

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

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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