

FEDERAL COURT OF APPEAL

BETWEEN:

Radu Hociung

Appellant (plaintiff)

and

Minister of Public Safety and Emergency Preparedness

Respondent (Defendant)

APPEAL BOOK

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Notice of Appeal

A-101-18

FORM 337 - Rule 337**NOTICE OF APPEAL****APPEAL**

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FEDERAL COURT OF APPEAL

BETWEEN:

Radu Hociung
Appellant (plaintiff)

and

Minister of Public Safety and Emergency Preparedness

Respondent (Defendant)

NOTICE OF APPEAL

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 Appeal
 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

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at **Toronto**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts 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 OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 26, 2018

Issued by: MJ Young
(Registry Officer)Address of local office:
90 rue Sparks Street
Ottawa, Ontario
K1A 0H9

M.J. YOUNG
REGISTRY OFFICER
AGENT DU GREFFE

TO:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
represented by
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

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of Justice Gleeson, dated MARCH 15, 2018 on Motion for Leave to Amend the Statement of Claim in Federal Court File T-1450-15, by which the motion to amend is dismissed.

THE APPELLANT ASKS that

1. The order be set aside.
2. The Motion for Leave to Amend the Statement of Claim be granted.
3. Costs.
4. Any other relief that the Court of Appeal considers just.

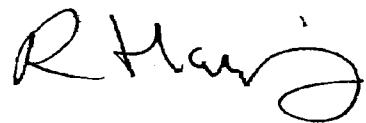
THE GROUNDS OF APPEAL are as follows:

1. Pursuant Federal Courts Act section 27(1)(c), an appeal lies to the Federal Court of Appeal from Justice Gleeson's judgment on the Motion to Amend the Statement of Claim in Federal Court file T-1450-15.
2. Justice Gleeson, as motion judge erred in law by basing his reasoning on evidence provided by the Defendant.
3. The defendant's evidence he used relates to establishing jurisdiction of the Court to hear the claims (the defendant submitted evidence in the form of

judicial notice with respect to the Customs Act section 106 and 135)

4. Motions to Amend are governed by Rules 75-79 and 200-201
5. The applicable principles relating to amendments are set out in *Canderel Ltd. v. Canada* [1994] 1 FC 3 (C.A.) at p. 10, as reiterated in *Bauer Hockey Corp. v. Sport Mask Inc* (Reebok-CCM Hockey), 2014 FCA 158 at paras 12-16, that general rule is that unless the allowance would result in an injustice to the other party not capable of being compensated by an award of costs, or the amendment would be a plea capable of being struck, it should be allowed.
6. With respect to evidence used on a Motion to Amend, *Bauer Supra* reiterates *Visx Inc. v. Nidek Co.* (FCA) (1996), 209 N.R. 342, 72 C.P.R. (3d) 19 at p. 24 of the C.P.R., which holds: "Procedurally, the Court will not receive any evidence where the basis for striking out paragraphs in a statement of defence is alleged to be that they disclose no reasonable defence [Rule 419(1)(a)]. Rule 419(2) expressly prohibits the use of evidence on a Rule 419(1)(a) motion. In similar fashion, the Court should not accept any evidence in support of an application for leave to amend pleadings under Rule 420, unless evidence is required in order to clarify the nature of the proposed amendments."
7. The Defendant represented no uncompensable injustice in his response.
8. The grounds for a plea being capable of being struck are enumerated at Rule 221(1), while Rule (2) states "No evidence shall be heard for an order under paragraph (1)(a)"

March 26, 2018



(Signature of solicitor or appellant)

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

SOR/2004-283, ss. 35 and 38

TAB 2

Justice Gleeson's Order on Motion to Amend Statement of Claim

Federal Court



Cour fédérale

Date: 20180315

Docket: T-1450-15

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOIUNG

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

TAB 3

Statement of Claim T-1450-15

ACTION

(Court File No.)

FEDERAL COURT

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

STATEMENT OF CLAIM

STATEMENT OF CLAIM TO THE DEFENDANT

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

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

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

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

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

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

(Date)

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: (Name and address of each defendant)

CLAIM

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

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

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

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

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

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

iv. Willfully committed fraud by seizing and demanding payment for the return of currency, when he clearly understood that no violation of the Customs Act or the PCMLTFA had occurred.

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

- i. The full definition of "cash" given by the PCMLTFR is:

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada or coins or bank notes of countries

other than Canada. (*espèces*)

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

- s) On or about February 9, 2015, the President's secretary phoned the Plaintiff to acknowledge receipt of the request to reassign, that there appears something improper had taken place, and that the legal team had been informed and was investigating. She promised that an outcome of the lawyers investigation will be communicated to the Plaintiff in writing.
- t) Following two more phone calls from the Plaintiff to the President's office, requesting the written response or acknowledgment of the January 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.
- u) On March 9, 2015, a new CBSA employee, M Gagnon wrote to the plaintiff and attempted the explanation that foreign coins are not "cash" as they are not "intended for circulation". This is a misrepresentation of the PCMLTFA in support of the demand for payment of \$1606.97 and thus also constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- v) As it follows the request of reassignment to the president of the CBSA, it is clear that this instance of fraud comes as a result of instructions given by the president to M Gagnon.
- w) On March 13, the Plaintiff responded to M Gagnon, clarifying that the wording of the "cash" definition applies the "intended for circulation in Canada" qualifier only to Canadian bank notes, and not to foreign currency, notes nor coins, nor Canadian coins.
- x) On May 26, M Gagnon responded with an attempt to once more change the explanation why the coins are "goods". She claimed that they are collector coins as their true value is not the same as their face value.
- y) On June 1, 2015, the Minister rendered his decision to the Plaintiff signed by Jeffrey Strickland for the Minister of Public Safety. In his decision, the

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

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

2. The Plaintiff also claims:

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

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

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

unfamiliar with and thus declare to be “goods”.

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

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

domestic, since the PCMLTFA was enacted.

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

August 27, 2015

Sincerely,

A handwritten signature in black ink, appearing to read "R Hociung".

(Signature of solicitor or plaintiff)

Radu Hociung

226 Willowdale Ave

Waterloo, ON N2J 3M1

Tel: (519) 883-8454

Fax: (519) 574-4009

SOR/2004-283, s. 35

TAB 4

Statement of Defense

Court file number: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

STATEMENT OF DEFENCE

1. The defendant does not admit any of the allegations contained in the statement of claim.
2. The defendant denies the allegations contained in paragraphs 1 and 2 of the statement of claim.
3. The defendant has no knowledge of the allegations contained in paragraphs ____ of the statement of claim: n/a.
4. The defendant states that the plaintiff presented himself to the Canadian Border Services Agency (CBSA) at the Queenston Bridge in Niagara-on-the-Lake, Ontario on Oct. 21, 2014.

5. The defendant further states that the plaintiff failed to declare the importation of United States gold and silver coins which he had purchased earlier that day in the United States at a value of \$5,700.00 USD.

6. The defendant further states that the gold coins in question are Buffalo Gold Bullion Coins and are collector items not intended for circulation as currency. The silver coins in question are also collector items not intended for circulation as currency.

7. The defendant further states that these collector coins are not "cash" or "currency" but rather goods for the purpose of the *Customs Act*. The exemption from declaring cash or currency in an amount below \$10,000.00 CAD has no application to these types of collector coins.

8. The defendant further states that the plaintiff's failure to declare the collector coins constitutes a violation of section 12 of the *Customs Act*.

9. The defendant further states that the onus to declare goods entering Canada, including collector coins, falls on the individual bringing the goods into the country, whether or not prompted by a CBSA officer.

10. The defendant further states that as a result of the violation, CBSA officers lawfully seized the collector coins and advised the plaintiff that the collector coins would be released to him on payment of \$1,606.97 CAD.

11. The defendant denies the plaintiff's allegations in the statement of claim that CBSA officers threatened the plaintiff with violence or told him that the collector coins would be destroyed, and puts him to the strict proof thereof.

12. The defendant further states that the plaintiff appealed CBSA's enforcement action to the Minister of Public Safety and Emergency Preparedness.

13. The Minister denied the appeal on the basis that the collector coins are not cash or currency but rather goods for the purpose of the *Customs Act*. The Minister decided that the collector coins may be released to the plaintiff upon payment of the reduced amount of \$321.39 to better reflect the circumstances of this enforcement action.

14. With respect to the plaintiff's claim for damages, which damages are not admitted but expressly denied, the defendant states that pursuant to section 106 of the *Customs Act*, the plaintiff may not seek damages herein but must bring a separate action for damages.

15. The defendant states that as a result of the foregoing, the plaintiff is not entitled to any of the relief sought in the statement of claim.

16. The defendant asks that the plaintiff's claim be dismissed with costs payable to the defendant.

17. The defendant asks that this action be tried at Toronto.

DATE: September 29, 2015

William F. Pentney, Q.C.
Deputy Attorney General of Canada

Eric Peterson, Crown Counsel
Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400
Toronto, Ontario
M5X 1K6

Tel: 416-952-6334
Fax: 416-973-5004

Counsel to the Defendant

TO: Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3MJ
Tel: 519-883-8454
Fax: 519-574-4009

asst *Donna Robinson*
416 - 952 - 6886

TAB 5

Plaintiff's Motion to Amend Statement of Claim

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 ongoing.
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".

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 Stated 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 under non-declaration section 12 of the PCMLTFA. For this he needed to establish either a reasonable suspicion of criminal provenance, as well as a sum exceeding \$10,000 (which is why he requested the wallet, in order to search for additional currency), without which arrest and confiscation could not be reasonably justified.

- iii. Knew that the PCMLTFA applies to the coins, and not the Customs Act, when he threatened arrest. Arrest is not a possible outcome of violations of the Customs Act, but it is an automatic outcome of violations of the PCMLTFA.
 - iv. Willfully committed fraud 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 bordersOn 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 schemeOn-

~~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 Act 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 known 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 or 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 transfers 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 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”. Ie, 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

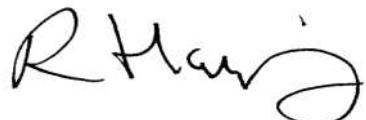
- f) A declaration of the value of collectable currency (which really is any currency someone might want to keep rather than spend) for the purposes of the PCMLTFA even if this value is different than face value. The Currency Act provides that the gold \$50 coins are worth their face value as legal tender. 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 transitional 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

| 226 Willowdale Ave

| 246 Southwood Drive

| Kitchener, Ontario

| N2E 2B1

| Waterloo, ON N2J 3M1

| Tel: (519) 883-8454

| Fax: (226) 336-8327 519) 574-4009

SOR/2004-283, s. 35

TAB 6

Defendant's Response on the Motion

Court file: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

**RESPONDING MOTION RECORD
MOTION TO AMEND CLAIM**

ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
Litigation Extradition Advisory Division
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6
Fax: (416) 973-5004

Per: Eric O. Peterson
Tel: (416) 952-6334
Email: eric.peterson@justice.gc.ca
LSUC: # 34833B
Solicitor/counsel for the Respondent

TO: Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3M1
Email: radu.cbsa@ohmi.org

TO: **Registrar**
Federal Court
Suite 200, 180 Queen Street West
Toronto, Ontario
M5V 3L6

Court file: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

**WRITTEN REPRESENTATIONS OF THE DEFENDANT
(Plaintiff's Motion to Amend Claim)**

STATEMENT OF FACTS

1. The plaintiff moves to amend the statement of claim in order to:
 - (1) expand his claim for damages,
 - (2) seek mandamus in the form of orders that the CBSA officers and officials involved herein be charged with fraud under the Criminal Code, and

(3) seek mandamus in the form of an order that the Minister dismantle CBSA for being a criminal organization engaged in money laundering.

POINTS IN ISSUE

2. Do the proposed amendments meet the test for amending a statement of claim?

SUBMISSIONS

3. Rules 75 to 79 and 200 to 201 govern the amendment of a statement of claim in this Court. Where a defence has been filed, as here, the plaintiff must seek leave for the amendments: rule 200.
4. An amendment adding a new cause of action will be allowed only where it is based on facts already pleaded and the opposing party would suffer no prejudice: *Martel Building Ltd. v. Canada* (1998), 163 D.L.R. (4th) 504 (F.C.A.), reversed on other grounds, 2000 SCC 60.
5. Here, the limitation period prescribed by the *Customs Act* for bringing an action under section 135 has expired. Subsection 135(1) of the Act provides that appeals of Ministerial Decisions by way of action

must be commenced within 90 days after the person is notified of the decision. The Ministerial Decision was rendered on June 1, 2015.

6. All the additional facts in support of an expanded claim for damages and a request for mandamus were known to the plaintiff, or could have been discovered through reasonable diligence, within the limitation period for bringing this action.
7. More importantly, the plaintiff may not seek damages or mandamus in an action brought under section 135. The only issue for the Court to determine in this type of action is whether there was a contravention of the *Customs Act* or its regulations.
8. An action under section 135 is an appeal of a Ministerial Decision by way of action. A section 135 action is a trial de novo with the sole purpose of determining whether a contravention of the *Customs Act* had occurred.
9. Any claims for damages or mandamus with respect to the performance of a CBSA officer's duties can be brought by way of separate action or judicial proceeding as provided for by section 106 of the *Customs Act*. The limitation period for bringing a claim for damages under section 106(1) with respect to the performance of a CBSA officer's duties is three months.
10. Parliament has chosen to separate actions under section 135 from proceedings arising from a CBSA officer's duties under section 106. The fact that Parliament has done so demonstrates that a section

135 action has a limited scope and is not to be combined with claims for damages or mandamus or any other causes of action or requests for relief.

11. The plaintiff's request for mandamus in the form of an order requiring the Minister to dismantle CBSA can be brought in a separate, regular civil action or application.¹ Such a proceeding cannot be combined with a section 135 action, for the reasons discussed above.
12. With respect to damages sought in the statement of claim as it now stands as well as the proposed amendments, the plaintiff was aware of the facts in support of his damages claim at the time he filed the statement of claim, or he could have discovered these facts through the exercise of reasonable diligence.
13. More to the point, the plaintiff cannot sue for damages in an action pursuant to section 135 of the *Customs Act*. In the face of this statutory bar, the proposed amendments dealing with damages do not have the slightest of success.
14. With respect to the request for mandamus that fraud charges be laid against the CBSA officials and officers involved, pursuant to the Criminal Code, this type of relief is not available to the plaintiff in this action. It was available to him in a proceeding pursuant to section 106 of the Act, although the limitation period has now expired, and

¹ If the plaintiff were to bring such an action or application, it is more than likely that the Minister would move for an order striking the claim or application as being frivolous and vexatious. A claim or application will be struck as being frivolous and vexatious where it does not have the slightest chance of success.

in any event, it does not appear that such a request would have the slightest chance of success in a section 106 proceeding (because an order of mandamus is not available against the Crown Attorney to lay criminal charges).

15. Finally, with respect to the request for mandamus that the Minister dismantle CBSA as a criminal organization engaged in money laundering, this type of relief is not available to the plaintiff in this action. He is at liberty to ask for such relief in a regular civil action or application.²

ORDER SOUGHT

16. The Minister asks that the plaintiff's motion to amend the statement of claim be dismissed with costs.
17. In the alternative, the Minister asks that if the Court grants leave for any of the amendments, those amendments should then be dealt with as part of the Minister's motion for summary judgment already filed.
18. The Minister also asks for his costs of this motion.

²² In the event that he did so, it is more than likely that the Minister would move to strike the claim or application as being frivolous and vexatious, the test being whether the claim or application has the slightest chance of success.

35. In the alternative, the plaintiff's testimony at his examination for discovery about his interactions with BSO Debski do not demonstrate any rude, offensive, or threatening actions or conduct on the part of BSO Debski towards the plaintiff.

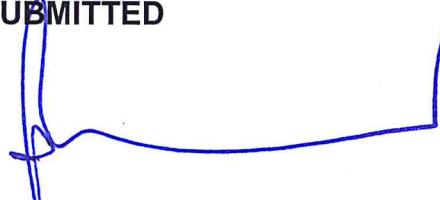
ORDER SOUGHT

36. The defendant requests Summary Judgment:

- (a) dismissing the action in its entirety, with prejudice;
- (b) its costs; and
- (c) such other relief as to this Honourable Court may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: February 28, 2017


Eric Peterson, Crown Counsel
**DEPARTMENT OF JUSTICE
CANADA**

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

AND TO: Radu Hociung
226 Willowdale Avenue
Waterloo, Ontario
N2J 3M1
Email: radu.cbsa@ohmi.org

PART I – LIST OF AUTHORITIES

Imperial Tobacco Inc. v. Canada (A.G.), 2011 SCC 42

APPENDIX A - STATUTES AND REGULATIONS

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

Oxford English Dictionary, "currency"

Royal Canadian Mint Act, R.S.C., 1985, c. R-9.

Currency Act, R.S.C., 1985, c. C-52, section 8

TAB 7

Plaintiff's Reply to Defendant's Response on the Motion

WRITTEN REPRESENTATIONS
Federal Court Rules, 1998, Rule 369

T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

**PLAINTIFF'S WRITTEN REPRESENTATIONS
REPLY TO DEFENDANT'S RESPONSE TO MOTION TO AMEND CLAIM**

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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CBSA Information Bulletin – Precious Metals – Bullion and Coin.....	20
TAB 3	23
Oral Examination of the Plaintiff, Jan 5, 2017.....	23

TAB 1

WRITTEN REPRESENTATIONS (Reply)

1. [Re: Defendant's Response Written Representations para 4] The amendments are based on facts already pleaded, ie, the seizure of gold and silver coins. Specifically, the seizure was performed pursuant the "Precious Metals Bulletin", which is a CBSA protected (not publicly available) document, and was obtained by the Plaintiff during examinations for discovery. The bulletin (attachment to Defendant's answers, TAB 2) shows clear intent and method for money laundering. The bulletin quotes the definition of financial instruments (precious metals) from the *Excise Tax Act* s.123(1) and Canada Revenue Agency policy statement P-192, which clarifies that gold and silver coins are financial instruments; the bulletin emphatically instructs border officers to not report or allow reporting of such financial instruments pursuant *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* s.12. Meaning, the seizure was in fact part of the money laundering scheme, justifying the new cause of action.

Information not previously available to plaintiff.

2. [Re: Defendant's para 6] The additional information in support of the expanded claim for damages was contained in the Precious Metals Bulletin, which is a CBSA protected document, as clearly stated in its footer:
 3. **"PROTECTED - This document is the property of the CANADA BORDER SERVICES AGENCY. It is provided on the understanding that it will be used solely for official purposes by your agency and that it will not be further disseminated without the written permission of the CANADA BORDER SERVICES AGENCY"**
4. Being a protected (confidential) document means it could not have possibly been

known to the plaintiff before its express disclosure by the CBSA in the January 31st, 2017 written answers to the Written Discovery questions. The document had not been previously included in the Defendant's Affidavit of Documents.

5. Furthermore, as the defendant has delayed providing discovery answers for more than 6 months, after the Written Discovery questions had been served on July 19, 2016, there was no way for the contents of the bulletin, or even its title to be known to the plaintiff. Even at the present time, using the title and various keywords contained in the bulletin in Google searches, do not yield this bulletin as a result, meaning it likely has never been publicly available. CBSA's own website does not publish this bulletin either, nor any to a similar effect.
6. [Re: Defendant's para 12] As shown at para 2.above, the information relied on in the amendment (namely, the CBSA Precious Metals Bulletin), was not known to the plaintiff before January 31st, 2017, when it was disclosed as part of discovery of the defendant, nor was it discoverable by reasonable diligence, as the bulletin is a secret document circulated within the CBSA.

Customs Act section 106

7. [Re: Defendant's para 9] Section 106 of the *Customs Act* is not invoked in this action because it does not apply. Section 106 applies only to officers performing their duties under an Act of Parliament. Here, the officers involved were committing fraud, while fraudulently claiming to enforce the *Customs Act*. Insofar as fraud is not a duty of these officers under an Act of Parliament, they are not entitled to the limitations set forth by section 106.

Mandamus Order

8. Finally, while the defendant has mentioned 'mandamus' liberally throughout his response to the motion, the plaintiff does not in fact seek any mandamus orders. The plaintiff is of the view that ordering a criminal organization to not be criminal (ie, the mandamus order contemplated by the defendant) is futile, just as ordering a wolf to guard sheep without partaking. It may be the defendant's hope that the Court will see a mandamus order as the most just remedy. Hoping for a mandamus order betrays the defendant's understanding that his actions are indeed illegal, going to the merits of this motion to amend. In any case, the plaintiff does not seek a mandamus order.

Customs Act Section 135

9. In his response, the defendant states various incorrect assumptions and unnecessary and wrong inferences with respect to the purpose of section 135 of the *Customs Act*.
10. One purpose of section 135 of the *Customs Act* is to afford the Minister the opportunity to correct any of CBSA's decisions before facing the judiciary system himself, being responsible for CBSA's day-to-day activities. That is, the Minister may engage the full adjudication process outlined in the *Customs Act*, and is allowed to reach a decision to the best of his abilities. Only once he has exhausted this process, and has delivered his Decision, then the Decision may be appealed to the judiciary.
11. Another purpose of section 135 is to set a limitation of 90 days for action to be commenced, and a limitation that the action may not be brought before the minister has completed the Decision process.
12. Another purpose is to set the Federal Court as the forum for appeals.
13. Another purpose is to set the manner of the appeal, as a full-fledged, ordinary action, pursuant the *Federal Courts Act* and the rules made under that Act.

14. There is one final purpose of section 135, and that is to allow variations to the Rules of the Federal Court, as specified by special rules made with respect to actions.
15. The Federal Court Rules list numerous special rules, and special circumstances regarding actions, but no such special rules have been ordered with respect to the present action. The Court may vary the rules as it sees just.
16. As there is no special rule at this time in this action, a limitation of liability of the defendant, or a limitation that the sole cause of action is to be the determination of the Minister's Decision, as the defendant claims, do not exist.
17. While the relief sought with respect to section 135 is to set aside, dismiss, reverse the Minister's Decision, or otherwise as the Court deems just, Rule 101 clearly and explicitly allows that a party may request additional relief against another party to the same proceeding in respect of other claims related to the same facts.

No prejudice exists

18. As a result, the only criteria for allowing the amendment to the Statement of Claim are those listed in Rule 75, namely "on such terms as will protect the rights of all parties"
19. In fact, even prejudice that can be compensated for by costs or adjournment should not prevent amendments to the Statement of Claim (rule 76), though there is no prejudice claimed as a result of this motion.

Limitation periods not exceeded

20. Although no limitation periods have expired with respect to any claims in the Amended Statement of Claim, it's worthwhile to note that it is the commencement of the action,

and not the filing of amendments that is or relevance in establishing limitations of time (this is clearly stated in Rule 77). The action was indeed commenced within the limitation period of section 135, as found previously by Madam Prothonotary Martha Milczynski in her order disposing of the defendant's August 30, 2016 motion to strike the Statement of Claim.

Criminal remedies available from the Federal Court

21. [Re: Defendant para 14] As the Federal Court has criminal jurisdiction, as well as civil, and as Section 135 requires actions to be treated pursuant Federal Courts Act and the the Federal Court Rules, it follows that relief available under the Criminal Code is available in section 135 actions. In any case, per the Rules, leave to amend the statement of claim should not depend in any way on whether the relief sought is likely to be granted.

Crown attorney not a party

22. Perhaps a more interesting question is why does the Crown Attorney find himself defending a client from criminal charges when he has absolutely no evidence to support his case (given the summary judgement motion he has filed), and therefore a negligible chance to succeed on merit. This question is especially interesting as the Defendant is quite aware of the majority of evidence the plaintiff plans to rely on at trial. This evidence has been disclosed in the Plaintiff's Affidavit of Documents, in the Answers to Written Discovery that the defendant himself provided, and includes other publicly available precedents and court orders. Surely the Crown Attorney has no reasonable expectation of success, that is to say, he should be convinced by now that it is not in the public interest that he defend the CBSA or the Minister in this action.

23. In any case, the Crown Attorney is not a party to this action, and thus cannot be ordered anything as an outcome of the action. Should the Attorney General wish to intervene the action, he is of course free to file a motion with that effect with the Court. Alternately, the Court may bring any of the questions in this proceeding to the attention of the Attorney General, pursuant Rule 110.

Separate action not necessary

24. [Re: Defendant's para 11] Perhaps a separate action can be brought against the Minister, however this is not mandated by any *Customs Act* or Federal Court Rules. Furthermore, since all claims emanate from the same facts, it is in the interest of an expeditious, just and least expensive determination that they be made in one action.

Testimony showing officer threats

25. [Re: Defendant's para 35] The plaintiff's testimony in fact does demonstrate offensive and threatening behaviour of BSO Debski [transcript enclosed, TAB 3], see answers to questions 57, 65-72. However, the claims regarding BSO Debski are not being amended, they are carried from the original Statement of Claim.

TAB 2

Defendant's Written Answers to Discovery, January 31, 2017



**Department of Justice Canada
Ontario Regional Office**

Ministère de la Justice Canada
Bureau régional de l'Ontario

- 11 / 46 -

FACSIMILE TRANSMISSION TRANSMISSION PAR TÉLÉCOPIEUR

SEND TO / ENVOYER À		FROM / DE	
Name / Nom: Radu Hociung		Name / Nom: Eric Peterson Counsel	
Address / Adresse: By fax only		Address / Adresse: Ontario Regional Office The Exchange Tower 130 King St. West Suite 3400, Box 36 Toronto, Ontario M5X 1K6	
Fax # / No du télécopieur: 226-336-8327	Tel. No. / No du Tél:	Fax # / No du télécopieur: (416) 973-5004	Tel. No. / No du Tél: (416) 952-6334

Comments / Commentaires:

Re: HOIUNG, Radu v. Minister of Public Safety and Emergency Preparedness

Federal Court docket: T-1450-15

Please find attached the Defendant's response to the written examination for discovery.

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11

Yes / Oui

X

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Name / Nom: **Donna Robijnsen** at / au: **416-952-6886**

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Court File No. T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Sebastian HOIUNG

PLAINTIFF

AND:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

DEFENDANT

AFFIDAVIT OF TARA-LEE FRASER

I, Tara-Lee Fraser, Senior Litigation Advisor, 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.

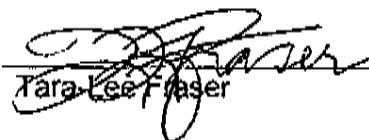
2. Attached hereto and marked as Exhibit "A" is the Defendant's Responses to Written Examination, being the Defendant's answers to the Plaintiff's written examination for discovery. I confirm that the answers therein are true, to the best of my knowledge.

-213 / 46 -

SWORN BEFORE ME at the City of
Ottawa, in the Province of Ontario
this 31st day of January, 2017.

X10

Commissioner for Taking Affidavits
for the Province of Ontario



Tara Lee Foran

Sherri-Lynn Catherine Foran,
a Commissioner, etc., Province of Ontario,
for the Government of Canada,
Canada Border Services Agency.
Expires August 24, 2018.

Sherri-Lynn Catherine Foran,
commissaire, etc., Province de l'Ontario au
service du gouvernement du Canada,
Agence des services frontaliers du Canada.
Date d'expiration. le 24 août 2018.

Sherri-Lynn Catherine Foran,
a Commissioner, etc., Province of Ontario,
for the Government of Canada,
Canada Border Services Agency.
Expires August 24, 2018.

Sherri-Lynn Catherine Foran,
commissaire, etc., Province de l'Ontario au
service du gouvernement du Canada,
Agence des services frontaliers du Canada.
Date d'expiration. le 24 août 2018.

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EXHIBIT "A"

This is Exhibit « A » referred to
in the affidavit of
Tara-Lee Fraser
sworn before me
this 3rd day of January A.D. 2017

8702

DEFENDANT'S RESPONSES TO WRITTEN EXAMINATION

1. Please provide a full list of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs during each year between 2000 and 2015, including quantities, full descriptions, and date of importation/exportation. If data for the entire 2000-2015 time period is not available, provide all the data available in this period. Please provide the list in electronic format if possible.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

2. Please provide a summary of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs for each year from 2000 to 2015 inclusive, including totals in quantity of coins, total number of troy ounces, and total value in dollars.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

3. Please provide a summary of gold and silver currency imported and exported from Canada during each year between 2000 and 2015 inclusive, which was reported on E-677 forms. Provide separate totals for gold and for silver coinage.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

4. Please provide a list of all seizures pursuant PCMLTFA where gold or silver coins were seized between years 2000-2015 inclusive. Please include date of seizure, total value seized, value of gold seized, value of silver seized, number of the PCMLTFA article invoked, and whether or not the currency was eventually returned.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

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5. When was the policy that "gold and silver coins are not currency" first stated within CBSA. Include the document that first stated this policy and include complete references to legislation used to create the policy. Please include detailed accounts of how gold and silver coins were treated prior to this policy being created.

The CBSA does not have a specific policy in relation to the reporting of collector coins, gold and silver coins or precious metals as currency.

Commodities made of precious metals have to be reported upon importation pursuant to the *Customs Act*. The reporting requirement for precious metals under the *Customs Act* did not change following the creation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and its related regulations.

Canada's *Customs Tariff* is based on the World Customs Organization's Harmonized Commodity Description and Coding System (HS). The HS was developed and is maintained by the WCO, an independent intergovernmental organization with over 200 countries. The HS is the standard coding structure and related product descriptions used in international trade. HS compliance is the mandatory classification and declaration of goods coming into or leaving Canada. The importer or exporter is responsible for the correct use of HS when declaring goods. Canada has been a member of the WCO since 1971. Items made of precious metals, including coins, are listed in the HS.

There is no express reference in Part 2 of the *PCMLTFA* or the *Cross-border Currency and Monetary Instruments Reporting Regulations*. Part 1 of the *PCMLTFA* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, however, provide the following definitions:

"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;

"funds" means either:

- (a) cash; or
- (b) currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's or entity's title or right to, or interest in, them; and

"precious metal" means gold, silver, palladium or platinum in the form of coins, bars, ingots or granules or in any other similar form".

By relying on statutory interpretation, foreign coins intended for circulation are considered currency for reporting purposes under the *PCMLTFA*. Whereas, foreign coins not intended for circulation are to be reported as goods in accordance with the *Customs Act*.

6. When was the policy that "gold and silver coins are not currency" first enforced within the CBSA, was it challenged, and what was the outcome? Include documentation.

The CBSA does not have a specific policy in relation to collector coins, gold and silver coins or precious metals as currency, and to best of our knowledge, the CBSA's position that foreign coins (collector coins) are goods has not been challenged in a court of law.

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7. When did Jeffrey Strickland first state or endorse the policy that "gold and silver coins are not currency"?

Mr. Strickland was introduced to the CBSA's position that foreign coins (collector coins) are goods for the purposes of reporting under the *Customs Act* in or about April 2011.

8. When did Jeffrey Strickland commence employment with the CBSA?

August 2004

9. Has Jeffrey Strickland ever known gold and silver coins to be currency during his career with the CBSA? Please include written evidence of the same.

Mr. Strickland has understood that non-circulation coins do not fall within the definition of currency since 2011, and has no recollection of being introduced to the subject, or having a position on the subject prior to this point in time.

10. When did Joanne Lepage first state or endorse the policy that "gold and silver coins are not currency"?

The determination that gold and silver coins constitute "goods" within the meaning of the *Customs Act* is derived from legal opinions dating back several years. Joanne was first made aware of this legislative interpretation in 1997 which sets out that coins or banknotes being imported where the intrinsic value is higher than its fiduciary value – e.g. collector coins with a value higher than their face value – fall within the purview of the *Customs Act* and must therefore be reported under this Act.

11. When did Joanne Lepage commence employment with the CBSA?

May 1990

12. Has Joanne Lepage ever known gold and silver coins to be currency during her career with the CBSA? Please include written evidence of the same.

During the course of her career, Ms. Lepage only encountered instances pertaining to collector coins which were "goods" within the meaning of the *Customs Act* and not "currency" under the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or its associated regulations.

13. How were gold coins issued by Canadian and foreign authorities of purity over 99.5% fine gold treated prior to the creation of the policy that they are not currency? Include any documentation available as proof.

The above noted, namely that coins being imported where the intrinsic value is higher than its fiduciary value – e.g. collector coins with a value higher than their face value – fall within the purview of the *Customs Act* remains a constant. The characterization of collector coins as "goods" rather than "currency" was unaffected by the coming into force of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

14. Are there any gold or silver coins in existence in Canada or other countries that would qualify as domestic or foreign currency according to CBSA? Enumerate all the gold and silver coins types that the CBSA has classified, in the year 2000 or afterwards, as currency for PCMLTFA and/or *Customs Act* purposes. Include issuing country, coin description and denomination.

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OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquiries in accordance with Rules 242(1)(c) and (d).

15. Explain in detail how the seizing BSO came to have a copy of the plaintiff's citizenship card, given that he did not request it, according to his narrative report.

BSO Debski does not recall. However, it is normal practice to make copies of information and evidence reviewed at the time of the examination where seizure is taken.

16. Is it true that officer Debski requested the plaintiff's passport and wallet, not his passport, drivers' license and [car] ownership as he claimed in his narrative report?

BSO Debski does not recall asking for Mr. Hociung's wallet.

17. Did the seizing officer use the language "arrestable offense" when describing the "seriousness" of the offence he alleged in his narrative report?

As stated in his narrative report, BSO Debski did advise Mr. Hociung that smuggling was an arrestable offence.

18. Given the alleged behaviour clues from Radu Hociung (nervousness, pacing, raised voice), and officer Debski's conclusion that the coins were being "smuggled", would a conclusion that an arrestable offense may have occurred be appropriate according to CBSA officer's manual?

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules. Mr. Hociung was not arrested or charged with a criminal offence as a result of this incident. But rather a civil seizure action was taken against the goods (*In rem*) for non-report under the Customs Act.

19. Why did officer Debski not report his verbal explanation of what "serious offense" means in terms of expected penalties?

This question is unclear and as such the Defendant is unable to answer.

20. Why did officer Debski not report asking the question "Where do you have so much money from?" and the answer he received, in his written report?

BSO Debski has indicated that the question was meant to instigate conversation and possibly show verbal and physical indicators that Mr. Hociung may have been exhibiting. This question was not pertinent to the seizure action.

21. Is his inquiry as to the provenance of funds related to the PCMLTFA or to the Customs Act? Include the section of the officer manual that explains the purpose and relevance of this question.

In the performance of their duties, BSOs may ask routine questions with respect to goods, currency and/or monetary instruments, to ascertain the nature of the goods being imported in order to determine what reporting obligations have been engaged under either (or both) the Customs Act as well as the PCMLTFA.

22. Why did officer Debski not report generating an "online rating" for the coins, showing supposedly owed taxes? What was the purpose of producing this rating?

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The online rating form was not provided to Mr. Hociung by BSO Debski nor did he review it before it was handed to Mr. Hociung.

As indicated in BSO Debski's narrative report, a copy of the online rating report was provided to Mr. Hociung to illustrate an approximate amount of tax calculated for the coins.

23. Explain in detail how the "online rating" came to show a 13% tax rate for the gold coins, while a call to CRA to clarify the same question yielded a conclusion that the gold and silver coins are tax exempt?

The online rating report is populated from the Traveller Entry Processing System (TEPS). The system is used to determine the duties and taxes owing on imported goods. The system automatically generates the related rates of duty/taxes based on the Customs Tariff classification code that is entered. The system has various methods to help classify items such as common commodity types or keyword searches to apply the applicable HS codes.

In this case, the calculation was made based on Customs Tariff classification code no. 7118.10.00.00.

However, during the ministerial review, it was later determined that the coins were tax exempt, and as such, the amount owed for the terms of release was lowered accordingly.

24. Did officer Debski intend to charge the plaintiff 13% of the value of the coins, as shown on the "online rating", had they been reported according to Customs Act section 12?

At the time of the seizure, terms of release for the return of the seized coins was calculated by the Integrated Customs Enforcement System in the amount of \$1,606.97, as indicated on the Seizure Receipt.

As mentioned above however, during the ministerial review, it was determined that the coins were tax exempt due to purity levels, and as such, the amount owed for terms of release was lowered accordingly.

25. Is the 13% tax typically charged for all importations of gold and silver coins into Canada? Provide detail as to how the CBSA determines which coins are subject to this tax.

The rate of duty and taxes applicable to imported gold and silver coins is dependent upon the purity level of the coins in question. If coins meet the required purity level, they are unconditionally duty free and tax exempt. However, if they fall below the purity level, then HST is applicable.

26. In his narrative report, the Officer Debski quoted "only coins issued [...]" . Include the complete reference to the document he is quoting, and the full text of the section quoted, and explain how he arrived at the conclusion that the stated criteria do not match the coins he seized as goods?
The criteria, as per his narrative report are:
• minted with metals at the required purity levels
• issued by a government authority

See attached – “Information Bulletin – Precious Metals – Bullion and Coin”

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27. Why did the seizing Officer Debski feel he needed to consult the Superintendent? What questions did he ask the superintendent? Was it to confirm whether an arrest was appropriate? Please include the superintendent's officer notebook entries as evidence, and list all questions officer Debski asked the superintendent.
- BSOs are supposed to consult with a superintendent any time enforcement action takes place. Recollection is that the discussion focused on how the coins should be treated, as currency or a commodity. Superintendent Kroeker does not have any notes with respect to this discussion or enforcement action.**

28. When did Superintendent Kroeker commence employment with the CBSA?

September 2002

29. When did Officer Debski commence employment with the CBSA?

November 2010

30. Is the Superintendent's advice that gold coins that match the criteria in the document he referred to in question 26 incorrect according to CBSA's Legal Services Unit? Explain in detail your reasoning why the Superintendent was correct or incorrect.

The information contained in the information bulletin at question 26 is correct and in line with the CBSA's current position with respect to gold and silver collector coins.

31. Explain in detail how the CBSA "Online rating" software generates a tax rate as output. What inputs are used in the determination, and how are they processed to produce the output rating?

Please refer to the answer provided in question 23.

32. Please provide the video recording from security cameras or other recording sources within the CBSA control, showing the interaction between Officer Christopher Debski and Radu Hociung on Oct 21, 2014 between the approximate times of 17:48 and 19:15, and the transcript of the conversation.

Video footage of the enforcement action is not available. The CBSA does not maintain transcripts of conversations had with the public.

33. The seizing officer claimed that if the "terms of release" are paid, then no tax or duty are owed, not even the tax he claimed to be applicable as per his own online rating. Is this correct according to CBSA? Explain in detail, with complete references to applicable legislation, why the CBSA "terms of release" would absolve an importer from the obligation to pay taxes and duty. Does this policy apply only to gold and silver coins, or generally to any imported goods?

Following the seizure of goods, BSOs may return the goods pursuant to subsection 117(1)(a) of the *Customs Act*, upon payment of an amount of money equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon at the time of the seizure.

For the purposes of the *Customs Act*, the term "duties" means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*. That said, the amount of terms of release calculated for the return of goods is said to include all applicable duties and taxes.

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34. Is "Jeff" in John Dancause's Jan 29 letter the same as Jeff Strickland?
Yes.
35. Who is the author of the Feb 12, 2015 memo to "M Lefebvre" listed in the privileged documents?
- OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**
36. Explain in detail why Jeffrey Strickland omitted to mention or consider John Dancause's letter of Jan 29, 2015, which is supported by direct references to the PCMLTFR and the Currency Act, including underlining of the relevant paragraphs, in his case synopsis.
- Jeffrey Strickland was the Minister's delegate who rendered the decision under section 131 and 133 of the Customs Act. The Case Synopsis and Reasons for Decision was prepared by an adjudicator, Martine Gagnon, of the Recourse Directorate, for Mr. Strickland's consideration.**
- Further consideration was given to John Dancause's comments, as captured in the fifth paragraph on the second last page of the Case Synopsis and Reasons for Decision, which says:**
- "...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". As the PCMLTFR translates the term "cash" in French as "espèces" is to equate the term "currency" in the context of the PCMLTFA and PCMLTFR. Therefore, foreign coins intended for circulation would be considered as currency to be reported under the provisions of the PCMLTFA unless they are not intended for circulation, in which case they would be considered goods to be reported under the CA."***
37. Is John Dancause's Jan 29, 2015 recommendation that the coins are currency, wrong? Explain in detail your reasoning, whether the CBSA deems the conclusion correct or incorrect.
- The CBSA's position, as articulated to you in the Minister's decision on May 28, 2015, is that the gold and silver coins that were purchased in the U.S. are not considered currency subject to the reporting requirements of the PCMLTFA, but rather are considered goods that must be reported in accordance with the Customs Act.**
38. Is the Minister of Finance's sworn affidavit on April 15th, 1999, regarding Canadian gold and silver coins, incorrect, according to the CBSA? Explain in detail your reasoning.
- OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules.**
39. Please include the full text of the legal opinion rendered by the Legal Services Unit on April 30, 2015, as claimed by Jeffrey Strickland. Also include the "statutory interpretation" he refers to in his case synopsis.
- OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**
40. Please include the full text of the legal opinion rendered by the Legal Services Unit on Feb 26, 2015.
- OBJECTION – Solicitor-Client Privilege.**

Niagara / Fort Erie

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:
- 99.5% in the case of gold and platinum, and
 - 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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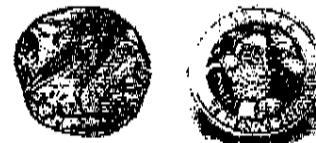
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Niagara / Fort Erie

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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October 2010

Niagara / Fort Erie

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.scotiarmocatta.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.

PROTECTED

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October 2010

TAB 3

Oral Examination of the Plaintiff, Jan 5, 2017

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Court File No. T1450-15

FEDERAL COURT

BETWEEN:

RADU HOCIUNG

Appellant

- and -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

This is the examination of RADU HOCIUNG, for discovery held
on consent of the parties at The Department of Justice,
130 King Street West, 34th Floor, Toronto, Ontario, on the
5th day of January, 2017.

APPEARANCES:

Radu Hociung	Self-represented
Mr. Eric Peterson	For the Respondent
Ms. Jeanette Duda	Court Reporter

International Reporting Inc.
41-5450 Canotek Road
Gloucester, Ontario
K1J 9G2
www.irri.net
1-800-899-0006

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RADU HOCHUNG, Affirmed:	
Examination by Mr. Peterson	1

1 Toronto, Canada

2

3 --- Upon commencing on Thursday, January 5, 2017
4 at 9:57 a.m.

5 RADU HOIUNG, AFFIRMED:

6 --- EXAMINATION BY MR. PETERSON:

7 1 Q. So, Mr. Hociung, can you state your
8 full legal name for the record, for the transcript?

9 A. It's Radu Hociung.

10 2 Q. Okay.

11 A. R-A-D-U, H-O-C-I-U-N-G.

12 3 Q. And, can you give me your date of
13 birth, please, for the record?

14 A. It's December 6th, 1973.

15 4 Q. All right. And, your current address
16 in Canada?

17 A. It's 246 Southwood Drive in
18 Kitchener.

19 5 Q. All right. And, you are the
20 plaintiff in this Federal Court action?

21 A. I am.

22 6 Q. All right. So, I'm here to ask you
23 questions, primarily, today about the events at the
24 Canadian border that gave rise to your claim. I
25 understand there are some legal arguments in your
26 Statement of Claim as well, but I will not be asking
27 you about your legal argument. So, I am only going
28 to focus on what happened to you on the day in

INTERNATIONAL REPORTING INC.

1 question at the border.

2 So, first of all, can you tell me a bit of
3 your background, your educational background?

4 A. I attended University of Waterloo for
5 Engineering from 1994 until 2000. Before that, of
6 course, high school. I never finished the
7 university. I didn't actually graduate and earn a
8 Bachelor. And, that is my education, I think.

9 7 Q. Okay. And, I think you mentioned in
10 one of the conferences you're an engineer?

11 A. Yes.

12 8 Q. All right. But, so are you a
13 professional engineer?

14 A. I am not a professional engineer, no.

15 9 Q. Okay. Okay. So, what type of work
16 do you do? What type of engineering work do you do?

17 A. How is this relevant?

18 10 Q. It's simply -- sometimes the court
19 would like to see what professional background you
20 have when you -- what you bring to the table if you
21 don't have a lawyer with you.

22 A. But, you are here for evidence;
23 right?

24 11 Q. Right. If you don't want to answer,
25 that's fine.

26 A. I do not want to answer.

27 12 Q. All right. Let's get to the day in
28 question then. On -- first of all, this is on

INTERNATIONAL REPORTING INC.

1 October 21, 2014, you were coming back from the
2 United States crossing into Canada. What was the
3 purpose of your trip to the United States?

4 A. I went to the United States to
5 purchase tires for my car.

6 13 Q. All right.

7 A. That was the main purpose of my trip.

8 14 Q. All right. And, you also purchased
9 some collectible coins I understand?

10 A. I purchased some coins while on the
11 trip, yes.

12 15 Q. All right. And, were those coins
13 purchased on that same trip in the United States?

14 A. Yes.

15 16 Q. All right. How much did you pay for
16 those coins?

17 A. I paid 50 -- if my memory serves
18 correctly, \$5,700.00 U.S. dollars.

19 17 Q. All right. And, did you have a
20 receipt for that?

21 A. I do, yes.

22 18 Q. Okay. Had you gone to the United
23 States previously to buy collectible coins or was
24 that the first time you had done so?

25 A. I have been to the United States
26 before, but never bought collectible coins in the
27 United States before.

28 19 Q. Okay. Have you ever purchased

INTERNATIONAL REPORTING INC.

1 collectible coins from the United States elsewhere
2 and brought them into Canada, other than United
3 States?

4 A. Sorry, repeat?

5 20 Q. So, have you ever bought collectible
6 coins from the U.S. or any other country abroad, and
7 then brought it into Canada?

8 A. I don't understand the relevance.

9 21 Q. All right. Have you ever bought
10 collectible coins ---

11 A. I don't understand the relevance.

12 22 Q. My ---

13 A. I understand your question.

14 23 Q. Right. The relevance is if you have
15 declared those coins at Canada customs before or if
16 you have also maintained the position that they are
17 not -- they don't have to be declared. Was this the
18 first time when you ---

19 A. No, I understand the question.

20 24 Q. Right.

21 A. I'm thinking about whether -- how I
22 should answer it.

23 25 Q. Okay.

24 A. The answer is no.

25 26 Q. You had never previously ---

26 A. I have never purchased coins outside
27 of the United States and brought -- outside of
28 Canada and brought them into Canada without

INTERNATIONAL REPORTING INC.

1 reporting them.

2 27 Q. Okay. Had you ever declared
3 collectible coins in the past at the Canadian
4 border?

5 A. Had I or have I, or had I ---

6 28 Q. Had I.

7 A. --- after that time?

8 29 Q. Had you at that time previously ever
9 declared to Canadian customs that you had purchased
10 collectible coins?

11 A. No, I have not.

12 30 Q. Okay. Are you in the business of
13 collecting coins? Are you ---

14 A. I am not, no.

15 31 Q. No. Is it ---

16 A. However, I'm a collector of coins
17 like everybody else.

18 32 Q. Okay. So, had you previously
19 purchased U.S. collectible coins in Canada or is the
20 first time ---

21 A. That is not relevant, I believe.

22 33 Q. Was this the first time you had ever
23 purchased U.S. collectible coins?

24 A. U.S. minted?

25 34 Q. Yes.

26 A. I am not sure.

27 35 Q. Okay. All right. So, then, tell me
28 -- well, let's move on to October 21, 2014. Tell me

INTERNATIONAL REPORTING INC.

1 in your own words what took place when you
2 approached the Canadian border. You approached in
3 your car, and you were in a line-up, and then what
4 happened?

5 A. So, at first, of course, there's a --
6 the primary check window where I stopped. The
7 officer there asked me -- I believe he asked me what
8 -- I don't remember the words exactly. I believe
9 the extent of his answer -- of his questions was
10 whether I was bringing goods into Canada, whether I
11 had purchased goods to bring into Canada.

12 36 Q. Right.

13 A. I told him about the tires that I had
14 bought. On the day it happened, I had a little bit
15 of a migraine, and I had bought some Advil and some
16 water, and that is all. That is all the goods that
17 I told him about.

18 37 Q. All right.

19 A. He never asked me about whether I
20 brought currency, about how much currency or
21 financial instruments I have.

22 38 Q. He never asked you if you were in
23 possession of currency over \$10,000.00?

24 A. He did not.

25 39 Q. He did not?

26 A. I believe he did not.

27 40 Q. Okay. All right. And, was it your
28 understand at that time that the collectible coins

INTERNATIONAL REPORTING INC.

1 in your possession did not have to be declared?

2 A. Absolutely.

3 41 Q. And, what was the basis of your
4 understanding? Was it anything that you read at the
5 customs border crossing or ---

6 A. No, I had researched the topic well
7 ahead of time, and these coins are minted by the
8 United States Mint according to the United States
9 code, and I forget the number. I believe it's 31.
10 It deals with the money and the currency of the
11 United States. So, they are minted at the United
12 States Mint by the United States Treasury according
13 to this law. And, in the law, they are clearly
14 stated to be a legal tender.

15 The mint itself on the site, the mint that
16 produces them, U.S. Mint, states clearly that they
17 are legal tender and, to me, that was enough to know
18 that this is currency that apply -- and, therefore,
19 currency regulations apply to it.

20 42 Q. So, they would be legal tender at
21 their face value or at their ---

22 A. Correct.

23 43 Q. --- commercial value?

24 A. Legal tender by definition is based
25 on the denomination.

26 44 Q. All right.

27 A. Not on any other value, but their
28 denomination, which is \$50.00 for the gold coins in

INTERNATIONAL REPORTING INC.

1 this case, and I believe \$1.00 for the silver coins.

2 45 Q. But, you paid \$5,700.00 for ---

3 A. That is correct.

4 46 Q. So, the commercial value far exceeded
5 the face value?

6 A. There is no such thing as a
7 commercial value. This is currency just like --
8 it's just currency. You can obtain currency at any
9 other value. The value that you obtain currency at
10 does not have to relate to the value of the
11 currency. The value of the currency is the
12 denomination ---

13 47 Q. Right.

14 A. --- and that is given by law.

15 48 Q. But, you did not pay the face value
16 of those coins.

17 A. I did not.

18 49 Q. Okay. So, if it's not the commercial
19 value, you paid, then, the retail value or...?

20 A. There's no such thing as retail.

21 Again, these are -- I believe it's not called the
22 retail value.

23 50 Q. What would it be called then? The
24 purchase price?

25 A. I'm not sure ---

26 51 Q. Okay. Fair enough.

27 A. --- what that -- what the number is
28 called.

INTERNATIONAL REPORTING INC.

1 52 Q. All right. So, at the primary line
2 of inspection, did you -- do you have any complaint
3 with what happened between you and the officer? Are
4 you taking issue with that particular officer in
5 this action?

6 A. I will not answer that at this time.
7 I may -- when I amend the Statement of Claim, there
8 may be additional claims.

9 53 Q. Okay. And then what happened next?
10 You weren't free to leave. That wasn't the end of
11 that.

12 A. Well, next, I had to go and pay the
13 taxes, import taxes for my tires ---

14 54 Q. Right.

15 A. --- and the other two items that I
16 brought. So, I went inside the customs office,
17 declared it to the officer what I had brought, which
18 was the tires and the other two items, and he
19 directed me to the cashier window, I paid the taxes
20 for the goods ---

21 55 Q. Right.

22 A. --- for the three items, and then he
23 said I was free to go, so I left ---

24 56 Q. Okay.

25 A. --- the customs office.

26 57 Q. Right, right. And then what happened
27 after that?

28 A. And then after that, on the way to my

INTERNATIONAL REPORTING INC.

1 car -- at this point, I didn't know that I was to be
2 secondarily inspected, so on the way to my car,
3 another officer, which is Officer Debski, came out
4 of his office with, I would say, a confrontational
5 greeting. He greeted me with a greeting, "What do
6 we have here?" Those were his exact words. I
7 remember them because they struck me as very odd.

8 I was, of course, a little taken aback,
9 not knowing if I'm in the back alley somewhere or at
10 the government building. I showed him my paper, my
11 paperwork, and I believe he asked me whether he can
12 look at my car. He asked me if the car -- if the
13 tires are mounted. I, of course, answered, "Yes,
14 they're mounted on." I think he had a very cursory
15 look at the tires, and I don't recall if he asked
16 for permission to search the car or not, but I
17 didn't oppose it anyway. So, he went on to search
18 my car.

19 58 Q. All right. And, that's when he found
20 the collectible coins; correct?

21 A. No.

22 59 Q. No. Okay.

23 A. That's when he found the receipt,
24 which I believe was on the front -- either on the
25 front seat of the car or -- on the passenger front
26 seat or in the glove compartment.

27 60 Q. Okay. And then ---

28 A. And then ---

INTERNATIONAL REPORTING INC.

1 61 Q. Yes, what happened next?

2 A. And then when he came out, he

3 confronted me. He asked me whether I reported

4 everything, whether I want to change my story, and

5 then I said, "No, I have nothing further to report."

6 So, he showed me the receipt and said, "What's

7 this?" And, I told him, "This is currency that I

8 purchased and I do not have to report it."

9 62 Q. Okay.

10 A. And, I'm not reporting it.

11 63 Q. Okay. And then what happened next?

12 They searched the vehicle and found the coins?

13 A. No, the coins were in my pocket.

14 So ---

15 64 Q. Oh.

16 A. --- all he did is he asked me, "Where

17 are the coins," because at this point he only had

18 the receipt from the car. So, I, of course, had the

19 coins in my pocket, as I keep all money. I don't

20 keep money around the car. And, I showed him, I

21 gave him the coins. He took them, fondled them

22 quite a bit I would say -- I might say. I think he

23 was quite inexperienced with coins like this. Maybe

24 he was happy to have them in his hand, I don't know.

25 And then he proceeded to explain a few

26 times that they are goods, goods, goods. And, of

27 course, I told him that they are stated on the Mint

28 website and the U.S. law that they are currency and

INTERNATIONAL REPORTING INC.

1 legal tender.

2 65 Q. Okay.

3 A. After which he -- he was very
4 confrontational. He was -- he took the stance --
5 his stance was also very confrontational. He made
6 me aware immediately that he was wearing -- or
7 carrying a gun. Like, his gun was, of course, in
8 his holster. He never drew his gun ---

9 66 Q. Right.

10 A. --- but he was facing me in such a
11 way that he was -- it seemed to me, I'm not
12 experienced with guns, but I was left with a feeling
13 that he's ready to pull it.

14 67 Q. Right.

15 A. And, he also said that this is a very
16 serious offence, and proceeded to explain that it is
17 an arrestable offence. He mentioned that at least
18 twice while outside ---

19 68 Q. Right.

20 A. --- that this was an arrest -- that
21 -- I don't believe -- I don't know if he used the
22 word "smuggling". I don't think he specifically
23 said what the offence was; however, he did say it's
24 an arrestable offence. He made it very clear that
25 he could have arrested me right then and there.

26 69 Q. Okay. And, but -- so what happened
27 next? At that point, did the conversation stop and
28 he let you go or...?

INTERNATIONAL REPORTING INC.

1 A. No, at that point, he went inside to
2 check with his supervisor or to do paperwork. He
3 ordered me to go to the -- inside the customs office
4 again and wait on the bench.

5 70 Q. Okay.

6 A. It was an order. He was yelling, at
7 this point, at me. I went inside, I waited for him,
8 it might have been maybe 15 minutes that I waited
9 for him. I think he came back one more time to ask
10 some questions about the coins. This was, of
11 course, about -- this was more than two years
12 ago ---

13 71 Q. Right.

14 A. --- and keeping in mind that I didn't
15 come to Canada to meet with you, so I didn't review
16 any of my papers, I didn't bring any of my notes.
17 I'm just recollecting memory that's two years old at
18 this point.

19 I believe my recollection is that he came
20 out one more time, at which point I -- that's when,
21 I believe, he told me that he would have to seize
22 them, and that's when I asked him what he would do
23 with them, what would happen with them, and
24 that's, I believe, at the point, he said that they
25 would be destroyed -- that I have to pay to get them
26 back. He wouldn't tell me how much, he hadn't
27 decided yet, but I asked him, "Who's going to
28 decide?"

INTERNATIONAL REPORTING INC.

1 72 Q. Right.

2 A. And, he responded that he would be
3 deciding. And, I asked him, "What happens if I
4 don't pay?" Of course, I knew that I don't owe a
5 penny since this do not have to be recorded --
6 reported, so I did not have -- I did not expect I
7 would have to pay anything to get my coins.

8 He said that if I do not pay his terms,
9 that the coins would be destroyed after either 30
10 days or 90 days. I don't recall the number he said,
11 but he gave a specific number like that, a multiple
12 of 30, and he said they would be destroyed if I
13 don't pay after that time.

14 73 Q. Okay.

15 A. After that, he went back into his
16 office to do more of paperwork or what he had to do.
17 Finally, when he came out, he cleared with the -- he
18 explained that he cleared with his supervisor that
19 he would not be arresting me, that it is not, in
20 fact, an arrestable offence as he had claimed
21 earlier, but he would have to continue with his
22 seizure paperwork.

23 74 Q. Okay. And then he gave you the
24 seizure paperwork?

25 A. And then he gave me the seizure
26 paperwork. I asked him a few questions when he
27 asked me the seizure paperwork, which he admitted
28 from his narrative report.

INTERNATIONAL REPORTING INC.

1 75 Q. Okay.

2 A. One specific question that I asked
3 him, since I knew that these coins would be
4 currency, I asked him -- and I knew there would be a
5 limit according to the *Proceeds of Crime and*
6 *Terrorist Financing Act*, there would be a limit up
7 to which -- under which they don't have to be --
8 currency does not have to be recorded, that is the
9 \$10,000.00 limit.

10 So, then, I asked him, what if somebody
11 were to come through the border with a suitcase of
12 gold coins like these that he thinks are goods?
13 Like, how would they have to be reported? And, he
14 said, "As long as they pay the tax, as long as they
15 report and pay the taxes, or the tax, then there's
16 no problem. They're free to go. You can bring any
17 amount," he said.

18 76 Q. Right.

19 A. Part of the paperwork that he gave me
20 was not just a seizure report and the -- not just
21 the seizure receipt and the terms, but also he gave
22 me a printout of a tax demand. I believe he showed
23 a tax rate of \$13.00 and he had quoted \$5,000.00
24 worth of gold coins.

25 77 Q. Right.

26 A. And, he decided 13 percent would be
27 the tax I would be assessed, and had I reported them
28 according to the currency -- excuse me, to the

INTERNATIONAL REPORTING INC.

1 Customs Act, that is the tax I would have been -- I
2 would have had to pay in order to sail through
3 without further questions.

4 78 Q. Okay. So, then ---

5 A. And then I left.

6 79 Q. Then you left? Okay.

7 A. I believe I returned one more to ask
8 whether -- this is just recollection. I believe I
9 returned one more to ask whether he would, or
10 whether the CBSA would ship me the coins when the
11 matter is finally sorted out, and I believe he
12 replied that they don't do -- that they don't ship,
13 that I would have to return in person to pick them
14 up.

15 80 Q. Okay. Do you recall what day of the
16 week was October 21st offhand?

17 A. I do not.

18 81 Q. Was it a week day or weekend?

19 A. I do not.

20 82 Q. Was the border crossing busy? Do you
21 remember?

22 A. No, it was completely not busy at
23 all.

24 83 Q. All right. Were you the only person
25 that you saw being detained in the secondary
26 inspection area?

27 A. I have no idea who else was detained.
28 There were a few people inside.

INTERNATIONAL REPORTING INC.

1 84 Q. All right. How long, approximately,
2 were you at the border crossing from the time you
3 pulled up for primary inspections to when you
4 ultimately pulled away again? Was it half an hour,
5 two hours, 10 hours...?

6 A. I believe -- no, I believe it was in
7 the order of two hours.

8 85 Q. Two hours. All right. So, prior to
9 pulling up and not declaring these coins, you had
10 did some research, you mentioned. Did you consult
11 with a lawyer or legal counsel?

12 A. No.

13 86 Q. All right. Did you contact my client
14 to ask for their preliminary opinion?

15 A. I did not.

16 87 Q. All right. Did you discuss whether
17 these coins would be declarable or not with anybody
18 in the coin collecting industry in Canada or the
19 U.S.?

20 A. I had read forums, internet forums of
21 other people that have imported coins from the U.S.
22 and from other countries, and I familiarized --
23 based on the forum conversations, I familiarized
24 myself with the import/export rules of currency at
25 borders ---

26 88 Q. Right.

27 A. --- at various borders. That's how I
28 learned that these coins are specifically minted by

INTERNATIONAL REPORTING INC.

1 the government as currency, so they can be imported
2 or exported freely within the confines, of course,
3 of the -- not the confines, but with the
4 requirements, with the reporting requirements of the
5 *Proceeds of Crime and Terrorist Financing Act.*

6 89 Q. All right.

7 A. Am I going to fast?

8 90 Q. No. Was this -- this was not your
9 first time crossing from Canada -- from the U.S.
10 into Canada by car; correct? You have crossed the
11 border previously?

12 A. I do not remember exactly, but I
13 believe so.

14 91 Q. Okay. Have you ever been detained
15 for a secondary inspection before or was this your
16 first time?

17 A. I believe I've been -- not detained,
18 but had to undergo the secondary inspection one time
19 on a trip by airplane, and I was arriving at
20 Pearson.

21 92 Q. Okay.

22 A. And, I had to open the luggage,
23 and...

24 93 Q. But, not at a land border?

25 A. I don't believe so.

26 94 Q. Okay. Was there anyone else that you
27 dealt with at the border on October 21st other than
28 Officer Debski that you are complaining about in

INTERNATIONAL REPORTING INC.

1 this lawsuit? Is he the only officer?

2 A. Well, I personally only dealt with
3 the reception officer that I first encountered when
4 I first went into the office, then with Officer
5 Debski and the cashier.

6 95 Q. Right.

7 A. I only interacted with three people
8 -- four people including the first response -- the
9 first line officer.

10 96 Q. Right. But, the only person that you
11 have a complaint with Officer Debski?

12 A. I don't know at this point.

13 97 Q. Okay. So, if that changes, you'll
14 let me know, but at this point in time, you're only
15 talking about Officer Debski?

16 A. If that changes, it will be in my
17 amended Statement of Claim.

18 98 Q. All right. All right. I think those
19 are all my questions. Thank you for coming.

20 A. You're welcome. May I ask what part
21 of this could not have been done in writing?

22 99 Q. The follow-up is intense. You can't
23 -- the rule states you have a right to examine
24 orally, and then if it ---

25 A. Yes ---

26 100 Q. --- doesn't pan out, then, whatever,
27 but there's no way I can judge what you're going to
28 say, and then, you know? It has to be done orally.

INTERNATIONAL REPORTING INC.

26

It takes the place of an examination in court, in front of a judge.

3 A. All right. You have told me a lot of
4 things I don't believe so -- but, that's fine.

5 101 Q. Okay.

6 A. That's fine. You realize ---

7 102 Q. We're done. We're done.

8

9 --- Upon adjourning at 10:21 a.m.

10

C E R T I F I C A T I O N

12

13 I, Jeanette Duda, a legal transcriber in the Province
14 of Ontario, hereby certify the foregoing pages to be
15 an accurate transcription of recordings to the best of
16 my skill and ability, and I so swear.

17

18

19

20 Jeanette Duda, Legal Transcriber

21

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INTERNATIONAL REPORTING INC.

TAB 8

Agreement re contents of Appeal Book

FEDERAL COURT OF APPEAL

BETWEEN:

Radu Hociung

Appellant (plaintiff)

and

Minister of Public Safety and Emergency Preparedness

Respondent (Defendant)

AGREEMENT AS TO THE CONTENTS OF APPEAL BOOK

Pursuant to subsection 343(1) for the *Federal Court Rules*, the parties agree that the following documents shall be included in the appeal book in respect of the above noted appeal:

1. A table of contents describing each document;
2. The Notice of Appeal in this Appeal;
3. The Order of Justice Gleeson dated March 15, 2018, on the motion to Amend the Statement of Claim;
4. The following pleadings from the first instance:
 1. The Statement of Claim with Court File Number T-1450-15
 2. The Statement of Defense with Court File Number T-1450-15
 3. Plaintiff's complete Motion Record for Leave to Amend the Statement of Claim
 4. Defendant's complete Response to the amendment motion motion
 5. Plaintiff's reply to the Defendant's response
5. The Agreement as to the Contents of the Appeal Book; and
6. A certificate, in Form 344, signed by the appellant, stating that the contents of the appeal book are complete and legible

DATED at the City of Playa Del Carmen, Quintana Roo, Mexico, Jun 1, 2018

ATTORNEY GENERAL OF CANADA



Radu Hociung, per: Eric O. Peterson,
Counsel to the Minister of Public Safety

and Emergency Preparedness, by consent

DEPARTMENT OF JUSTICE

Ontario Regional Office

The Exchange Tower

130 King Street West

Suite 3400, Box 36

Toronto, Ontario

M5X 1K6

Tel: (416) 952-6334

Fax: (416) 973-5004

Dated at the City of Playa del Carmen, Quintana Roo, Mexico, May 30, 2018

Radu Hociung



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

Subject: RE: Appeals A-101-18 and A-102-18, Radu Hociung vs. MPSEP

From: "Peterson, Eric" <Eric.Peterson@justice.gc.ca>

Date: 31/05/2018 8:47 AM

To: 'Radu Hociung' <radu.cbsa@ohmi.org>

Thank you Mr. Hociung. The formal agreements are fine and you have my consent to sign the forms on my behalf.

Please note my office's new address, effective this week.

Eric Peterson
Crown Counsel / Avocat de la Couronne
Department of Justice Canada / Ministère de la Justice Canada
National Litigation Sector / Secteur national du contentieux
Ontario Regional Office / Bureau régional de l'Ontario
Richmond Adelaide Centre / Centre Richmond Adelaide
120 Adelaide Street West / 120, rue Adelaide Ouest
Suite 400 / Pièce 3400
Toronto (Ontario) M5H 1T1
Tel. / Tél: (647) 256-7550
Fax / Téléc: (416) 973-5004
E-mail / Courriel: eric.peterson@justice.gc.ca

From: Radu Hociung [mailto:radu.cbsa@ohmi.org]

Sent: May 30, 2018 3:54 PM

To: Peterson, Eric <Eric.Peterson@justice.gc.ca>

Subject: Re: Appeals A-101-18 and A-102-18, Radu Hociung vs. MPSEP

Mr Peterson,

Upon trying to file the Appeal Books that I have served you, I found that the Registry will not accept the agreement we reached below in the form of a printout of the email, and as such we should put it in an acceptable formal form.

Kindly find attached two agreements, for the A-101-18 and A-102-18 appeals, that reflect our email agreement. Please execute and return them to me either by email or fax, and I will file them with the Court.

Thank you for your prompt attention

Sincerely

Radu Hociung.

Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): radu.cbsa@ohmi.org
On 12/04/2018 1:41 PM, Peterson, Eric wrote:

Mr. Hociung,

Thank you for your email. My client is in agreement with your proposal for the Appeal Books.

Eric Peterson
Crown Counsel / Avocat de la Couronne
Department of Justice Canada / Ministère de la Justice Canada
National Litigation Sector / Secteur national du contentieux
Ontario Regional Office / Bureau régional de l'Ontario
The Exchange Tower / La tour exchange
130 King Street West / 130, rue King Ouest
Suite 3400, Box 36 / Pièce 3400, C.P. 36
Toronto (Ontario) M5X 1K6
Tel. / Tél: (416) 952-6334
Fax / Téléc: (416) 973-5004
E-mail / Courriel: eric.peterson@justice.gc.ca

From: Radu Hociung [<mailto:radu.cbsa@ohmi.org>]
Sent: April 12, 2018 2:29 PM
To: Peterson, Eric <Eric.Peterson@justice.gc.ca>
Subject: Appeals A-101-18 and A-102-18, Radu Hociung vs. MPSEP

Mr. Peterson,

For the appeal books in the two appeals, A-101-18 and A-102-18, pursuant Federal Courts Rule 343(1) the appellant intends to use the following documents:

In each appeal book,

- Motion record of the respective motion being appealed
- Respective responding motion records
- Respective replies
- Statement of Claim and Proposed Amended Statement of Claim

Is your client in agreement with these proposed Appeal Book contents?

Thank you
Radu Hociung

--
Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): radu.cbsa@ohmi.org

TAB 9

Certificate of legibility

FORM 344 - Rule 344
CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

Court File A-101-18

FEDERAL COURT OF APPEAL

BETWEEN:

Radu Hociung

Appellant (plaintiff)

and

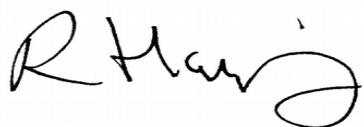
Minister of Public Safety and Emergency Preparedness

Respondent (Defendant)

CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

I, Radu Hociung, appellant, certify that the contents of the appeal book in this appeal are complete and legible.

May 13, 2018



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