is liable for the tort of fraud claimed against the CBSA and some of its employees, pursuant the *Crown Liability and Proceedings Act*, s 3(b) (1), and thus was named as an additional defendant.

13. Discovery of the defendant is not yet complete, and given the defendant's track record of delaying as much as possible, this timely motion seeks to avoid delay in presenting to the defendant a full record of claims, so that he may have ample opportunity to defend his case. However, as discovery continues, further amendments may become necessary to reflect additional evidence that the defendant may provide in his answers.

14. The Plaintiff has made every effort as to not cause the Defendant prejudice in amending the Statement of Claim.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Hociung', with a stylized flourish at the end.

Radu Hociung.

TAB 3

Schedule “A”

ACTION

T-1450-15

~~(Court File No.)~~

FEDERAL COURT

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

and

Canada Border Services Agency

and

Her Majesty the Queen in Right of Canada

Defendants

Defendant

AMENDED 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.

| February 17, 2017

| ~~(Date)~~

| Issued by: _____

(Registry Officer)

Address of local office: _____

| TO: ~~(Name and address of each defendant)~~

| Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

| AND TO:

| Deputy Attorney General of Canada

284 Wellington Street
Ottawa, Ontario K1A 0H8

CLAIM

This is an Action pursuant section 135 of the Customs Act. Re Ministerial Decision CS-74472/4273-14-0724, and/or pursuant Criminal Code s.469, as the case may be.

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, in Niagara Falls, Ontario. 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 ("the coins"). 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. He then seized the coins. ("the seizure")
- 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 (document # ME-17-01-9901-E) 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) The CBSA superintendent informed officer Debski of the contents of an operational bulletin titled "Information Bulletin – Precious Metals – Bullion and Coin" ("the bulletin"), which quotes the

Excise Tax Act ss 123(1) definition of "Financial Instruments (precious metals)" as well as PP192, a policy statement by Canada Revenue Agency that clarifies that precious metals in bar, ingot, coin or wafer form are financial instruments, and that gold or silver coins issued by a government authority qualify for exemption from consumption or importation taxes. However, the bulletin instructs officers to treat these forms of gold as "goods", and not as "financial instruments". This bulletin is part of a money-laundering scheme ("the scheme") by CBSA, officer Debski relied on it exclusively in his decision to seize the coins and demand a terms of release payment.

- j) Had the plaintiff agreed with officer Debski, and either reported the coins as goods, or paid the terms of release, he would have participated in the money-laundering scheme.
- k) 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.
- l) Officer Debski decided that the sum of \$1606.97 must be paid as terms of release of the Plaintiff's currency.
- m) 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 officer #17097 to commit fraud over \$5000 as defined by section 380(a)~~agent #17097 to commit fraud as defined by section 380~~ of the Criminal Code, R.S. C. 1985, c. C-46.
- n) 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 for non-declaration pursuant to 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 as defined by CC 380(a)~~ed 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.

v. Knew and admitted in his narrative report that the coins were currency.

vi. Acted maliciously by seizing, and thus depriving the plaintiff of property valued at \$6427.89.

vii. By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

o) 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.

p) During the ensuing requests for additional documentation, the CBSA has made several false claims, misrepresenting the PCMLTFA

2. The enforcement and the Minister's decision to uphold it are incorrect, as the coins in question are currency, and not subject to any provisions of the Customs Act, including section 12. It is not the object of the Customs Act to control the flow of currency across Canada's borders~~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.~~

3. With respect to Ann Kendall, the plaintiff claims:

- a) On November 3, 2014, A Kendall, the Adjudicator assigned to the appeal, working at the Recourse Directorate of the CBSA in Ottawa, Ontario, in a letter to the plaintiff, 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 and the seizure of \$6427.89, Adjudicator Kendall's misrepresentation constitutes fraud as defined by section 380(a) of the Criminal Code, R.S. C. 1985, c. C-46.

1. 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*)”

2. To be clear, the PCMLTFR 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.

3. It is clear from the PCMLTFR's 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.

4. The version of the “cash” definition that Ann Kendall used is: “Currency includes all foreign and domestic bank notes and circulation coins”. This alternate definition of cash, used to substitute the definition given by the PCMLTFR, constitutes “making of regulations” by the CBSA. Its purpose is to except coins that the CBSA believes not to circulate from cross-border monetary reporting requirements, and is a further part of the CBSA money-laundering scheme.

~~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.~~

- b) On November 6, 2014 the Plaintiff responded in a letter 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~~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.~~
- c) On December 11, A Kendall responded with a letter from Ottawa, Ontario, 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 seizure of \$6427.89 and demand for payment of \$1606.97, and thus constitutes fraud over \$5000 according to CC s380(a).
- d) 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.
- e) 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.
- f) Following two more phone calls from the Plaintiff to the President's office, requesting the written response or acknowledgment of the January 20th 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.

- g) On January 29, 2015, John Dancause, a Program Manager with the Recourse Directorate of the CBSA advised the adjudicator, Ann Kendall, that the correct classification of the coins is as currency, and that there is no support to the classification of goods, further recommending the enforcement action be reversed. ("the Dancause letter")~~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.~~
- h) Ann Kendall, an adjudicator with the CBSA Recourse Directorate, knew, or should have known based on all evidence available to her, that the PCMLTFR does not exclude the coins from the reporting requirements, and that they are not "goods", subject to any provision of the Customs Acts 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.
- i) Ann Kendall acted maliciously in sustaining, and supporting the seizure, depriving the plaintiff of \$6427.89 worth of property~~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.~~
- j) Ann Kendall in her duties as adjudicator ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are "goods", thus failing to impartially adjudicate~~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.~~
- k) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

4. With regards to Martine Gagnon, the plaintiff claims:

- a) On March 9, 2015, a new CBSA adjudicator within the Recourse Directorate of the CBSA in Ottawa, Ontario, Martine 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 seizure of \$6427.89 worth of property and demand for payment of \$1606.97 and thus also constitutes fraud over \$5000 as defined by section 380(a) of the Criminal Code, R.S. C. 1985, c. C-46.

- b) 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 Martine Gagnon.
- c) On March 13, the Plaintiff responded to Martine 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.
- d) On May 26, Martine 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.
- e) Martine Gagnon knew, or should have know based on information available to her that the coins were currency, and therefore the enforcement action was unwarranted.
- f) Martine Gagnon acted maliciously in supporting the enforcement, and recommending that plaintiff be deprived of \$6427.89 worth of property, absent his payment of "terms of release".
- g) Martine Gagnon in her duties as adjudicator ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are "goods", thus failing to impartially adjudicate.
- h) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

5. With regard to Joanne Lepage

- a) Working as a Senior Program Advisor for the CBSA in Ottawa, Ontario, Joanne Lepage facilitated money laundering per CC s462.31 on August 31, 2010 by providing assurances in writing to an anonymous importer seeking a ruling that the financial instruments (precious metals) and currency he/she was wanting to import into Canada would not be subject to reporting under PCMLFA rules.
- b) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

6. With regard to Jeffrey Strickland, the Minister's delegate, the plaintiff claims:

- a) 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.
- b) 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.
- c) Jeffrey Strickland, the Minister's delegate, knew or should have known that the Customs Act does not apply to currency, that the coins were currency, and that the PCMLTFR does include the coins in the definition of “cash”, while claiming the opposite.
- d) Jeffrey Strickland maliciously deprived the plaintiff of \$6427.89 worth of property by sustaining the seizure.
- e) Jeffrey Strickland has committed fraud over \$5000 as defined by the CC s.380(a)
- f) Jeffrey Strickland in his duties as adjudicator and Minister's Delegate ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are “goods”, thus failing to impartially adjudicate.
- g) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.
- 7. The CBSA has made regulation replacing the PCMLTFR. The scope of the regulation made by the CBSA is to replace the definition of “cash” with an alternate that arbitrarily excludes some forms of currency from the definition.
- 8. The CBSA making of regulation contravenes the *Canada Border Services Agency Act* s6(4) and s12(3)(b), which states that neither the CBSA, nor any of its employees, officers, president are permitted to make regulations, nor is the Minister permitted to delegate powers to make regulations.

9. The seizure is part of a money laundering scheme ("the scheme") run by the CBSA.
10. The CBSA facilitates money laundering, and has done so deliberately and consistently since its creation in 2003. The money laundering scheme works as follows:
 - a) The CBSA has created regulation to replace the PCMLTFR, and to install an alternate version of the definition of "cash", in order to exclude some forms of currency from PCMLTFA reporting requirements.
 - b) The CBSA has instructed its border security officers to not report, nor to allow reporting by travelers of precious metal financial instruments or precious metals currency pursuant the PCMLTFA, in an operational bulletin titled "Informational Bulletin – Precious Metals – Bullion and Coin" ("the bulletin")
 - c) The bulletin also recommends that financial instruments (precious metals) and precious metals currency be accounted for under several Customs Tariff headings. ("the tariff headings")
 - d) The bulletin also instructs the officers to seize and assess "terms of release" of travelers who have financial instruments (precious metals) and precious metals currency, and would otherwise properly report them pursuant the PCMLTFA, and thus refuse to participate in the scheme.
 - e) The CBSA has adopted a position that all gold and silver, in all its forms, is "goods", is subject to provisions of the Customs Act, and not subject to any provisions of the PCMLTFA.
 - f) The Legal Services Unit department of the CBSA ("the CBSA lawyers") provides advice with the effect of reinforcing the bulletin, and any seizures.
 - g) As a result of classifying all gold and silver importations under the same tariff headings, the accounting record contains a mix of legitimate and money-laundering importations, which makes it nearly impossible to investigate money laundering.
 - h) Without the scheme, the tariff headings would contain only importations and exportations that could be considered suspect for the purposes of money laundering investigations.
11. In connection with the scheme, the CBSA also provides a direct money laundering service ("the service"), which works as follows:
 - a) The TEPS software that the CBSA uses and controls for the calculation of duty calculates a tax rate of 13% on gold and silver coins.
 - b) The bulletin, dated October 2010 makes reference to this tax rate, and claims it is an error due to be

fixed in the next release; however, as of 21st October 2014, the “error” still exists.

- c) The bulletin further states that the correct tax rate for gold and silver coins is “Unconditionally Duty Free & Tax Exempt Goods”, and that officers are able to override the default 13% figure.
- d) Using the TEPS software, the CBSA charges travelers 13% of the melt value of any gold or silver coins being imported, and accepts payments in various forms, including cash, representing “GST/HST”. Tax payments to the CBSA are not subject to reporting under the PCMLTFA, regardless of the amount.
- e) Thus, the CBSA can accept proceeds of crime as GST/HST payments, in any amount.
- f) Following this tax payment transaction, the importers typically submit to the CBSA a B2G form (“CBSA Informal Adjustment Request”), requesting a refund of the GST/HST paid due to “misclassification”.
- g) In response to the B2G request, the CBSA issues a refund, in form of a Government of Canada cheque, payable to the importer, for the full amount of GST/HST paid at importation time.
- h) The Government of Canada cheque, is once again not subject to reporting requirements under the PCMLTFA, even in large amounts, and it is a payment that is unlikely to raise any suspicions from the banks; government cheques are “as good as gold”, in the eyes of the banks, ironically.
- i) By demanding and accepting payments for tax that is not owed, and later refunding it in the form of a government cheque, dirty money (proceeds of crime) can be inserted into the banking system (ie. laundered), completely bypassing all PCMLTFA provisions.

12. Since it was created, the CBSA has used the scheme multiple times, including:

- a) On or about November 10th, 2003, at the Lester Pearson airport in or near the City of Toronto, Ontario, allowed a Gowrkumaran Sellathurai to export two gold bars valued at \$20,000, by using the false dichotomy that the gold bars “were not currency”, in spite of believing Mr. Sellathurai was exporting proceeds of crime, and seizing \$123,000 CAD and \$400 USD from him for non-report pursuant PCMLTFA s12.
- b) On or about October 6th, 2009, at the Douglas Border Crossing at or near the City of Surrey, British Columbia, allowed a Khaled Mohammed Nawaya to import 812 Canadian \$50 gold coins, while treating them as goods valued at approximately \$800,000 CAD and being paid terms of release by Mr. Nawaya, despite seizing \$40,000 CAD and \$30,110 USD from him for non-report pursuant

PCMLTFA s12. Even though the CBSA believed Mr. Nawaya to possess proceeds of crime, they deemed the 812 coins to be not currency, and allowed him to keep them.

c) On or about August 31st, 2010, sending an email from Ottawa, Ontario, a Lepage Joanne, acting as Senior Program Advisor for the CBSA, provided written assurances to an anonymous person that he could import financial instruments (precious metals) in the form of gold bars and gold currency coins into Canada, without submitting any written reports pursuant the PCMLTFA, reasoning that the CBSA does not consider these forms of gold to be currency or monetary instruments, in spite of the the importer's statement that he intended to import them as "capital", and in spite of the importer's hiding his identity. The importer used the services of a US based gold dealer and a Canadian based customs brokerage to represent him in requesting this ruling.

d) On or about November 7, 2011, at the Lester Pearson airport at or near the city of Toronto, Ontario, allowed a Joseph Adam (based on his Canadian passport), a.k.a. Gamal Hegazy (based on his Egyptian passport) to export thirty two kilograms in gold bars, valued at \$1.867 million, which were proceeds of crime, representing fraud by a Omar Kalair and Yusuf Panchbhaya of UM Financial, which at the time was in receivership. While the gold bars were financial instruments, the CBSA treated them as "goods", and enforced no PCMLTFA reporting requirements.

13. The adjudicators working within the CBSA's Recourse directorate do not in fact adjudicate, but instead advocate the CBSA's position and policies.

14. The Recourse Directorate department of the CBSA is a self-policing organization that does not police, but only serves reinforce pre-set CBSA policies.

15. For the CBSA as a whole, the plaintiff claims:

a) Being composed of approximately 12000 employees and officers in Canada, and having as one of its main purposes the facilitation of money laundering, which results in direct and indirect benefits to the organization, is a criminal organization as defined by CC s467.1

b) It is not able or willing to self-police

c) Instead of enforcing the PCMLTFA as required by the program legislation specified in the *Canada Border Services Agency Act*, dedicates itself to undermining the PCMLTFA.

d) Instead of correctly implementing the Customs Act, it implements it to fraudulently derive terms of

release income.

- e) It has interests opposite to the spirit and intent of the *Canada Border Services Agency Act*.
- f) Is composed of persons that regardless of the position (from junior border officers like officer Debski to Minister Delegate Jeffrey Strickland, and including program managers, senior program advisers, and adjudicators), are willing to participate in criminal activity without second thoughts, without complain or resistance.
- g) Is a deeply flawed organization that cannot be expected to be willing or capable of being turned into a lawful organization respecting the *Canada Border Services Agency Act*.
- h) Does not act in the public interest, not having public safety as a priority of its policies and activities.

16. 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) The CBSA circulates an internal operational bulletin, titled “Information Bulletin – Precious Metals – Coins and Bullion” (“the bulletin”), in which it instructs its Border Security officers to treat importations and exportations of financial instruments (precious metals) and precious metal currency as importations and exportations of “goods” and specifically to not report such financial instruments and currency to FINTRAC, pursuant the PCMLTFA~~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) 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 under the tariff headings 7118.90.00.10, 7118.90.00.91 and 7118.90.00.99 as recommended by the bulletin; gold bars are imported in an amount of about \$9B annually, while \$16B are exported annually under the tariff heading 7108.00.12 as recommended by the bulletin.(2013 statistics from Industry Canada)~~Therefore the Minister of Public Safety, and the CBSA are, as a matter of policy, supporting and facilitating crime and terrorism.~~
- e) In the bulletin, the CBSA also instructs officers to not allow travelers to make reports of financial instruments (precious metals) and precious metal currency pursuant the PCMLTFA.
- f) In order to enforce the non-reporting policy, the bulletin instructs the officers to penalize law-abiding travelers by seizing their financial instruments and currency, and to offer them "terms of release" in exchange for their return.
- g) By preventing the monetary reports CBSA facilitates money laundering and terrorist financing.

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

- a) Punitive damages of \$15000 from the CBSA for the threats of violence by officer Debski and the fraud committed by the same. His behaviour is malicious, oppressive and high-handed, departing enormously from the ordinary standards of decent behaviour~~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) Punitive damages of \$15000 from the CBSA for the fraud committed by CBSA employee 17097, A Kendall, M , M Gagnon, and for the instructions leading to fraud given by the president of the CBSA, Luc Portelance. Their behaviour is malicious, oppressive and high-handed, departing enormously from the ordinary standards of decent behaviour.

- c) Punitive damages of \$2000 for accusing the Plaintiff of smuggling and violating the Customs Act, which resulted in non-eligibility to US Nexus Trusted Traveler program. The CBSA's behaviour is malicious, oppressive and high-handed such it departs significantly from the ordinary standards of decent behaviour~~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.~~
- d) 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.
- e) Punitive and exemplary damages of \$5,000,000 from the Ministry of Public Safety for CBSA's sustained policy and practice of aiding crime, and facilitating money laundering and terrorism in Canada, while deriving profits from it since the CBSA was created. The Minister's and CBSA's behaviour is malicious, oppressive and high-handed such it departs significantly from the ordinary standards of decent behaviour, and impact the safety and well-being of all people living in Canada~~the sustained policy of aiding crime and terrorism in Canada, while deriving profits from it since 2000.~~
- f) 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.
- g) The maximum penalty available under the Criminal Code for officer Debski's fraud and facilitating money laundering.
- h) The maximum penalty available under the Criminal Code for each of Ann Kendall, Martine Gagnon and Jeffrey Strickland for fraud and facilitating money laundering.

18. 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:
 - 1. 2012 25-cent coin uncirculated “war of 1812” Brock Colour, with a collector fair market value [FMV] of \$17,
 - 2. 2012 circulated version of the 25-cent colour Brock quarter FMV \$1.24,
 - 3. 1957 circulated 25-cent quarters FMV \$4.38,
 - 4. -1957 \$20 circulated note FMV \$60,
 - 5. 2006 \$5 uncirculated note, FMV \$72

- f) 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.
- g) 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.
- h) An order to the Minister's Public to immediately release the Plaintiff's currency without encumbrance.
- i) 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 traveling public as well as precious metals dealers be informed of the change, and a transition~~ing public as well as precious metals dealers be informed of the change, and a transitionary~~ period be allowed for.
- j) An order to the Prime Minister to create an oversight body to ensure lawful implementation of the PCMLTFA by the Minister of Public Safety.
- k) 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, and gold bullion in any form deemed a financial instrument by the Court, foreign and domestic, since the PCMLTFA was enacted.
- l) An order to the Minister of Public Safety to dismantle the present CBSA and to implement a new Agency that conforms to the requirements of the *Canada Border Services Agency Act*.
- m) Any other such remedies as the Court deems just.

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

August 27, 2015

February 17, 2017

Sincerely,



~~(Signature of solicitor or plaintiff)~~

Radu Hociung

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SOR/2004-283, s. 35

