

FORM 337 - Rule 337

A-101-18

**NOTICE OF APPEAL**

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| FEDERAL COURT OF APPEAL<br>COUR D'APPEL FÉDÉRALE |        |
| FILED  | DEPOSE |
| MAR 26 2018<br>C de Montigny<br>MJ. MONT         |        |
| OTTAWA, ON                                       | 1      |

**APPEAL**

**FEDERAL COURT OF APPEAL**

BETWEEN:

**Radu Hociung**  
Appellant (plaintiff)

and

**Minister of Public Safety and Emergency Preparedness**

Respondent (Defendant)

**NOTICE OF APPEAL**

Radu Hociung  
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Kitchener, Ontario  
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**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: 

(Registry Officer)

**MJ. YOUNG**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

Address of local office:

**90 rue Sparks Street**

**Ottawa, Ontario**

**K1A 0H9**

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.

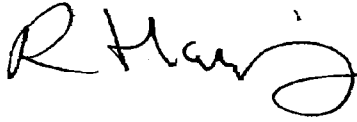
THE GROUNDS OF APPEAL are as follows:

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 Maska 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



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(Signature of solicitor or appellant)

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SOR/2004-283, ss. 35 and 38