

Radu Hociung

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Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8

11-074 21  
4275-14-0124

<b>Recourse Directorate</b> <b>Direction des recours</b> <b>RECEIVED - REÇU</b>
NOV 17 2014
File No. CS - 74472
Ref. AXK

11/10/14

**Subject:**

Thank you for your letter dated November 3 2014.

Here is additional information that may help you:

1. Find attached a sworn affidavit from the Assistant Deputy Minister of Finance that states the status of Canadian gold coins as **CIRCULATION CURRENCY**.
2. Find attached a copy of *US Public Law 109-145*, which amends *US Code Title 31*, section 5112(a) (11) and adds the American Gold Buffalo coins to the list of **CURRENT US LEGAL-TENDER** (ie, **CURRENCY**)
3. Find attached an excerpt of *US Code Title 31*, section 5112(e), which explicitly says that US Silver Eagles are NUMISMATIC, and CURRENT LEGAL TENDER at the same time.
4. Further more, kindly read the seizing officer's narrative report, paragraph 11, where he states he was advised by the CBSA superintendent on duty that "coins minted with metals at the required purity levels and issued by a government authority qualify" [ as currency ] . He does not claim to have checked these simple criteria, even though he stated them both when on the statement of goods seized: "United States of America \$50, 1oz of .9999 Fine Gold". In fact this is the same information I conveyed to him repeatedly during our interaction, and he vehemently refused to consider it. [Note: I believe the superintendent is referring to paragraph 27 of section 123 of Canada Revenue Agency Memorandum 17.1]

**Please clarify your assertions with clear references** to the acts you are invoking. I would like clarifications for the following claims you made in your November 4, 2014 letter:

1. "... under the PCMLTFA, a currency includes all foreign and domestic ...". **Please supply the section number that defines currency.** As far as I can tell, this act does not mention the words "bank note", "circulation", "coin", even though you have highlighted the phrase "circulation coins" by enclosing it

in quotes and underlining it, implying the phrase is used in the text of the Act.

2. "... silver and gold coins are considered as uncirculated, they are not considered to be currency...", **please supply the act name and section number that makes this determination.** As far as I can tell, the *US Code Title 31* explicitly says that gold and silver uncirculated coins issued under its authority is **current legal tender** of the United states, see sections 5102, 5112 (a)(11) for gold, and 5112(e) for silver. Note that the word "uncirculated" has a specific legal meaning, which is distinct from the word "circulation" (eg. Collectible loonies you can buy at the post office are uncirculated , but were issued "for circulation" – see attachment –, ie you can spend them if you want, and are no less legal currency than loonies already circulated). Under the Currency Act of Canada, and US Code Title 31, both gold and silver are "uncirculated" currency issued for "circulation". Also note the text of the Minister of Finance's affidavit that uses similar language, "issued for circulation", and are "current and legal tender", even though bullion coins are by definition "uncirculated". Neither Canadian, nor US acts exclude "uncirculated" coins from being "currency", quite the contrary, they explicitly state it. Please supply references to Acts you've used in your assertion.

Furthermore, note the following:

1. At no point have I claimed to have made an error in reporting, inadvertent or intentional. I have plainly and repeatedly stated the error of classification is ENTIRELY the CBSA's. My report was as complete and accurate as required by Canada's laws, including:
  - a) *Canada Customs Act*,
  - b) *Canada Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,
  - c) *Canada Tax Act*
2. Section 110 of the *Customs Act* applies to goods, but not financial instruments or currency.
3. The collectibility of currency does not affect its currency status, even for non-circulating currency. Your claim to the contrary finds no support in Canadian Law or United States Law, and in fact *US Title 31* explicitly contradicts it.
4. I am not submitting my narrative account of the events at CBSA on Oct 21<sup>st</sup> at this time.

Also, I feel obligated to point out the following, though I have written to the Prime Minister and to the Minis-

ter of Public Safety separately on this issue:

Mis-classification of currency as 'goods' is effectively exempting currency traffic from the requirements to report under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. I do not believe it is the mandate of the CBSA to allow such arbitrary exemptions, and as such through your flawed interpretation of the law, you have created a hazard to the national security of Canada.

On the web there are numerous accounts of your narrative that "gold currency is goods exempt from PCMLTFA", going back several years, which act as advertisement to actual terrorists and other criminals that they are welcome in Canada along with their currency, as long as they convert it to gold prior to arrival. Conversion is easy in most of the world, and even the Royal Canadian Mint exports its gold coins worldwide.

I would be interested to know if you also regard other Canadian currency that has been officially, permanently withdrawn from circulation, and is now collectible, as "goods", and exempt from PCMLTFA. I am referring to the Canada \$1000 note, the \$2 note, but also to the plethora of collectible commemorative coinage in circulation (pick up a handful of Canadian quarters, and you'll find much of it falls in this category). **Please inform me what your interpretation** is vis-a-vis these forms of currency.

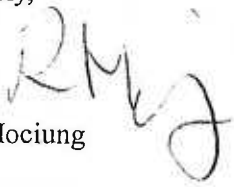
Furthermore, if your interpretation were correct, then the definition of Canada Revenue Agency of gold and silver coins above a certain purity, issued by a government authority, would apply to NO gold coins anywhere in the world, and would be a pointless section of the Tax act.

Radu Hociung

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I await your clarifications on sections numbers, and your decision.

Sincerely,

A handwritten signature in dark ink, appearing to be 'RH' followed by a stylized flourish.

Radu Hociung

Attachments.



## GST/HST Memoranda Series

### 17.1 Definition of "Financial Instrument"

April 1999

#### Overview

This memorandum explains the components of the definition of "financial instrument" as it relates to the provision of financial services under the Goods and Services Tax (GST)/Harmonized Sales Tax (HST).

#### Note

This memorandum replaces GST/HST Memorandum 17.1, *Definition of "Financial Instrument"*, dated January 1995. Significant changes have been side-barred.

#### Note - HST

Reference in this memorandum is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the "participating provinces"). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

### General

1. The definition of financial instrument is relevant for the definition of financial service. A financial service generally involves a transaction relating to a financial instrument or money.

#### Financial services

2. Supplies of financial services are exempt under Part VII of Schedule V unless specifically listed as zero-rated under Part IX of Schedule VI. Services for which fees are charged and which relate to financial instrument transactions are exempt where these transactions fall within the definition of financial service found in subsection 123(1).

#### Definition of financial instrument ss 123(1)

3. "Financial instrument" means:

- (a) a debt security;
- (b) an equity security;
- (c) an insurance policy;
- (d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest;
- (e) a precious metal;
- (f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange;

## Interest in a partnership, trust or estate of a deceased individual

### Terms

25. A partnership is created where two or more persons enter into a relationship to carry on business for profit. A trust is a fiduciary relationship imposed by contract or by law with respect to property or money held by one person for the benefit of one or more persons. A partnership, a trust and the estate of a deceased individual are treated as separate persons under the Act.

26. Any interest, or any right in respect of an interest, in a partnership, a trust or the estate of a deceased individual is a financial instrument. This interest or right represents a claim, title or legal share of an **investment** in a partnership, a trust or the estate of a deceased individual and not in the underlying assets of the partnership, trust or the estate of a deceased individual.

## Precious metals

### Definition of precious metal ss 123(1)

27. A "precious metal" is a bar, ingot, coin or wafer of gold, platinum or silver that is refined to a purity level of at least

a) 99.5% in the case of gold and platinum, and

b) 99.9% in the case of silver.

### Policy statement P-192, *Supplies of Precious Metals*

28. A precious metal in the form of a bar, ingot or wafer at the required purity levels must generally be recognized and accepted for trading on Canadian financial markets. Ordinarily, these will bear markings indicating their purity level. They 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.

29. Any supply of a precious metal (i.e., gold, platinum or silver) meeting the purity requirements, as set out in the definition of precious metal in subsection 123(1), is a supply of a financial service and generally exempt. Metals of this quality are normally investment-related and are usually bought and sold on international exchanges that establish world-wide precious metal prices.

30. The sale or purchase of a precious metal, in the course of a commercial activity, that does not comply with the defined requirements is not considered a supply of a financial instrument, but rather a supply of property. Generally, the sale of gold, platinum or silver in bar, ingot, coin or wafer form with a purity level of less than 99.5% for gold and platinum, and less than 99.9% for silver is taxable at 7% or 15%. The sale of gold, platinum or silver at the defined purity levels, but not in the form of a bar, ingot, coin or wafer (e.g., in granular form), is taxable at 7% or 15%.

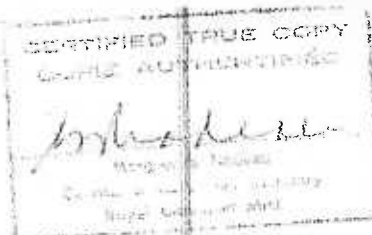
### Refiner

31. A refiner of precious metals is considered to be any person who in the regular course of business converts or refines gold, platinum or silver regardless of the degree of purity.

Department of Finance  
Canada

Ottawa, Canada  
K1A 0G5

Ministère des Finances  
Canada



TO WHOM IT MAY CONCERN:

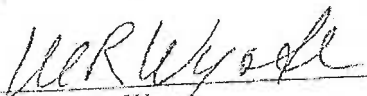
I, Mark Jewett, Assistant Deputy Minister and Counsel to the Department of Finance, hereby declare under oath that the following coins were issued under the authority of the Government of Canada for circulation in Canada pursuant to s. 5.1 of the *Royal Canadian Mint Act*, 1985 R.S., c. R-8, as amended:

\$50	9999 Au	Maple Leaf Reverse Design
\$50	9995 Pt	Maple Leaf Reverse Design
\$20	9999 Au	Maple Leaf Reverse Design
\$20	9995 Pt	Maple Leaf Reverse Design
\$10	9999 Au	Maple Leaf Reverse Design
\$10	9995 Pt	Maple Leaf Reverse Design
\$5	9999 Au	Maple Leaf Reverse Design
\$5	9995 Pt	Maple Leaf Reverse Design
\$5	9999 Ag	Maple Leaf Reverse Design
\$2	9995 Pt	Maple Leaf Reverse Design
\$1	9995 Pt	Maple Leaf Reverse Design
\$1	9999 Au	Maple Leaf Reverse Design


The above-referenced coins are current and legal tender and may be used as a means of payment in accordance with the provisions of the *Currency Act*, 1985 R.S., c. C-52, as amended.

No tax under Part IX of Schedule VI to the *Excise Tax Act*, 1985 R.S., c. E-15, as amended, is payable on the sale of the above-referenced coins by the Royal Canadian Mint.

Sworn before me in the City of Ottawa,  
Province of Ontario, Canada,  
this 15<sup>th</sup> of April, 1999

  
Douglas R. Wyatt  
General Counsel  
General Legal Services Division  
Department of Finance

For and on behalf of:  
DEPARTMENT OF FINANCE CANADA

  
Mark Jewett, Q.C.  
Assistant Deputy Minister  
and Counsel to the  
Department of Finance

Canada

and issued remain tarnish-free for as long as possible without incurring undue expense; and

(6) if the Secretary of the Treasury determines to include on any \$1 coin minted under section 102 of this Act a mark denoting the United States Mint facility at which the coin was struck, such mark should be edge-incused.

## TITLE II—BUFFALO GOLD BULLION COINS

### SEC. 201. GOLD BULLION COINS.

Section 5112 of title 31, United States Code, is amended—

(1) in subsection (a), by adding at the end the following:

“(11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.”; and

(2) by adding at the end, the following:

“(q) GOLD BULLION COINS.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Presidential \$1 Coin Act of 2005, the Secretary shall commence striking and issuing for sale such number of \$50 gold bullion and proof coins as the Secretary may determine to be appropriate, in such quantities, as the Secretary, in the Secretary’s discretion, may prescribe.

“(2) INITIAL DESIGN.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), the obverse and reverse of the gold bullion coins struck under this subsection during the first year of issuance shall bear the original designs by James Earle Fraser, which appear on the 5-cent coin commonly referred to as the ‘Buffalo nickel’ or the ‘1913 Type 1’.

“(B) VARIATIONS.—The coins referred to in subparagraph (A) shall—

“(i) have inscriptions of the weight of the coin and the nominal denomination of the coin incused in that portion of the design on the reverse of the coin commonly known as the ‘grassy mound’; and

“(ii) bear such other inscriptions as the Secretary determines to be appropriate.

“(3) SUBSEQUENT DESIGNS.—After the 1-year period described to in paragraph (2), the Secretary may—

“(A) after consulting with the Commission of Fine Arts, and subject to the review of the Citizens Coinage Advisory Committee, change the design on the obverse or reverse of gold bullion coins struck under this subsection; and

“(B) change the maximum number of coins issued in any year.

“(4) SOURCE OF GOLD BULLION.—

“(A) IN GENERAL.—The Secretary shall acquire gold for the coins issued under this subsection by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined.

Deadline.

James Earle  
Fraser.



*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

- (d) (1) United States coins shall have the inscription "In God We Trust". The obverse side of each coin shall have the inscription "Liberty". The reverse side of each coin shall have the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. Subject to other provisions of this subsection, the obverse of any 5-cent coin issued after December 31, 2005, shall bear the likeness of Thomas Jefferson and the reverse of any such 5-cent coin shall bear an image of the home of Thomas Jefferson at Monticello. The Secretary of the Treasury, in consultation with the Congress, shall select appropriate designs for the obverse and reverse sides of the dollar coin. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the Secretary may inscribe coins of the denomination with the year that was last inscribed on coins of the denomination.
- (2) The Secretary shall prepare the devices, models, hubs, and dies for coins, emblems, devices, inscriptions, and designs authorized under this chapter. The Secretary may, after consulting with the Citizens Coinage Advisory Committee and the Commission of Fine Arts, adopt and prepare new designs or models of emblems or devices that are authorized in the same way as when new coins or devices are authorized. The Secretary may change the design or die of a coin only once within 25 years of the first adoption of the design, model, hub, or die for that coin. The Secretary may procure services under section 3109 of title 5 in carrying out this paragraph.
- (e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in qualities and quantities that the Secretary determines are sufficient to meet public demand, coins which—
  - (1) are 40.6 millimeters in diameter and weigh 31.103 grams;
  - (2) contain .999 fine silver;
  - (3) have a design—
    - (A) symbolic of Liberty on the obverse side; and
    - (B) of an eagle on the reverse side;
  - (4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and
  - (5) have reeded edges.
- (f) **Silver Coins.—**
  - (1) **Sale price.—** The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).
  - (2) **Bulk sales.—** The Secretary shall make bulk sales of the coins minted under subsection (e) at a reasonable discount.
  - (3) **Numismatic items.—** For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) shall be considered to be numismatic items.
- (g) For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.
- (h) **The coins issued under this title shall be legal tender as provided in section 5103 of this title.**
- (i) (1) Notwithstanding section 5111 (a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in qualities and quantities that the Secretary determines are sufficient to meet public demand, and such gold coins shall—
  - (A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have—
    - (i) on the obverse side, a design symbolic of Liberty; and

## TITLE 31 - Section 5103 - Legal tender

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

### § 5102. Standard weight

The standard troy pound of the National Institute of Standards and Technology of the Department of Commerce shall be the standard used to ensure that the weight of United States coins conforms to specifications in section 5112 of this title.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

#### Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5102	31:364.	R.S. § 3548; restated Mar. 4, 1911, ch. 268, § 1, 36 Stat. 1354.

The words "National Bureau of Standards of the Department of Commerce" are substituted for "Bureau of Standards of the United States" because of 15:1511. The words "troy pound of the mint of the United States, conformably to which the coinage thereof shall be regulated" are omitted as unnecessary because of the restatement. The word "ensure" is substituted for "securing" as being more precise. The words "specifications in section 5112 of this title" are substituted for "the provisions of the laws relating to coinage" because of the restatement.

#### Amendments

1988—Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

### § 5103. Legal tender

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub. L. 97-452, § 1(19), Jan. 12, 1983, 96 Stat. 2477.)

#### Historical and Revision Notes

##### 1982 Act

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5103	31:392.	July 23, 1965, Pub. L. 89-81, § 102, 79 Stat. 255.
	31:456.	R.S. § 3584.

The words "All . . . regardless of when coined or issued" are omitted as unnecessary because of the restatement. The word "debts" is substituted for "debts, public and private" to eliminate unnecessary words. The words "public charges, taxes, duties, and dues" are omitted as included in "debts".

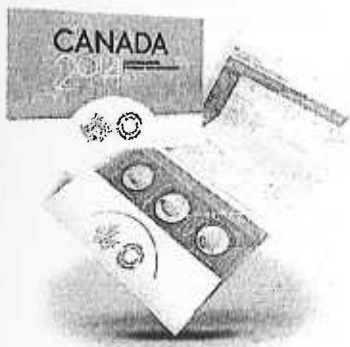
##### 1983 Act

This restores to 31:5103 the reference to public charges, taxes, and dues because they are not considered to be debts. See, *Hagar v. Reclamation District No. 108*, 111 U.S. 701, 706 (1884).

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Royal Canadian Mint

## Uncirculated Set (2014)



[Description](#)

[Specifications](#)

MINTAGE: 75000  
STATUS:  
Canada and US only

\$24.95 CAD

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Uncirculated Set (2014)

Ottawa

IN STOCK

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IN STOCK

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See reverse



## NEW! Unique packaging! Includes the rare 50-cent coin!

Nothing delights the eye more than a perfect, shiny coin. And this set delivers on that—times six! It includes all five of Canada's circulation coins, plus the rare 50-cent coin featuring Canada's Coat of Arms.

This set is a great gift for birthdays and weddings, and is a wonderful souvenir for anyone visiting Canada. Transform everyday achievements, like the first day of school or first job, into memorable milestones—an affordable gift to keep handy for those special moments of 2014!

The Uncirculated Set continues a long tradition as the perfect way to collect Canada's circulation coins from year-to-year. Order yours today!

### Special Features:

- New! Unique packaging holds your coins and your certificate in the same place.
- These uncirculated coins have been carefully selected to provide you with the best examples of their kind.
- Perfect gift to mark any 2014 event such as a birth, a wedding, an anniversary, or as a great souvenir to those travelling to Canada.
- Fits perfectly into your uncirculated set binder!

### Polar Bear:

Canada's bi-metallic two-dollar coin, launched in 1996, features a polar bear, one of the world's largest terrestrial carnivores which can weigh up to 650 kilograms. It lives near the cold seas and frozen ice of Canada's far-north.

### Common Loon:

Launched in 1987, the reverse of the one-dollar coin represents a common loon swimming against the rugged backdrop of the Canadian Shield. The loon's haunting calls are one the quintessential sound of the Canadian wilderness in summer.

### Canada's Coat of Arms:

The Canadian Coat of Arms, proclaimed in 1921 and modified in 1996, reminds Canadians of our diverse heritage. It features images from France (the fleur-de-lis), England (the three royal lions and rose), Scotland (a lion and thistle) and Ireland (the Irish harp and shamrock).

### Caribou:

An enduring symbol of the Canadian north, the majestically-antlered caribou has remained a Canadian icon since first appearing on the twenty-five-cent piece in 1936.

### Bluenose:

In 1921, Atlantic Canadians built one of the finest racing and fishing vessels in Canadian history, the Bluenose. Known for its speed, and almost unbeatable in a race, the ship first appeared on the ten-cent piece in 1937.

### Beaver:

The beaver is Canada's national animal. Highly sought after for its rich fur in the 17th and 18th centuries, it was the mainstay of the colonial economy for centuries. Today, the beaver is revered as a symbol of hard work and perseverance.

### Packaging:

Your 2014 Uncirculated Set coins are sealed inside a transparent film and presented in a colourful specifications card!

Order yours today!

## Specifications

No.  
128638

### 2 dollars

**Composition:**  
three-ply nickel finish plated (outer ring), three-ply brass finish plated aluminum bronze (inner core)

**Finish:**  
uncirculated

**Weight (g):**  
6.92

**Diameter (mm):**  
28

**Edge:**  
interrupted serrations

**Artist:**  
Brent Townsend (reverse), Susanna Blunt (obverse)

### 1 dollar

**Composition:**  
three-ply brass plated steel

**Finish:**  
uncirculated

**Weight (g):**  
6.27

**Diameter (mm):**  
26.5

**Edge:**  
plain

**Artist:**  
Ralph-Robert Carmichael (reverse), Susanna Blunt (obverse)

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Order yours today!

**Specifications**

No.  
128638

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**Finish:**  
uncirculated

**Weight (g):**  
6.92

**Diameter (mm):**  
28

**Edge:**  
interrupted serrations

**Artist:**  
Brent Townsend (reverse), Susanna Blunt (obverse)

**1 dollar**

**Composition:**  
three-ply brass plated steel

**Finish:**  
uncirculated

**Weight (g):**  
6.27

**Diameter (mm):**  
26.5

**Edge:**  
plain

**Artist:**  
Ralph-Robert Carmichael (reverse), Susanna Blunt (obverse)