Subject: T-1450-15 Examination for Discovery of the Defendant
From: Radu Hociung <radu.cbsa@ohmi.org>
Date: 02/02/2017 9:48 AM
To: "Peterson, Eric" <Eric.Peterson@justice.gc.ca>, "Robinson, Donna" <Donna.Robinson@justice.gc.ca>

Good morning Mr. Peterson,

Thank you for your fax dated January 31st, 2017, containing partial answers to the Written Examination for Discovery served to you on July 19, 2016.

Objections

I would like to point out to you that while your client is indeed permitted to make the objections listed under Rule 242 of the Federal Court Rules, the objections must be made in the form prescribed by Rules 94 (1), (2), 95 (1), (2) with respect to documents, and 99 (2) with respect to questions, that is to say your client must bring a motion to be relieved from the requirement to produce the documents, and to have the question struck out, respectively.

An objection is not an answer, but rather a non-answer, and as such the answer affidavit you served does not answer the questions your client was asked, and thus your client's obligation to provide provide written answers by 31-JAN-2017 was not fulfilled. Thus once again, your client finds itself at risk of default judgment, respecting Rule 97, and separately Rule 210(1).

If questions could be arbitrarily answered with "Objection", without the examining party having the opportunity to defend, all questions would be answered as such by the adverse party, and the entire process of Examination for Discovery would be an exercise in futility.

I would like to point out, that while in case of Rule 210, a motion for default judgment may be brought by the plaintiff at his own discretion, Rule 97 is not so kind. In that case, a motion by the plaintiff is not necessary, and it is the Court that decides at its own discretion whether to order your client to answer of to give default judgment.

Regarding answers to questions

You may have noticed that I love handling your motions, including getting paid for it. Nevertheless, I would like to make some further comments, hoping to avoid further waste of time and expense:

With respect to the answers your client wishes to object to; Rule 95 gives your client the opportunity to avoid the expense associated with the motion by stating the objection and providing a preliminary answer, and having the propriety of the question determined at trial. It

appears your client has missed this opportunity.

With respect to **questions 39 and 40**, where your client asserted solicitor-client privilege; your client has already disclosed the summary and content of these communications in letters to me dated March 9, 2015 and the Decision rendered on June 1, 2015, and thus, they are no longer covered by the requirement of being made in confidence, and therefore your client has lost privilege. In other words, express waiver of privilege occurs where the client voluntarily and intentionally discloses confidential communication, as has happened in your client's letters to me.

With respect to **question 35**, the author of the memo is not privileged information, it is metadata. Furthermore, the way this document is identified in your client's affidavit of documents is ambiguous. M. Lefebre may have received multiple memos on Feb 12, 2015.

With respect to the questions to which your client wishes to make a relevance objection, it should be clear from the Statement of Claim why they are relevant. For this reason, I will not explain them further here, but kindly make your motions, and I will be happy to elaborate in my (paid) reply.

With respect to the Informational Bulletin (**question 26**). The document requested is evidence, and as such it must be admissible as required by the *Canada Evidence Act*. Ie, you should provide an original or certified copy, and include a affidavit of authenticity and genuineness. Furthermore, on the date this document was used for enforcement, the document's author, Julia Cossitt, had been retired for more than a year. Who is the person that assumed authorship, ownership, and continued maintenance of this document following Mrs. Cossitt's retirement?

Questions arising from your client's answers

With respect to question 19, the following question arises from your client's answer:

> **Clarification of the question: During the interaction with the Plaintiff, officer Debski explained verbally that "serious offence" means a penalty of arrest. His words were "this is an arrestable offence". Why did officer Debski not report his "arrestable offense" in his narrative report, despite using this phrase three times during the interaction?**

With respect to question 6, the following question arises from your client's answer:

> **Clarification of the question: The question requested the date of the first enforcement/seizure of gold or silver coins pursuant to the CBSA's position or the Customs Act, whether this was challenged in any form (for instance by submitting an**

Enforcement Appeal Form), and what the outcome of that challenge/appeal was. The question is not limited to challenges in a court of law, which are public information.

Closing

I would like to hereby give your client the opportunity to revise their answers, and completely answer all the questions, and thus avoid paying me once more to for handling your motions of objection. Or, enter your motions and put a smile on my pretty face.

Either way, you should handle this matter before the next CMC, or risk default judgment at the discretion of the Court. As much as I would love to bring your client to an epic trial rather than bring motions pursuant Rule 210, there is nothing I can do to avoid the Court's wrath pursuant Rule 97.

Lastly, I full-heartedly recommend you review the Rules of the Federal Court at your earliest convenience.

Sincerely,
Radu Hociung.

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