

Federal Court



Cour fédérale

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur**TO / DESTINATAIRE(S) :****1. Name / Nom : Mr. Radu Hociung, (Applicant)****Facsimile / Télécopieur : 226-336-8327****Telephone / Téléphone :**☐ **As requested / tel que demandé**☐ **Left voice message / suite au message vocal****2. Name / Nom : Mr. Eric Peterson, (Counsel, Department of Justice, Toronto, Ont.)****Facsimile / Télécopieur : 416-973-5004****Telephone / Téléphone :**☐ **As requested / tel que demandé**☐ **Left voice message / suite au message vocal****3. Name / Nom :****Facsimile / Télécopieur :****Telephone / Téléphone :**☐ **As requested / tel que demandé**☐ **Left voice message / suite au message vocal****FROM / EXPÉDITEUR : R. 369 Team****Telephone / Téléphone : 416-973-3356****Facsimile / Télécopieur : 416-973-2154****DATE : September 21, 2016****TIME / HEURE : 3:14 PM****Total number of pages (including this page) /
Nombre de pages (incluant cette page) :****SUBJECT / OBJET :****Court File No. / N° du dossier de la Cour: T-1450-15****Between / entre: HOCIUNG v. MPSEP**

Enclosed is a true copy of the **Order** / Judgment / Reasons of: // Vous trouverez ci-joint une copie conforme de l'ordonnance / jugement / motifs de: **Madam Prothonotary Mileczynski** dated /daté du September 21, 2016

COMMENTS / REMARQUES :**Re: 369 motion filed August 30, 2016**

Pursuant to section 20 of the Official Languages Act all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

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Federal Court



Cour fédérale

Date: 20160921

Docket: T-1450-15

Toronto, Ontario, September 21, 2016

PRESENT: Madam Prothonotary Martha Milczynski

BETWEEN:

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER

UPON MOTION in writing on behalf of the Defendant filed August 30, 2016, pursuant to Rules 221 and 369 of the *Federal Courts Rules* for:

1. An Order striking the statement of claim in its entirety, without leave to amend;
2. Costs; and
3. Such other relief as counsel may advise and this Honourable Court deems just.

AND UPON reading the Motion Record of the Defendant and the Plaintiff's Written Representations opposing the relief requested;

AND UPON reviewing the court registry file entries for this action;

A party seeking an order striking a statement of claim without leave to amend, and dismissing an action forecloses a plaintiff from ever having his or her dispute determined by the Court. Consequently, such party bears a heavy burden to satisfy the Court that the action should be terminated at the earliest stage, before the parties' and judicial resources are consumed. The Defendant must, however, to obtain this extraordinary relief, establish beyond any doubt that it is plain and obvious that the claim cannot succeed.

The Defendant has not met this high threshold on this motion. This is not to say the Plaintiff's case has merit or that there may not be some other summary disposition of the action before trial. It does say, however, that at this juncture and on the face of the pleadings themselves the Court is not certain that the claim should be struck in its entirety. I note in this regard that the Defendant did not take a surgical/alternative approach to the Plaintiff's pleading (where only some portions are sought to be struck) - the only relief sought by Defendant on this motion is to strike the claim in its entirety.

I also note that this motion is brought somewhat late in the action. Although not disclosed in the motion, a review of the file entries shows that some steps have been taken to advance the proceeding toward trial. The statement of claim was filed on August 27, 2015. The Defendant did not bring a motion to strike at that time, but proceeded to serve and file its statement of defence on September 29, 2015, then delivered its affidavit of documents and filed

proof of service thereof on November 9, 2015. In his written representations, the Plaintiff states that in July, 2016 he sought to examine a representative of the Defendant. On August 30, 2016, he wrote to the Court to request case management. Only then and at about the same time, this motion to strike was filed.

The within action has been brought by the Plaintiff pursuant to section 135 of the *Customs Act*, which states:

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

(2) *The Federal Courts Act* and the rules made under that *Act* applicable to ordinary actions apply in respect of actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

The Plaintiff was notified of the decision that is the subject of within action on June 1, 2015. He is not out of time. The relief sought relates to events surrounding the seizure of several United States Treasury gold and silver coins by the Canada Border Services Agency ("CBSA") at the Queenston Bridge in Niagara-on-the-Lake on October 21, 2014. The Plaintiff did not declare the coins, and the issue was (and remains) whether the coins are collectors' items and "goods" for the purposes of the *Customs Act* which must be declared, or whether they are "cash or currency", which need not be declared if in an amount under \$10,000.00 CAD. The coins in question were in stated denominations (\$1s and \$50s) and were purchased for \$5,700.00 USD, far greater than their "face value". Initially the CBSA required payment of \$1,606.97 to release the coins. That amount was reduced to \$321.39 by the Minister in the June 1, 2015 decision, which the Plaintiff still objects paying, as set out in his statement of claim. The

Plaintiff also seeks various declarations and remedies, including damages for how he says he was treated by various CBSA agents and employees, costs and a clearing of any record that may lead to increased scrutiny or searches when travelling in future. Other relief sought appears to relate to broader declarations concerning the nature and status of currency.

The Defendant's grounds for this motion to strike (which resemble what is pleaded in the Defendant's statement of defence) include submissions:

- that the coins are goods and not cash for the purpose of the *Customs Act*;
- that the Plaintiff failed to declare their importation;
- that the Plaintiff was not subjected to mistreatment; and
- that in any event, the Plaintiff must commence a separate action to claim damages for any alleged mistreatment, in respect of which the Plaintiff is now out of time.

I am not satisfied that it is a foregone conclusion that the Plaintiff will fail such that his claim must be struck in its entirety at this stage of the proceeding – after the statement of defence has been filed and after the Defendant has delivered its affidavit of documents. Clearly, the subject of the Minister's decision that the coins were "goods" and not "cash and currency" are the proper subject of appeal under section 135(1) of the *Customs Act*. The Defendant's written representations on this motion in fact go to the merits of the appeal. It is also not entirely clear and without doubt that the Plaintiff must commence a separate action for damages, or that he is out of time. While I have some possible concerns about certain portions of the pleadings and/or

remedies the Plaintiff is seeking, it is important to acknowledge that he is not represented by a lawyer and is attempting to conduct the litigation on his own behalf. He has indicated in his written representations that he intends to amend his statement of claim. He has also requested case management, which I agree will assist the parties in resolving any interlocutory and procedural issues and help advance the matter to final disposition through the case management process or trial. To the extent the statement of claim may be amended, the Defendant should not be prevented from bringing a motion to strike portions of the claim, but at a time and in the manner directed by the Case Management Judge.

Accordingly, in light of all of the above, the motion to strike will be dismissed, and the request for case management granted. With respect to costs of this motion, the parties may make submissions in the manner set out below.

THIS COURT ORDERS that:

1. The motion be and is hereby dismissed, without prejudice.
2. The action shall continue as a specially managed proceeding and is referred to the office of the Chief Justice for the appointment of a Case Management Judge.
3. The parties shall, within 20 days of the date of appointment of a Case Management Judge, submit a joint or independent proposal for a timetable to govern the remaining steps in the proceeding, and shall include dates and times of mutual availability for a case management teleconference in the event the Case Management Judge determines such call to be necessary.

4. In the event they cannot agree on the costs of this motion, the parties may, within 15 days of the date of this Order, file written submissions no longer than 3 pages in length.

"Martha Milczynski"

Prothonotary