

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
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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

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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 Rules 227, 232, 97(d), of the Federal Courts Rules.

THE MOTION IS FOR:

1. An Order that the Defendant produce all documents he designated as solicitor-client privileged in his affidavit of documents as listed in Exhibit "A".
2. An Order that the documents purporting to originate with employees of the CBSA, and provided in the Defendant's Affidavit of Documents be admissible as evidence at trial, as listed in Exhibit "A".
3. His costs of this motion; and
4. Such other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

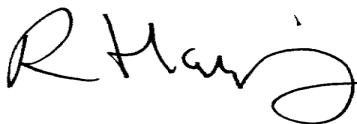
1. The Defendant incorrectly claimed solicitor-client attorney privilege on several memorandums and emails, as there the Legal Services Unit acted as a business counsellor. If any privilege did exist, it has been lost due to voluntary disclosure by the defendant.
2. The Defendant has failed to answer proper questions within the time allowed for written examination for discovery.

3. The Defendant is at refusing to communicate, answer discovery questions, and produce documents as part of discovery, in order to prevent their use as evidence at trial.

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

1. The record of the proceeding.
2. Exhibits "A" and "B" herein.
3. The pleadings herein.

DATE: January 31, 2018



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TAB 2

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

WRITTEN REPRESENTATIONS

OVERVIEW

1. This action was brought on August 28th, 2015, to challenge seizure of several United States Treasury gold and silver coins by the CBSA.
2. The defendant served his Affidavit of Documents on November 9th, 2015.
3. Written discovery questions were served to the Defendant on July 19th, 2016.
4. On August 30th, 2016, the Plaintiff wrote to the Court to request the case be specially managed, as the Defendant had failed to respond to discovery questions within 30-days as per Rule 99(4)
5. At about the same time, the Defendant filed a motion to strike the Statement of Claim in its entirety.
6. Both the Defendant's motion and the Plaintiff's request for Case Management were considered by Madam Prothonotary Martha Milczynski on September 21st. The motion was denied, and the request for Case Management was granted.
7. In her Order, the Prothonotary noted that some of the Defendant's own representations go to the merits of the appeal.
8. On November 9th, 2016, Mr. Prothonotary Kevin Aalto was assigned as Case Management Judge.

9. On December 22nd, 2016, at the first Case Management Conference, Mr Prothonotary Aalto ordered the Defendant to provide written answers to the interrogatories by Jan 31st, 2017, and to conduct oral discoveries on the Plaintiff on Jan 5th, 2017.
10. On January 31st, 2017, the Defendant provided complete answers to 19 of the 40 questions in the written examination, but responded to 10 with an objection statement, and no preliminary answer; 5 were non-responsive, where the answer did not relate to the question and 6 answers gave rise to further questions.
11. On February 2nd and 7th, 2017, the Plaintiff served the Defendant follow-up questions arising from his answers, as well as a reminder that any objections he has must be made as per Rules 94, 95 and 99, ie by bringing motions. Stating "objection" in lieu of an answer is not a proper way to object.
12. On February 20th, 2017, the Plaintiff brought a motion for leave to amend the statement of claim, based on answers the Defendant provided on January 31st. This motion is still pending.
13. On March 1st, 2017, the day before a scheduled CMC, the Defendant filed a Motion for Summary judgement, with the text of the motion being largely identical to his August 30th, 2016 motion to strike the statement of claim. This motion is still pending.
14. The Motion for Summary Judgement included the representations that drew Madam Prothonotary Milczynski's observation that the motion supports the appeal.
15. Subsequent CMC were held on March 2nd, 2017, November 14th, 2017 and December 18th, 2017.
16. On March 2nd and November 14th, the Plaintiff requested the Case Management Judge to order the Defendant to respond to outstanding discovery questions, but the CM Judge refused.
17. On November 23rd, 2017 the defendant brought a motion appealing the CM Judge's decisions to hold the proceedings in abeyance indefinitely, and to cease case managed mode.
18. On December 14th, 2017, Mr Justice Zinn considered the motion appealing the Prothonotary orders, and dismissed it, and directed the Registry that the motions for Summary Judgement and Leave to Amend the Statement of Claim be placed before a judge forthwith.
19. On December 18th, 2017, Mr. Prothonotary Aalto ordered that the proceeding cease to be specially managed, and continue normally.
20. As of the date of this motion record, the defendant has not yet provided any answers to the February

2016 questions. The plaintiff's motion to amend the claim, and the defendant's motion for summary judgement are still pending with the Court.

21. The discovery answers obtained so far were so incriminating, that a claim of facilitating money laundering by the CBSA is needed to be amended to the Statement of Claim. There is reason to believe that the unanswered questions will lead to other similarly serious claims being amended to the Statement of Claim.

FACTS

22. On October 21st, 2014, the plaintiff entered Canada with several gold and silver United States coined issued by the US Treasury pursuant United States Code 31 "Money and Finance", sections 5112(a)(11) and 5112(e), as legal tender circulation currency.
23. Upon random inspection, the CBSA ruled that the coins should have been declared as goods, seized them, and offered Terms of Release in the sum of \$1606.97, or 25% of the value of the metals contained in the coins.
24. On October 23, 2014, the plaintiff appealed the seizure and requested a Ministerial Decision pursuant Customs Act section 129.
25. On June 1st, 2015, the Minister delivered his Decision, lowering the Terms of Release to \$321.39, but maintaining that the coins are "goods", and that a non-report contravention was committed.
26. In his Decision, the reason the Minister gave is that the US coins are not 'cash' as defined by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* [PCMLTFR], and therefore they are considered 'goods'.
27. The PCMLTFR definition of "Cash" is:

<p>"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</p>
--

Canada or coins or bank notes of countries other than Canada. (espèces)

28. During the period between the October 23 2014 when the Minister's decision was requested and June 1, 2016 when the Minister rendered his decision, various correspondence between the CBSA Recourse Directorate and the Plaintiff was exchanged.
29. On March 9, 2015, M Gagnon, a senior appeals officer with the CBSA Recourse Directorate, wrote to the plaintiff to inform of an opinion that the Legal Services Unit [LSU] of the CBSA rendered, in which by "statutory interpretation" the CBSA concluded that the coins are not "cash". The letter is enclosed as exhibit "B".
30. The CBSA March 9th 2015 letter, making reference to the LSU opinion was also disclosed in the Defendant's Affidavit Schedule 1 (non-privileged documents), enclosed as exhibit "A".
31. In his affidavit of documents, the Defendant claimed solicitor-client privilege over several memos and email exchanges between members of the CBSA Recourse Directorate and members of the LSU, dated between February 12, 2015 and May 5, 2015. The affidavit of documents, not including copies of the non-privileged documents, is enclosed as exhibit "A".
32. The CBSA is a crown corporation, established under the *Canada Border Services Act [CBSAA]* s.3, and has the mandate of supporting the administration and enforcement of multiple Acts of Parliament, among which are the *Customs Act [CA]* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act [PCMLTFA]*.
33. The Minister of Public Safety and Emergency Preparedness is the defendant in this action, and responsible for the CBSA, under CBSAA s.6.
34. The business of the CBSA is the administration of various Acts of Parliament.
35. The CBSA's organization includes a Recourse Directorate, which is responsible for handling appeals brought under the various Acts.
36. The Recourse Directorate is staffed with paralegal staff and other officers and administrative staff, but not with lawyers.
37. The LSU is another department of the CBSA, is staffed mainly with lawyers, and acts as an adviser to the Recourse Directorate, providing interpretations of the Acts, and legal opinions, in order to assist the

Recourse Directorate in providing reasons for various enforcement actions.

38. Under the Crown Liability and Proceedings Act, the solicitor for agents of the Crown is the General Attorney of Canada.

MEMORANDUM OF LAW

39. Under Criminal Code, s. 462.31, Money Laundering is a serious offence, punishable with up to 10 years imprisonment.
40. Failure to report currency or financial instruments imported or exported from Canada is an indictable offence, punishable with up to 5 years imprisonment.
41. Under the Criminal Code, a “serious offence” is an indictable offence under any Act of Parliament, for which the maximum punishment is imprisonment five years or more.
42. Under Criminal Code, s. 467.11, facilitating indictable crimes is itself an indictable crime, punishable with up to five years of imprisonment.
43. In *Susan Hosiery*¹, the judge found that documents that must be proven at trial must be disclosed, and are not protected by solicitor-client privilege.
44. Solicitor-client privilege arises only when the following factors are present:
- (a) The communication must be between a solicitor and client. Even in absence of a formal retainer, criteria that have to be met are set in *Descôteaux*²
 - (b) The communication must be made in confidence, as set in *Sopinka*³
 - (c) The communication must be made in the course of seeking legal advice. It does not apply when the lawyer is acting as a business counsellor as set in *Sopinka* and *Blood Tribe*⁴
45. Where solicitor-client exists, it is lost in the following circumstances:

¹ *Susan Hosiery Ltd. v. M.N.R.*, [1969] D.T.C. 5278 (Ex. Ct.)

² *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860 [“*Descôteaux*”]

³ *Sopinka, Lederman and Bryant, The Law of Evidence in Canada*, 3rd ed. at para. 14.48 [“*Sopinka*”]

⁴ *Ibid.* at para. 14.71;

Canada (Privacy Commissioner) v. Blood Tribe Department of Health, [2008] 2 S.C.R. 574 [“*Blood Tribe*”], at para. 10

- (a) When the holder of the privilege makes a voluntary disclosure of any material part of the privileged communication⁵, such as by referring to them in Schedule 1 to an affidavit of documents⁶. If privilege is waived, all documents relating to the communication need to be disclosed⁷
- (b) Where a party puts his “state of mind” in issue in the pleadings, and the state of mind was informed by legal advice, solicitor-client privilege is deemed to have been waived. When a party relies on legal advice, he/she cannot in fairness be permitted to use privilege to prevent the other party from exploring its validity⁸

SUBMISSIONS

- 46. With respect to the facts in this action, the LSU's role is one of business advisor to the the Recourse Directorate, advising of the interpretation of Acts, in order to aid the Directorate in administering the Acts.
- 47. The LSU is not, and cannot be the solicitor for the defendant, or the CBSA, or other civil servants, as this role is reserved under the Crown Liability Act, to the General Attorney.
- 48. The LSU's role in this proceeding is not one of solicitor, but one of expert, or business advisor, providing expertise that the Recourse Directorate does not possess (interpretation of the Acts being administered).
- 49. The LSU's opinion as to the classification of the coins is an interpretation of Acts, or an expert opinion, intended to be provided as reasons to the plaintiff. It is not legal advice given by a solicitor to his client.
- 50. Solicitor-client privilege does not exist, as the LSU is acting in a solicitor role in this proceeding, between the LSU and the Recourse Directorate, and thus the documents marked as privileged in schedule 2 of the Defendant's affidavit of documents must be disclosed.
- 51. The opinion rendered by the LSU to the Recourse Directorate is relevant to the case, and must be proven at trial, thus the defendant is bound to give discovery of them, as ruled in *Susan Hosiery Ltd*⁹

⁵ Sopinka, supra, fn. 3, at para. 14.122.

⁶ *Re Briamore Manufacturing Ltd.*, [1986] 1 W.L.R. 1429.

⁷ Sopinka, supra, fn. 3, at para. 14.122.

⁸ *S&K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.* (1983), 35 C.P.C. 146 at para. 6 (B.C.S.C.).

⁹ *Susan Hosiery Ltd.*, supra, fn 1

52. Should the court determine that a solicitor-client relationship does exist between the LSU and the Recourse Directorate, privilege has been expressly waived by M. Gagnon's voluntary disclosure of the LSU's opinion in her March 9th, 2015 letter (exhibit "B").
53. The Minister's delegate relied on the LSU opinion in arriving at his decision that makes the subject of this action. The Minister's delegate is effectively in the "state of mind" that currency of the United States is not "cash" according to the PCMLTFR, that is, it does not match the "coins of countries other than Canada" of that definition. This state of mind needs to be proven at trial, and fairness dictates that the plaintiff be entitled to exploration of its validity¹⁰
54. In case the relationship between LSU and the Recourse Directorate is deemed by the Court to be a solicitor-client relationship, the opinion disclosed by M Gagnon in her March 9, 2015 either advised or caused her to understand that the coins in question, which are currency of the United States, do not need to be reported under PCMLTFA. ¹¹
55. The opinion rendered by the LSU, that the US currency in question is "goods" and need not be reported under PCMLTFA amounts to an advice to not report under s.12 of PCMLTFA, which is an indictable offence per s. 74 of the PMCLTFA, punishable by imprisonment up to five years.
56. The CBSA view that this kind of currency is not to be reported under s.12 of the PCMLTFA is what brought this action about, and thus it can be understood that the advice sought from the LSU was to facilitate the commission of a crime, as non-reporting of currency imported into Canada is an indictable offence per s.74 of the PCMLTFA.
57. The "statutory interpretation" that the LSU provided is not clear as to which statute is being interpreted, nor an explanation of the interpretation itself. The "statutory interpretation" is therefore a "state of mind" of the LSU and the Recourse Directorate. This state of mind was a major factor in the Minister's decision, and thus according to the principles of fairness, the plaintiff must be allowed to understand how the state of mind was formed.
58. In seizing the coins on October 21, 2014, CBSA officer Debski committed fraud over \$5000, by

10 *S&K Processors Ltd. v. Campbell Ave. Herring Producers Ltd.* (1983), 35 C.P.C. 146 at para. 6 (B.C.S.C.).

11 Podrebarac and Bida, *Keeping Secrets and Protecting Confidential Documents and Information in Litigation*, (2010) 37 Adv. Q., p. 215; ["Bida"] Descôteaux, *supra* fn. 2 at p. 881

misrepresenting that US currency was goods. M Gagnon, as the second Recourse Directorate adjudicator assigned to the appeal, sought to uphold officer Debski's fraud, and to defraud the plaintiff of \$1606.97 as representing "Terms of Release" of the coins. The LSU's opinion was sought for this purpose, ie, for the purposes of supporting a fraud, and committing a further one.

59. Whether the LSU's advice itself was criminal, or it was sought in order to enable a crime is not important. In either case, the communication between the LSU and the Recourse Directorate with respect to the facts in this action are not protected by solicitor-client privilege.¹²

60. At this point in time, the defendant's answers to discovery have been outstanding for about 18 months. No objection motions have been filed seeking to strike any of the questions, and the time for filing such objections has long passed. The defendant had 30 days from the time he was served with the questions to either object or answer them, according to Rule 99.

61. By refusing to answer discovery questions, the defendant is denying production of documents originated within CBSA, and disclosed in his affidavit of documents schedule 1 as "non-privileged. By refusing production, he seeks to prevent their use as evidence at trial.

ORDER SOUGHT

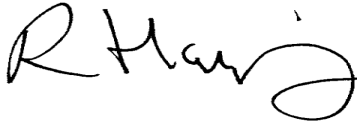
62. The plaintiff requests ORDERS:

- (a) The defendant produce all documents listed in Schedule 2 of his affidavit of documents ("privilege claimed", which is enclosed as exhibit "A".
- (b) Documents originating within the CBSA which were disclosed in the defendant's affidavit of documents be admissible at trial, without being produced expressly by the defendant as answers to discovery; Alternately, an order that he produce all documents referred within as evidence.
- (c) The defendant be ordered to answer discovery questions immediately, or expedited, within 5 business days of the order, without leave to file motions of objection.
- (d) His costs on this motion..

¹² Bida, *supra* fn 11, p. 215;
Descôteaux, *supra* fn. 2 at p. 881

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: January 31, 2018



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246 Southwood Drive
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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

TAB 3

Exhibit "A"

Court File No. T-1450-15

FEDERAL COURT

BETWEEN:

Radu Sebastian HOCIUNG

PLAINTIFF

AND:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

DEFENDANT

AFFIDAVIT OF DOCUMENTS

I, Simon Quenneville, Senior Litigation Officer, employed by the Canada Border Services Agency, Recourse Directorate, with an office located at 333 North River Rd, Tower A, 11th Floor, in the City of Ottawa, Province of Ontario, SWEAR THAT:

1. I am employed by the Canada Border Services Agency and have been authorized by the Defendant to make this Affidavit.
2. I have conducted a diligent search of the Defendant's records and have made appropriate inquiries of others to inform myself in order to make this Affidavit.
3. This Affidavit discloses, to the full extent of my knowledge, information and belief, all of the documents relevant to any matter in issue in the action that are in the Defendant's possession, power or control, that were but are no longer in the Defendant's possession, power or control or that I believe are in the possession, power or control of a person who is not a party to the action.
4. I have listed and described in Schedule 1 all of the relevant documents, or bundles of relevant documents, that are in the Defendant's possession, power or control and for which no privilege is claimed.

5. I have listed and described in Schedule 2 all of the relevant documents, or bundles of relevant documents, that are in the Defendant's possession, power or control and for which privilege is claimed and have stated in that Schedule the grounds for each claim of privilege in respect of a document or bundle of documents.
6. I have listed and described in Schedule 3 all of the relevant documents, or bundles of relevant documents, that were but are no longer in the Defendant's possession, power or control and for which no privilege is claimed and have described in that Schedule how possession, power or control of any document or bundle of documents was lost and their current location, so far as I can determine.
7. I have listed and described in Schedule 4 all of the relevant documents, or bundles of relevant documents, that I believe are in the possession, power or control of a person who is not a party to the action and have described in that Schedule the identity of each such person, including the person's name and address, if known.
8. I am not aware of any other relevant document other than those that are listed in this Affidavit or that are or were only in the possession, power or control of another party in the action.

SWORN BEFORE ME at the City of
Ottawa, in the Province of Ontario this
6 day of November, 2015.

Nabih Alimohamed
Commissioner for Taking Affidavits
for the Province of Ontario

Simon Quenneville
Simon Quenneville

CERTIFICATE OF SOLICITOR

I, Eric Peterson, certify that I have explained to the deponent of this Affidavit of Documents the necessity of making full disclosure under Rule 223 of the *Federal Court Rules, 1998*, and the possible consequences of failing to do so.

The documents listed in Schedule 1 to this Affidavit may be inspected at the Department of Justice, 3400 – 130 King Street West, Toronto, Ontario, at a date and time to be agreed upon.

Date: _____

Eric Peterson
Barrister and Solicitor

SCHEDULE 1

The following are all of the relevant documents, or bundles of relevant documents, that are in the Defendant's possession, power or control and for which no privilege is claimed:

TAB	DATE	DOCUMENT DESCRIPTION
1	October 21, 2014	Seizure Synopsis (3 pages)
2	October 21, 2014	Seizure Receipt (K19C) and Statement of Goods Seized (2 pages)
3	October 21, 2014	BSO Debski's narrative report (4 pages)
4	October 21, 2014	BSO Stewart's narrative report (2 pages)
5	October 23, 2014	Electronic Enforcement Appeal Form (2 pages)
6	October 21, 2014	Letter from CBSA Recourse Directorate to Queenston Bridge Port of Entry (Port 4273) (1 page)
7	October 21, 2014	Port seizure file cover from Port 4273 (1 page)
	Undated	Handwritten notes (1 page)
	October 21, 2014	Border Services Officer Seizure Checklist (1 page)
	Undated	Driver's License photocopy – HOCIUNG, Radu (2 pages)
	Undated	Citizenship Card photocopy – HOCIUNG, Radu Sebastian (1 page)
	Undated	Canadian Passport photocopy – HOCIUNG, Radu (1 page)
	Undated	Declaration Card (E67) (1 page)
	October 21, 2014	Bailey Tire Inc. – Receipt (1 page)
	October 21, 2014	Jack Hunt – Coin Broker Inc. - Receipt (1 page)
	Undated	Owner's Certificate of Insurance and Vehicle License (2 pages)
	Undated	Images of Seized goods (7 pages)
	Undated	Handwritten notes (Business mailing addresses and phone numbers) (2 pages)
	October 21, 2014	Casual Goods Accounting Document (B15) and receipt (2 pages)
8	October 31, 2014	Email from A. Kendall to CBSA-ASFC_SOR_Recourse_Modernization (Port 4273) (1 page)
9	November 3, 2014	Acknowledgement letter from CBSA Recourse Directorate to Radu Sebastian Hociung (4 pages)
10	November 3, 2014	Email from A. Kendall to Port 4273 (1 page)
11	November 10, 2014	E-mail exchange between P. Minervini and A.

		Kendall (2 pages)
12	November 10, 2014	Letter from Radu Hociung to CBSA Recourse Directorate with attachments (12 pages)
13	November 12, 2014	CBSA Memo for File – Telephone Conversation between A. Kendall and Radu Sebastian Hociung (1 page)
14	November 19, 2014	E-mail exchange between CBSA Recourse Directorate (4 pages)
15	November 20, 2014	Email from P. Minervini to A. Kendall with attachments (3 pages)
16	December 11, 2014	Acknowledgement letter from CBSA Recourse Directorate to Radu Sebastian Hociung (3 pages)
17	December 11, 2014	Email from A. Kendall to Port 4273 (1 page)
18	December 17, 2014	CBSA Memo for File – Telephone Conversation between A. Kendall and Radu Sebastian Hociung (1 page)
19	December 18, 2014	Email from P. Minervini to A. Kendall with attachments (3 pages)
20	January 21, 2015	Letter from Radu Hociung to L. Portelance (4 pages)
21	January 21, 2015	Letter from Radu Hociung to CBSA Recourse Directorate (4 pages)
22	January 21, 2015	Letter from Radu Hociung to CBSA Recourse Directorate (5 pages)
23	January 28, 2015	E-mail exchange between CBSA Recourse Directorate with attachment (3 pages)
24	January 29, 2015	Letter from John D. with attachments (3 pages)
25	February 3, 2015	Acknowledgement letter from CBSA Recourse Directorate to Radu Sebastian Hociung (2 pages)
26	February 3, 2015	Email from A. Kendall to Port 4273 (1 page)
27	February 9, 2015	CBSA Complaint Input Form (1 page)
28	March 9, 2015	Acknowledgement letter from CBSA Recourse Directorate to Radu Sebastian Hociung (3 pages)
29	March 9, 2015	Email from M. Gagnon to Port 4273 (1 page)
30	March 17, 2015	Letter from Radu Hociung to CBSA Recourse Directorate (3 pages)
31	April 1, 2015	CBSA Memo for File – Telephone Conversation between M. Gagnon and Radu Sebastian Hociung (1 page)
32	April 8, 2015	CBSA Memo for File – Telephone Conversation between M. Gagnon and Radu Sebastian Hociung (1 page)
33	May 15, 2015	Email from M. Gagnon to Port 4273 (1 page)
34	May 22, 2015	Handwritten notes from J. Strickland (1 page)
35	May 26, 2015	Acknowledgement letter from CBSA Recourse

		Directorate to Radu Sebastian Hociung (2 pages)
36	May 26, 2015	Email from M. Gagnon to Port 4273 (1 page)
37	May 26, 2015	CBSA Memo for File – Telephone Conversation between M. Gagnon and Radu Sebastian Hociung (1 page)
38	May 28, 2015	Case Synopsis and Reasons for Decision (7 pages)
39	May 28, 2015	Draft Ministerial Decision Letter from CBSA Recourse Directorate to Radu Sebastian Hociung (4 pages)
40	June 1, 2015, 2014	Ministerial Decision Letter from CBSA Recourse Directorate to Radu Sebastian Hociung (5 pages)

SCHEDULE 2

The following are all of the relevant documents, or bundles of relevant documents, that are or were in the Defendant's possession, power or control and for which privilege is claimed:

Date	Document Description	Privilege claimed
February 12, 2015	Memorandum for M. Lefebvre	Solicitor-Client privilege
February 16, 2015	Email from M. Gauthier to L. Ott	Solicitor-Client privilege
February 16, 2015	Email from P. Murphy to L. Ott and S. Arès	Solicitor-Client privilege
February 26, 2015	Memorandum to J. Strickland from L. Ott	Solicitor-Client privilege
February 27, 2015	E-mail exchange between CBSA Recourse Directorate (3 pages)	Solicitor-Client privilege
March 10, 2015	Email from T. Jones to M. Gagnon	Solicitor-Client privilege
March 25, 2015	E-mail from J. Strickland to M. Gagnon	Solicitor-Client privilege
March 25, 2015	Email from M. Gagnon to L. Ott	Solicitor-Client privilege
March 31, 2015	Email exchange between L. Ott and M. Gagnon	Solicitor-Client privilege
April 2, 2015	Email exchange between L. Ott and M. Gagnon	Solicitor-Client privilege
April 23, 2015	Email exchange between L. Ott and M. Gagnon	Solicitor-Client privilege
April 28, 2015	Email exchange between L. Ott and D. Docking	Solicitor-Client privilege
April 29, 2015	Email exchange between L. Ott and D. Docking	Solicitor-Client privilege
April 30, 2015	Email exchange between L. Ott and L. Lefebvre	Solicitor-Client privilege
April 30, 2015	Email from L. Ott to M. Gagnon	Solicitor-Client privilege
May 1, 2015	Email from M. Lefebvre to L. Ott	Solicitor-Client privilege
May 1, 2015	Email from M. Haley to L. Ott	Solicitor-Client privilege
May 1, 2015	Email from J. Strickland to L. Ott	Solicitor-Client privilege
May 1, 2015	Email from J. Strickland to L. Ott	Solicitor-Client privilege
May 1, 2015	Email from M. Haley to J. Strickland	Solicitor-Client privilege
May 5, 2015	Email from D. Docking to L. Ott	Solicitor-Client privilege

SCHEDULE 3

The following are all of the relevant documents, or bundles of relevant documents, that were but are no longer in the Defendant's possession, power or control and for which no privilege is claimed:

Nil

SCHEDULE 4

The following are all of the relevant documents, that I believe are in the possession, power or control of a person who is not a party to the action:

Nil

TAB 4

Exhibit “B”



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Recourse Directorate

1686 Woodward Dr.
Ottawa, ON, K1A 0L8

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

March 9, 2015

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

Mr. Hociung,

Although your correspondence dated January 21, 2015 was acknowledged on February 3, 2015, I would like to provide you with additional information following the receipt of an opinion from our Legal Services Unit.

In the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations* (PCMLTFR), "cash" is defined as:

"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*)

In the French version of the PCMLTFR, the term "cash" is translated as "espèces". The English translation of "espèces" within the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (PCMLTFA) is "currency". Therefore, it is concluded that it was Parliament's intent to equate "cash" and "currency" within the context of the PCMLTFA and PCMLTFR.

When applying the principles of statutory interpretation, the common denominator under the definition of "cash" as per the PCMLTFR is in the phrase "intended for circulation".

On the basis of the foregoing, the Canada Border Services Agency (CBSA) is of the view that foreign coins **intended for circulation** would be considered as **currency** to be reported under the provisions of the PCMLTFA. However, foreign coins that are **not intended for circulation** are to be considered **goods** and are to be reported under the *Customs Act*.

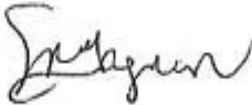
In the circumstances of this enforcement action, the information available suggests that the foreign coins were not intended for circulation, and as such have been deemed goods to be reported under the *Customs Act*. On the basis of the documentation on file, it appears that the goods in question were acquired outside of Canada and were not properly reported to the CBSA. Consequently, it appears a contravention of the *Customs Act* may have occurred, and the enforcement action may have been warranted. Without information or documentation to dispute this allegation, the enforcement action may be maintained as assessed.

You may, within 30 days from the date of mailing of this correspondence, provide any additional information or documentation that you believe will assist in making the decision in this case. All of the information submitted by mail should quote the file number and be sent to the address below:

Canada Border Services Agency
Recourse Directorate, Appeals Division
1686 Woodward Dr.
Ottawa, Ontario
K1A 0L8

I can assure you that the evidence on file will be carefully considered when this matter is reported for final decision. As soon as a decision is rendered, you will be notified by registered mail.

Regards,



M. Gagnon

Senior Appeals Officer, Appeals Division, Recourse Directorate
Canada Border Services Agency
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