



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Field Directorate

1686 Woodward Dr Ottawa, ON, K1A 0L8

REGISTERED

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

May 28, 2015

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

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

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

Decision

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

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

Reasons

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

You 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

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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 were 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,

Attachment

c. 4273
Queenston Bridge - Traffic Operations
P.O. Box 126
Niagara Falls, Ontario L2E 6T1

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

c.c. File