

WRITTEN REPRESENTATIONS
Federal Court Rules, 1998, Rule 369

T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

**PLAINTIFF'S WRITTEN REPRESENTATIONS
REPLY TO DEFENDANT'S RESPONSE TO MOTION TO AMEND CLAIM**

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TO:

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AND TO:

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The Exchange Tower
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Toronto, Ontario

AND TO:

Deputy Attorney General of Canada
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TAB 1

WRITTEN REPRESENTATIONS (Reply)

1. [Re: Defendant's Response Written Representations para 4] The amendments are based on facts already pleaded, ie, the seizure of gold and silver coins. Specifically, the seizure was performed pursuant the "Precious Metals Bulletin", which is a CBSA protected (not publicly available) document, and was obtained by the Plaintiff during examinations for discovery. The bulletin (attachment to Defendant's answers, TAB 2) shows clear intent and method for money laundering. The bulletin quotes the definition of financial instruments (precious metals) from the *Excise Tax Act* s.123(1) and Canada Revenue Agency policy statement P-192, which clarifies that gold and silver coins are financial instruments; the bulletin emphatically instructs border officers to not report or allow reporting of such financial instruments pursuant *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* s.12. Meaning, the seizure was in fact part of the money laundering scheme, justifying the new cause of action.

Information not previously available to plaintiff.

2. [Re: Defendant's para 6] The additional information in support of the expanded claim for damages was contained in the Precious Metals Bulletin, which is a CBSA protected document, as clearly stated in its footer:
 3. **"PROTECTED - This document is the property of the CANADA BORDER SERVICES AGENCY. It is provided on the understanding that it will be used solely for official purposes by your agency and that it will not be further disseminated without the written permission of the CANADA BORDER SERVICES AGENCY"**
4. Being a protected (confidential) document means it could not have possibly been

known to the plaintiff before its express disclosure by the CBSA in the January 31st, 2017 written answers to the Written Discovery questions. The document had not been previously included in the Defendant's Affidavit of Documents.

5. Furthermore, as the defendant has delayed providing discovery answers for more than 6 months, after the Written Discovery questions had been served on July 19, 2016, there was no way for the contents of the bulletin, or even its title to be known to the plaintiff. Even at the present time, using the title and various keywords contained in the bulletin in Google searches, do not yield this bulletin as a result, meaning it likely has never been publicly available. CBSA's own website does not publish this bulletin either, nor any to a similar effect.
6. [Re: Defendant's para 12] As shown at para 2.above, the information relied on in the amendment (namely, the CBSA Precious Metals Bulletin), was not known to the plaintiff before January 31st, 2017, when it was disclosed as part of discovery of the defendant, nor was it discoverable by reasonable diligence, as the bulletin is a secret document circulated within the CBSA.

Customs Act section 106

7. [Re: Defendant's para 9] Section 106 of the *Customs Act* is not invoked in this action because it does not apply. Section 106 applies only to officers performing their duties under an Act of Parliament. Here, the officers involved were committing fraud, while fraudulently claiming to enforce the *Customs Act*. Insofar as fraud is not a duty of these officers under an Act of Parliament, they are not entitled to the limitations set forth by section 106.

Mandamus Order

8. Finally, while the defendant has mentioned 'mandamus' liberally throughout his response to the motion, the plaintiff does not in fact seek any mandamus orders. The plaintiff is of the view that ordering a criminal organization to not be criminal (ie, the mandamus order contemplated by the defendant) is futile, just as ordering a wolf to guard sheep without partaking. It may be the defendant's hope that the Court will see a mandamus order as the most just remedy. Hoping for a mandamus order betrays the defendant's understanding that his actions are indeed illegal, going to the merits of this motion to amend. In any case, the plaintiff does not seek a mandamus order.

Customs Act Section 135

9. In his response, the defendant states various incorrect assumptions and unnecessary and wrong inferences with respect to the purpose of section 135 of the *Customs Act*.
10. One purpose of section 135 of the *Customs Act* is to afford the Minister the opportunity to correct any of CBSA's decisions before facing the judiciary system himself, being responsible for CBSA's day-to-day activities. That is, the Minister may engage the full adjudication process outlined in the *Customs Act*, and is allowed to reach a decision to the best of his abilities. Only once he has exhausted this process, and has delivered his Decision, then the Decision may be appealed to the judiciary.
11. Another purpose of section 135 is to set a limitation of 90 days for action to be commenced, and a limitation that the action may not be brought before the minister has completed the Decision process.
12. Another purpose is to set the Federal Court as the forum for appeals.
13. Another purpose is to set the manner of the appeal, as a full-fledged, ordinary action, pursuant the *Federal Courts Act* and the rules made under that Act.

14. There is one final purpose of section 135, and that is to allow variations to the Rules of the Federal Court, as specified by special rules made with respect to actions.
15. The Federal Court Rules list numerous special rules, and special circumstances regarding actions, but no such special rules have been ordered with respect to the present action. The Court may vary the rules as it sees just.
16. As there is no special rule at this time in this action, a limitation of liability of the defendant, or a limitation that the sole cause of action is to be the determination of the Minister's Decision, as the defendant claims, do not exist.
17. While the relief sought with respect to section 135 is to set aside, dismiss, reverse the Minister's Decision, or otherwise as the Court deems just, Rule 101 clearly and explicitly allows that a party may request additional relief against another party to the same proceeding in respect of other claims related to the same facts.

No prejudice exists

18. As a result, the only criteria for allowing the amendment to the Statement of Claim are those listed in Rule 75, namely "on such terms as will protect the rights of all parties"
19. In fact, even prejudice that can be compensated for by costs or adjournment should not prevent amendments to the Statement of Claim (rule 76), though there is no prejudice claimed as a result of this motion.

Limitation periods not exceeded

20. Although no limitation periods have expired with respect to any claims in the Amended Statement of Claim, it's worthwhile to note that it is the commencement of the action,

and not the filing of amendments that is or relevance in establishing limitations of time (this is clearly stated in Rule 77). The action was indeed commenced within the limitation period of section 135, as found previously by Madam Prothonotary Martha Milczynski in her order disposing of the defendant's August 30, 2016 motion to strike the Statement of Claim.

Criminal remedies available from the Federal Court

21. [Re: Defendant para 14] As the Federal Court has criminal jurisdiction, as well as civil, and as Section 135 requires actions to be treated pursuant Federal Courts Act and the the Federal Court Rules, it follows that relief available under the Criminal Code is available in section 135 actions. In any case, per the Rules, leave to amend the statement of claim should not depend in any way on whether the relief sought is likely to be granted.

Crown attorney not a party

22. Perhaps a more interesting question is why does the Crown Attorney find himself defending a client from criminal charges when he has absolutely no evidence to support his case (given the summary judgement motion he has filed), and therefore a negligible chance to succeed on merit. This question is especially interesting as the Defendant is quite aware of the majority of evidence the plaintiff plans to rely on at trial. This evidence has been disclosed in the Plaintiff's Affidavit of Documents, in the Answers to Written Discovery that the defendant himself provided, and includes other publicly available precedents and court orders. Surely the Crown Attorney has no reasonable expectation of success, that is to say, he should be convinced by now that it is not in the public interest that he defend the CBSA or the Minister in this action.

23. In any case, the Crown Attorney is not a party to this action, and thus cannot be ordered anything as an outcome of the action. Should the Attorney General wish to intervene the action, he is of course free to file a motion with that effect with the Court. Alternately, the Court may bring any of the questions in this proceeding to the attention of the Attorney General, pursuant Rule 110.

Separate action not necessary

24. [Re: Defendant's para 11] Perhaps a separate action can be brought against the Minister, however this is not mandated by any *Customs Act* or Federal Court Rules. Furthermore, since all claims emanate from the same facts, it is in the interest of an expeditious, just and least expensive determination that they be made in one action.

Testimony showing officer threats

25. [Re: Defendant's para 35] The plaintiff's testimony in fact does demonstrate offensive and threatening behaviour of BSO Debski [transcript enclosed, TAB 3], see answers to questions 57, 65-72. However, the claims regarding BSO Debski are not being amended, they are carried from the original Statement of Claim.

TAB 2

Defendant's Written Answers to Discovery, January 31, 2017



**Department of Justice Canada
Ontario Regional Office**

Ministère de la Justice Canada
Bureau régional de l'Ontario

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SEND TO / ENVOYER À	FROM / DE
Name / Nom: Radu Hociung	Name / Nom: Eric Peterson Counsel
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	Tel. No. / No du Tél: (416) 952-6334

Comments / Commentaires:

Re: HOIUNG, Radu v. Minister of Public Safety and Emergency Preparedness

Federal Court docket: T-1450-15

Please find attached the Defendant's response to the written examination for discovery.

SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ

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Protected documents? / Documents protégés?

1

Yes / Oui

X

No / Non

TRANSMISSION

Pages (including cover sheet)	Date:	Time:
13	January 31, 2017	

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Name / Nom: Donna Robinson **at/au:** 416-952-6886

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Court File No. T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Sebastian HOIUNG

PLAINTIFF

AND:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

DEFENDANT

AFFIDAVIT OF TARA-LEE FRASER

I, Tara-Lee Fraser, Senior Litigation Advisor, employed by the Canada Border Services Agency, Recourse Directorate, with an office located at 333 North River Rd, Tower A, 11th Floor, in the City of Ottawa, Province of Ontario,
SWEAR THAT:

1. I am employed by the Canada Border Services Agency and have been authorized by the Defendant to make this Affidavit.

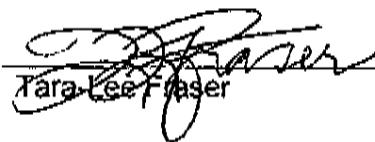
2. Attached hereto and marked as Exhibit "A" is the Defendant's Responses to Written Examination, being the Defendant's answers to the Plaintiff's written examination for discovery. I confirm that the answers therein are true, to the best of my knowledge.

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SWORN BEFORE ME at the City of
Ottawa, in the Province of Ontario
this 31st day of January, 2017.

X10

Commissioner for Taking Affidavits
for the Province of Ontario



Tara Lee Foran

Sherri-Lynn Catherine Foran,
a Commissioner, etc., Province of Ontario,
for the Government of Canada,
Canada Border Services Agency.
Expires August 24, 2018.

Sherri-Lynn Catherine Foran,
commissaire, etc., Province de l'Ontario au
service du gouvernement du Canada,
Agence des services frontaliers du Canada.
Date d'expiration. le 24 août 2018.

Sherri-Lynn Catherine Foran,
a Commissioner, etc., Province of Ontario,
for the Government of Canada,
Canada Border Services Agency.
Expires August 24, 2018.

Sherri-Lynn Catherine Foran,
commissaire, etc., Province de l'Ontario au
service du gouvernement du Canada,
Agence des services frontaliers du Canada.
Date d'expiration. le 24 août 2018.

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EXHIBIT "A"

This is Exhibit « A » referred to
in the affidavit of
Tara-Lee Fraser
sworn before me
this 3rd day of January A.D. 2017

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DEFENDANT'S RESPONSES TO WRITTEN EXAMINATION

1. Please provide a full list of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs during each year between 2000 and 2015, including quantities, full descriptions, and date of importation/exportation. If data for the entire 2000-2015 time period is not available, provide all the data available in this period. Please provide the list in electronic format if possible.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

2. Please provide a summary of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs for each year from 2000 to 2015 inclusive, including totals in quantity of coins, total number of troy ounces, and total value in dollars.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

3. Please provide a summary of gold and silver currency imported and exported from Canada during each year between 2000 and 2015 inclusive, which was reported on E-677 forms. Provide separate totals for gold and for silver coinage.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

4. Please provide a list of all seizures pursuant PCMLTFA where gold or silver coins were seized between years 2000-2015 inclusive. Please include date of seizure, total value seized, value of gold seized, value of silver seized, number of the PCMLTFA article invoked, and whether or not the currency was eventually returned.

OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

5. When was the policy that "gold and silver coins are not currency" first stated within CBSA. Include the document that first stated this policy and include complete references to legislation used to create the policy. Please include detailed accounts of how gold and silver coins were treated prior to this policy being created.

The CBSA does not have a specific policy in relation to the reporting of collector coins, gold and silver coins or precious metals as currency.

Commodities made of precious metals have to be reported upon importation pursuant to the *Customs Act*. The reporting requirement for precious metals under the *Customs Act* did not change following the creation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and its related regulations.

Canada's *Customs Tariff* is based on the World Customs Organization's Harmonized Commodity Description and Coding System (HS). The HS was developed and is maintained by the WCO, an independent intergovernmental organization with over 200 countries. The HS is the standard coding structure and related product descriptions used in international trade. HS compliance is the mandatory classification and declaration of goods coming into or leaving Canada. The importer or exporter is responsible for the correct use of HS when declaring goods. Canada has been a member of the WCO since 1971. Items made of precious metals, including coins, are listed in the HS.

There is no express reference in Part 2 of the *PCMLTFA* or the *Cross-border Currency and Monetary Instruments Reporting Regulations*. Part 1 of the *PCMLTFA* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, however, provide the following definitions:

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada or coins or bank notes of countries other than Canada;

"funds" means either:

- (a) cash; or
- (b) currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's or entity's title or right to, or interest in, them; and

"precious metal" means gold, silver, palladium or platinum in the form of coins, bars, ingots or granules or in any other similar form".

By relying on statutory interpretation, foreign coins intended for circulation are considered currency for reporting purposes under the *PCMLTFA*. Whereas, foreign coins not intended for circulation are to be reported as goods in accordance with the *Customs Act*.

6. When was the policy that "gold and silver coins are not currency" first enforced within the CBSA, was it challenged, and what was the outcome? Include documentation.

The CBSA does not have a specific policy in relation to collector coins, gold and silver coins or precious metals as currency, and to best of our knowledge, the CBSA's position that foreign coins (collector coins) are goods has not been challenged in a court of law.

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7. When did Jeffrey Strickland first state or endorse the policy that "gold and silver coins are not currency"?

Mr. Strickland was introduced to the CBSA's position that foreign coins (collector coins) are goods for the purposes of reporting under the *Customs Act* in or about April 2011.

8. When did Jeffrey Strickland commence employment with the CBSA?

August 2004

9. Has Jeffrey Strickland ever known gold and silver coins to be currency during his career with the CBSA? Please include written evidence of the same.

Mr. Strickland has understood that non-circulation coins do not fall within the definition of currency since 2011, and has no recollection of being introduced to the subject, or having a position on the subject prior to this point in time.

10. When did Joanne Lepage first state or endorse the policy that "gold and silver coins are not currency"?

The determination that gold and silver coins constitute "goods" within the meaning of the *Customs Act* is derived from legal opinions dating back several years. Joanne was first made aware of this legislative interpretation in 1997 which sets out that coins or banknotes being imported where the intrinsic value is higher than its fiduciary value – e.g. collector coins with a value higher than their face value – fall within the purview of the *Customs Act* and must therefore be reported under this Act.

11. When did Joanne Lepage commence employment with the CBSA?

May 1990

12. Has Joanne Lepage ever known gold and silver coins to be currency during her career with the CBSA? Please include written evidence of the same.

During the course of her career, Ms. Lepage only encountered instances pertaining to collector coins which were "goods" within the meaning of the *Customs Act* and not "currency" under the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or its associated regulations.

13. How were gold coins issued by Canadian and foreign authorities of purity over 99.5% fine gold treated prior to the creation of the policy that they are not currency? Include any documentation available as proof.

The above noted, namely that coins being imported where the intrinsic value is higher than its fiduciary value – e.g. collector coins with a value higher than their face value – fall within the purview of the *Customs Act* remains a constant. The characterization of collector coins as "goods" rather than "currency" was unaffected by the coming into force of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

14. Are there any gold or silver coins in existence in Canada or other countries that would qualify as domestic or foreign currency according to CBSA? Enumerate all the gold and silver coins types that the CBSA has classified, in the year 2000 or afterwards, as currency for PCMLTFA and/or *Customs Act* purposes. Include issuing country, coin description and denomination.

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OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).

15. Explain in detail how the seizing BSO came to have a copy of the plaintiff's citizenship card, given that he did not request it, according to his narrative report.
BSO Debski does not recall. However, it is normal practice to make copies of information and evidence reviewed at the time of the examination where seizure is taken.
16. Is it true that officer Debski requested the plaintiff's passport and wallet, not his passport, drivers' license and [car] ownership as he claimed in his narrative report?
BSO Debski does not recall asking for Mr. Hociung's wallet.
17. Did the seizing officer use the language "arrestable offense" when describing the "seriousness" of the offence he alleged in his narrative report?
As stated in his narrative report, BSO Debski did advise Mr. Hociung that smuggling was an arrestable offence.
18. Given the alleged behaviour clues from Radu Hociung (nervousness, pacing, raised voice), and officer Debski's conclusion that the coins were being "smuggled", would a conclusion that an arrestable offense may have occurred be appropriate according to CBSA officer's manual?
OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules. Mr. Hociung was not arrested or charged with a criminal offence as a result of this incident. But rather a civil seizure action was taken against the goods (*In rem*) for non-report under the Customs Act.
19. Why did officer Debski not report his verbal explanation of what "serious offense" means in terms of expected penalties?
This question is unclear and as such the Defendant is unable to answer.
20. Why did officer Debski not report asking the question "Where do you have so much money from?" and the answer he received, in his written report?
BSO Debski has indicated that the question was meant to instigate conversation and possibly show verbal and physical indicators that Mr. Hociung may have been exhibiting. This question was not pertinent to the seizure action.
21. Is his inquiry as to the provenance of funds related to the PCMLTFA or to the Customs Act? Include the section of the officer manual that explains the purpose and relevance of this question.
In the performance of their duties, BSOs may ask routine questions with respect to goods, currency and/or monetary instruments, to ascertain the nature of the goods being imported in order to determine what reporting obligations have been engaged under either (or both) the Customs Act as well as the PCMLTFA.
22. Why did officer Debski not report generating an "online rating" for the coins, showing supposedly owed taxes? What was the purpose of producing this rating?

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The online rating form was not provided to Mr. Hociung by BSO Debski nor did he review it before it was handed to Mr. Hociung.

As indicated in BSO Debski's narrative report, a copy of the online rating report was provided to Mr. Hociung to illustrate an approximate amount of tax calculated for the coins.

23. Explain in detail how the "online rating" came to show a 13% tax rate for the gold coins, while a call to CRA to clarify the same question yielded a conclusion that the gold and silver coins are tax exempt?

The online rating report is populated from the Traveller Entry Processing System (TEPS). The system is used to determine the duties and taxes owing on imported goods. The system automatically generates the related rates of duty/taxes based on the Customs Tariff classification code that is entered. The system has various methods to help classify items such as common commodity types or keyword searches to apply the applicable HS codes.

In this case, the calculation was made based on Customs Tariff classification code no. 7118.10.00.00.

However, during the ministerial review, it was later determined that the coins were tax exempt, and as such, the amount owed for the terms of release was lowered accordingly.

24. Did officer Debski intend to charge the plaintiff 13% of the value of the coins, as shown on the "online rating", had they been reported according to Customs Act section 12?

At the time of the seizure, terms of release for the return of the seized coins was calculated by the Integrated Customs Enforcement System in the amount of \$1,606.97, as indicated on the Seizure Receipt.

As mentioned above however, during the ministerial review, it was determined that the coins were tax exempt due to purity levels, and as such, the amount owed for terms of release was lowered accordingly.

25. Is the 13% tax typically charged for all importations of gold and silver coins into Canada? Provide detail as to how the CBSA determines which coins are subject to this tax.

The rate of duty and taxes applicable to imported gold and silver coins is dependent upon the purity level of the coins in question. If coins meet the required purity level, they are unconditionally duty free and tax exempt. However, if they fall below the purity level, then HST is applicable.

26. In his narrative report, the Officer Debski quoted "only coins issued [...]" . Include the complete reference to the document he is quoting, and the full text of the section quoted, and explain how he arrived at the conclusion that the stated criteria do not match the coins he seized as goods?
The criteria, as per his narrative report are:
• minted with metals at the required purity levels
• issued by a government authority

See attached – “Information Bulletin – Precious Metals – Bullion and Coin”

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27. Why did the seizing Officer Debski feel he needed to consult the Superintendent? What questions did he ask the superintendent? Was it to confirm whether an arrest was appropriate? Please include the superintendent's officer notebook entries as evidence, and list all questions officer Debski asked the superintendent.
- BSOs are supposed to consult with a superintendent any time enforcement action takes place. Recollection is that the discussion focused on how the coins should be treated, as currency or a commodity. Superintendent Kroeker does not have any notes with respect to this discussion or enforcement action.**
28. When did Superintendent Kroeker commence employment with the CBSA?
- September 2002**
29. When did Officer Debski commence employment with the CBSA?
- November 2010**
30. Is the Superintendent's advice that gold coins that match the criteria in the document he referred to in question 26 incorrect according to CBSA's Legal Services Unit? Explain in detail your reasoning why the Superintendent was correct or incorrect.
- The information contained in the information bulletin at question 26 is correct and in line with the CBSA's current position with respect to gold and silver collector coins.**
31. Explain in detail how the CBSA "Online rating" software generates a tax rate as output. What inputs are used in the determination, and how are they processed to produce the output rating?
- Please refer to the answer provided in question 23.**
32. Please provide the video recording from security cameras or other recording sources within the CBSA control, showing the interaction between Officer Christopher Debski and Radu Hociung on Oct 21, 2014 between the approximate times of 17:48 and 19:15, and the transcript of the conversation.
- Video footage of the enforcement action is not available. The CBSA does not maintain transcripts of conversations had with the public.**
33. The seizing officer claimed that if the "terms of release" are paid, then no tax or duty are owed, not even the tax he claimed to be applicable as per his own online rating. Is this correct according to CBSA? Explain in detail, with complete references to applicable legislation, why the CBSA "terms of release" would absolve an importer from the obligation to pay taxes and duty. Does this policy apply only to gold and silver coins, or generally to any imported goods?
- Following the seizure of goods, BSOs may return the goods pursuant to subsection 117(1)(a) of the *Customs Act*, upon payment of an amount of money equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon at the time of the seizure.**
- For the purposes of the *Customs Act*, the term "duties" means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*. That said, the amount of terms of release calculated for the return of goods is said to include all applicable duties and taxes.**

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34. Is "Jeff" in John Dancause's Jan 29 letter the same as Jeff Strickland?
Yes.
35. Who is the author of the Feb 12, 2015 memo to "M Lefebvre" listed in the privileged documents?
- OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**
36. Explain in detail why Jeffrey Strickland omitted to mention or consider John Dancause's letter of Jan 29, 2015, which is supported by direct references to the PCMLTFR and the Currency Act, including underlining of the relevant paragraphs, in his case synopsis.
- Jeffrey Strickland was the Minister's delegate who rendered the decision under section 131 and 133 of the Customs Act. The Case Synopsis and Reasons for Decision was prepared by an adjudicator, Martine Gagnon, of the Recourse Directorate, for Mr. Strickland's consideration.**
- Further consideration was given to John Dancause's comments, as captured in the fifth paragraph on the second last page of the Case Synopsis and Reasons for Decision, which says:**
- "...When applying the principles of statutory interpretation, the common denominator under the definition of "cash" as per the PCMLTFR is in the phrase "intended for circulation". As the PCMLTFR translates the term "cash" in French as "espèces" is to equate the term "currency" in the context of the PCMLTFA and PCMLTFR. Therefore, foreign coins intended for circulation would be considered as currency to be reported under the provisions of the PCMLTFA unless they are not intended for circulation, in which case they would be considered goods to be reported under the CA."***
37. Is John Dancause's Jan 29, 2015 recommendation that the coins are currency, wrong? Explain in detail your reasoning, whether the CBSA deems the conclusion correct or incorrect.
- The CBSA's position, as articulated to you in the Minister's decision on May 28, 2015, is that the gold and silver coins that were purchased in the U.S. are not considered currency subject to the reporting requirements of the PCMLTFA, but rather are considered goods that must be reported in accordance with the Customs Act.**
38. Is the Minister of Finance's sworn affidavit on April 15th, 1999, regarding Canadian gold and silver coins, incorrect, according to the CBSA? Explain in detail your reasoning.
- OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules.**
39. Please include the full text of the legal opinion rendered by the Legal Services Unit on April 30, 2015, as claimed by Jeffrey Strickland. Also include the "statutory interpretation" he refers to in his case synopsis.
- OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**
40. Please include the full text of the legal opinion rendered by the Legal Services Unit on Feb 26, 2015.
- OBJECTION – Solicitor-Client Privilege.**

Niagara / Fort Erie

Information Bulletin
Planning and Program Integration Division – Program Services

**PRECIOUS METALS – BULLION AND COIN
 TARIFF CLASSIFICATION AND HST EXEMPTION**

In recent months, there has been an increase in the buying and selling of precious metals with many people looking to this commodity as an investment strategy, a "hedge" or safe haven against economic, political, social or currency issues. Gold is the most popular metal with silver, platinum and palladium the other major investment metals. All have risen in price over the past several years as demand has increased around the globe.

When imported into Canada, precious metals in certain forms are duty-free and GST/HST exempt. They will be duty-free by the application of the proper tariff classification and tax exempt by means of the Non-Taxable Imported Goods (GST/HST) Regulations (paragraph 3(a)). Please note: currently, the Travelers Entry Processing System (TEPS) is applying GST/HST to imported precious metals. This error is due to be corrected with the next release but until this takes place, the TEPS user can change the default GST/HST field. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed for precious metals importation at this time.

The purpose of this bulletin is to provide information to port-of-entry personnel that will assist them in identifying, classifying and documenting goods made of precious metals.

What is a Precious Metal?

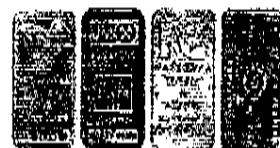
A metal is deemed to be precious if it is rare. A precious metal is defined in the Excise Tax Act as:

- ...a bar, ingot, coin or wafer that is composed of gold, silver or platinum and that is refined to a purity level of at least:
- 99.5% in the case of gold and platinum, and
 - 99.9% in the case of silver.

A precious metal in the form of a bar, ingot or wafer at the required purity levels must be recognized and accepted for trading on Canadian financial markets. They will bear markings indicating their purity level and 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. (Although not specifically named in the Excise Tax Act, the accepted purity level for palladium is 99.5%).

Is There a Difference Between 'Bullion' and 'Coin'?

The bulk quantity of precious metals are referred to as bullion which describes a precious metal formed into bars, ingots or other forms, generally as distinguished from coins. Bullion is assessed by weight and purity level, and is traded on its intrinsic metal value. The weight of bullion is usually measured in troy ounces, where one troy ounce is equal to approximately 31g. A recognized bullion bar is one that was minted by a major, well-known refinery, such as the Royal Canadian Mint or Johnson-Matthey, and is accepted for trading on Canadian financial markets.



A coin is a piece of metal intended for use as legal tender and stamped with marks or inscriptions which show that it was issued by an authority that guarantees its weight and purity. The word 'bullion' is also used to refer to coins and many mints issue bullion in coin form. Although a precious metal coin is produced with a negotiable face value (also known as the denomination), the bullion content is typically much higher than the face value and such coins are bought and sold based on how much bullion they contain and the current market rates for the metal.



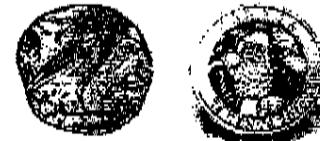
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Bullion coins are not to be confused with numismatic coins which are old or rare currencies that are collected for their historical significance and aesthetic quality. A numismatic coin can be a regular-issue coin or commemorative coin, token or trade dollar. Examples of this would be antique coins, such as the Greek coin or special Christmas issue of a Canadian 50-cent piece, pictured at right. They are collectible but the worth of these coins is generally determined by the finish, rarity, and design. Although numismatic coins can include precious metal coins that were once legal tender, the market is quite different than that for bullion coins which is based entirely on the value of the precious metal itself.



Identifying Precious Metals

- **Manufacturer** – The entity that casts the bullion is identified on the surface. On bars, this is usually a company or government. On coins, it is a country's government mint.
- **Weight** – The weight of the bullion is listed in either ounces or grams. The weight refers to the weight of the metal contained in the bullion and not the overall weight of the coin or bar.
- **Purity** – The purity is listed as a decimal. For example, gold is shown as .9999 pure, or in karats like 24K, both of which are considered pure gold. If the gold bullion purity is not marked, it is 22K gold or 91.3 percent gold. Platinum will also show .9999 while silver and palladium will be marked from .995 (minimum) to .9999
- **Date** – The year a bullion coin is minted is usually stamped on it. Most bullion bars do not have dates.
- **Identification** – Many bars have identification numbers stamped on them. Most coins do not.



Examples of precious metal. Left to right: Canadian \$50 gold coin; silver bullion bar; Royal Canadian Mint gold ingot; Credit Suisse platinum wafer.

Tariff Classification

When imported, precious metals in bar, ingot or wafer forms are to be treated as goods for customs purposes and classified accordingly. Coins are also to be treated as goods and not as currency. Although the coins technically have legal tender status in Canada, the face value of a gold, silver or platinum bullion coin is purely symbolic and much lower than its actual market value. Only those coins minted with metals at the required purity levels and issued by a government authority qualify. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed by an importer or exporter at this time.

The following tariff classifications are recommended:

Silver bullion	7106.91.00.11	Silver bullion, unwrought forms, containing by weight 92.5% or more of silver
Gold bullion	7108.12.00.11	Gold bullion, unwrought forms, containing by weight not less than 99.95% of gold
Platinum bullion	7110.11.00.00	Platinum, unwrought or in powder form
Palladium bullion	7110.21.00.00	Palladium, unwrought or in powder form
Gold coins	7118.90.00.10	Gold coin, being legal tender
Silver or Platinum Canadian coins	7118.90.00.91	Canadian coins, other than gold, being legal tender
Silver, Platinum or Palladium coins	7118.90.00.99	Coin, other than gold or Canadian, being legal tender

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Document Completion and Applying Tax Exemption

It is advisable to complete a B15 Casual Goods Import Document for declared importations of precious metals. Given the values of such importations, it is in the importer's best interests to have documentation of such goods.

When completing a B15, go to the TEPS screen and select a commodity or enter a tariff item. When the calculation page opens up, the selected commodity or tariff item will be shown, along with the appropriate rate of duty (which should be nil) and an HST rate of 13%. At the bottom of the screen, it will say "Do you need to update any of the above information?" Enter Y for yes. Tab over to the GST/HST and enter zero. Tab down until the Declared Value box comes up, at which time a value should be entered and the process can continue as usual. (Please note that all B15s that are overridden in this manner will appear on the end of day report.)

For enforcement actions, in the Allegation area, select the appropriate allegation (i.e. non-report) and level then click Continue to proceed to the Commodity screen. From the drop-down commodity menu, select **Unconditionally Duty Free & Tax Exempt Goods**. At this time, this is the selection that will apply the appropriate Terms of Release for precious metals of this type, as outlined in the Enforcement Manual – Part 5, Chapter 2, section 101. Selecting the Metal Products, Precious Metals commodity will apply the grouping principle of calculating terms of release based on a percentage of combined rates of duty and taxes.

In the event of a seizure of precious metals, Border Services Officers and Superintendents are requested to contact the Intelligence Unit at 905-354-6595, or after hours by using the duty-pager 1-800-263-1420, unit 352801.

Determining Value in the Absence of Receipts or Documentation

Legitimate importers of precious metals will most likely have sales receipts showing the purchase price of their goods, as well as full descriptions that will aid in classification. However, it does happen that receipts are lost or, in the case of undeclared goods, that documentation is not available or expected.

Should a receipt or other documentation not be available, it is suggested that an Internet search for current prices of precious metals be conducted. Such prices will not be available from the Bank of Canada as this agency does not provide them, unlike the daily currency exchange rates. It will, therefore, be necessary to rely on commercially-based websites. Some websites that are currently available and can be used for research are shown below. These sites report daily market quotes but it is suggested that more than one website be checked to determine an accurate and/or average price.

www.scotiarmocatta.com

Scotia-Mocatta is the global bullion banking division of the Bank of Nova Scotia, formed in 1997 by the bank's acquisition of Mocatta Bullion from Standard Chartered Bank in London. Currently, up-to-the-minute prices for gold, silver, platinum and palladium are shown in a bar at the top of the home page. Prices are also available by going to Tools then Precious Metals Pricing and selecting the desired metal.

<http://www.kitco.com/market>

Kitco is an American-based precious metals retailer, with a location in Montreal. On the home page, a precious metals chart provides a Canadian dollar link to a one-page summary of current gold, silver, platinum and palladium prices.

<http://goldprice.org/>

Goldprice is an Australian website providing free gold information – they do not buy or sell precious metals. Prices for other types of precious metals can be accessed by clicking on the appropriate links on the website's home page or using their affiliated addresses: <http://silverprice.org/> - <http://platinumprice.org/> - <http://palladiumprice.org/>

Further Information

For additional information or guidance, please contact Julia Cossitt, Program Services at 905-354-6595, ext. 241.

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TAB 3

Oral Examination of the Plaintiff, Jan 5, 2017

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Court File No. T1450-15

FEDERAL COURT

BETWEEN:

RADU HOCIUNG

Appellant

- and -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

This is the examination of RADU HOCIUNG, for discovery held
on consent of the parties at The Department of Justice,
130 King Street West, 34th Floor, Toronto, Ontario, on the
5th day of January, 2017.

APPEARANCES:

Radu Hociung	Self-represented
Mr. Eric Peterson	For the Respondent
Ms. Jeanette Duda	Court Reporter

International Reporting Inc.
41-5450 Canotek Road
Gloucester, Ontario
K1J 9G2
www.irri.net
1-800-899-0006

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Examination by Mr. Peterson	1

1

Toronto, Canada

2

3 --- Upon commencing on Thursday, January 5, 2017

4 at 9:57 a.m.

5 RADU HOCHIUNG, AFFIRMED:

6 --- EXAMINATION BY MR. PETERSON:

7 1 Q. So, Mr. Hochiung, can you state your
8 full legal name for the record, for the transcript?

9 A. It's Radu Hochiung.

10 2 Q. Okay.

11 A. R-A-D-U, H-O-C-I-U-N-G.

12 3 Q. And, can you give me your date of
13 birth, please, for the record?

14 A. It's December 6th, 1973.

15 4 Q. All right. And, your current address
16 in Canada?

17 A. It's 246 Southwood Drive in
18 Kitchener.

19 5 Q. All right. And, you are the
20 plaintiff in this Federal Court action?

21 A. I am.

22 6 Q. All right. So, I'm here to ask you
23 questions, primarily, today about the events at the
24 Canadian border that gave rise to your claim. I
25 understand there are some legal arguments in your
26 Statement of Claim as well, but I will not be asking
27 you about your legal argument. So, I am only going
28 to focus on what happened to you on the day in

1 question at the border.

2 So, first of all, can you tell me a bit of
3 your background, your educational background?

4 A. I attended University of Waterloo for
5 Engineering from 1994 until 2000. Before that, of
6 course, high school. I never finished the
7 university. I didn't actually graduate and earn a
8 Bachelor. And, that is my education, I think.

9 7 Q. Okay. And, I think you mentioned in
10 one of the conferences you're an engineer?

11 A. Yes.

12 8 Q. All right. But, so are you a
13 professional engineer?

14 A. I am not a professional engineer, no.

15 9 Q. Okay. Okay. So, what type of work
16 do you do? What type of engineering work do you do?

17 A. How is this relevant?

18 10 Q. It's simply -- sometimes the court
19 would like to see what professional background you
20 have when you -- what you bring to the table if you
21 don't have a lawyer with you.

22 A. But, you are here for evidence;
23 right?

24 11 Q. Right. If you don't want to answer,
25 that's fine.

26 A. I do not want to answer.

27 12 Q. All right. Let's get to the day in
28 question then. On -- first of all, this is on

1 October 21, 2014, you were coming back from the
2 United States crossing into Canada. What was the
3 purpose of your trip to the United States?

4 A. I went to the United States to
5 purchase tires for my car.

6 13 Q. All right.

7 A. That was the main purpose of my trip.

8 14 Q. All right. And, you also purchased
9 some collectible coins I understand?

10 A. I purchased some coins while on the
11 trip, yes.

12 15 Q. All right. And, were those coins
13 purchased on that same trip in the United States?

14 A. Yes.

15 16 Q. All right. How much did you pay for
16 those coins?

17 A. I paid 50 -- if my memory serves
18 correctly, \$5,700.00 U.S. dollars.

19 17 Q. All right. And, did you have a
20 receipt for that?

21 A. I do, yes.

22 18 Q. Okay. Had you gone to the United
23 States previously to buy collectible coins or was
24 that the first time you had done so?

25 A. I have been to the United States
26 before, but never bought collectible coins in the
27 United States before.

28 19 Q. Okay. Have you ever purchased

1 collectible coins from the United States elsewhere
2 and brought them into Canada, other than United
3 States?

4 A. Sorry, repeat?

5 20 Q. So, have you ever bought collectible
6 coins from the U.S. or any other country abroad, and
7 then brought it into Canada?

8 A. I don't understand the relevance.

9 21 Q. All right. Have you ever bought
10 collectible coins ---

11 A. I don't understand the relevance.

12 22 Q. My ---

13 A. I understand your question.

14 23 Q. Right. The relevance is if you have
15 declared those coins at Canada customs before or if
16 you have also maintained the position that they are
17 not -- they don't have to be declared. Was this the
18 first time when you ---

19 A. No, I understand the question.

20 24 Q. Right.

21 A. I'm thinking about whether -- how I
22 should answer it.

23 25 Q. Okay.

24 A. The answer is no.

25 26 Q. You had never previously ---

26 A. I have never purchased coins outside
27 of the United States and brought -- outside of
28 Canada and brought them into Canada without

1 reporting them.

2 27 Q. Okay. Had you ever declared
3 collectible coins in the past at the Canadian
4 border?

5 A. Had I or have I, or had I ---

6 28 Q. Had I.

7 A. --- after that time?

8 29 Q. Had you at that time previously ever
9 declared to Canadian customs that you had purchased
10 collectible coins?

11 A. No, I have not.

12 30 Q. Okay. Are you in the business of
13 collecting coins? Are you ---

14 A. I am not, no.

15 31 Q. No. Is it ---

16 A. However, I'm a collector of coins
17 like everybody else.

18 32 Q. Okay. So, had you previously
19 purchased U.S. collectible coins in Canada or is the
20 first time ---

21 A. That is not relevant, I believe.

22 33 Q. Was this the first time you had ever
23 purchased U.S. collectible coins?

24 A. U.S. minted?

25 34 Q. Yes.

26 A. I am not sure.

27 35 Q. Okay. All right. So, then, tell me
28 -- well, let's move on to October 21, 2014. Tell me

1 in your own words what took place when you
2 approached the Canadian border. You approached in
3 your car, and you were in a line-up, and then what
4 happened?

5 A. So, at first, of course, there's a --
6 the primary check window where I stopped. The
7 officer there asked me -- I believe he asked me what
8 -- I don't remember the words exactly. I believe
9 the extent of his answer -- of his questions was
10 whether I was bringing goods into Canada, whether I
11 had purchased goods to bring into Canada.

12 36 Q. Right.

13 A. I told him about the tires that I had
14 bought. On the day it happened, I had a little bit
15 of a migraine, and I had bought some Advil and some
16 water, and that is all. That is all the goods that
17 I told him about.

18 37 Q. All right.

19 A. He never asked me about whether I
20 brought currency, about how much currency or
21 financial instruments I have.

22 38 Q. He never asked you if you were in
23 possession of currency over \$10,000.00?

24 A. He did not.

25 39 Q. He did not?

26 A. I believe he did not.

27 40 Q. Okay. All right. And, was it your
28 understand at that time that the collectible coins

1 in your possession did not have to be declared?

2 A. Absolutely.

3 41 Q. And, what was the basis of your
4 understanding? Was it anything that you read at the
5 customs border crossing or ---

6 A. No, I had researched the topic well
7 ahead of time, and these coins are minted by the
8 United States Mint according to the United States
9 code, and I forget the number. I believe it's 31.
10 It deals with the money and the currency of the
11 United States. So, they are minted at the United
12 States Mint by the United States Treasury according
13 to this law. And, in the law, they are clearly
14 stated to be a legal tender.

15 The mint itself on the site, the mint that
16 produces them, U.S. Mint, states clearly that they
17 are legal tender and, to me, that was enough to know
18 that this is currency that apply -- and, therefore,
19 currency regulations apply to it.

20 42 Q. So, they would be legal tender at
21 their face value or at their ---

22 A. Correct.

23 43 Q. --- commercial value?

24 A. Legal tender by definition is based
25 on the denomination.

26 44 Q. All right.

27 A. Not on any other value, but their
28 denomination, which is \$50.00 for the gold coins in

1 this case, and I believe \$1.00 for the silver coins.

2 45 Q. But, you paid \$5,700.00 for ---

3 A. That is correct.

4 46 Q. So, the commercial value far exceeded
5 the face value?

6 A. There is no such thing as a
7 commercial value. This is currency just like --
8 it's just currency. You can obtain currency at any
9 other value. The value that you obtain currency at
10 does not have to relate to the value of the
11 currency. The value of the currency is the
12 denomination ---

13 47 Q. Right.

14 A. --- and that is given by law.

15 48 Q. But, you did not pay the face value
16 of those coins.

17 A. I did not.

18 49 Q. Okay. So, if it's not the commercial
19 value, you paid, then, the retail value or...?

20 A. There's no such thing as retail.

21 Again, these are -- I believe it's not called the
22 retail value.

23 50 Q. What would it be called then? The
24 purchase price?

25 A. I'm not sure ---

26 51 Q. Okay. Fair enough.

27 A. --- what that -- what the number is
28 called.

1 52 Q. All right. So, at the primary line
2 of inspection, did you -- do you have any complaint
3 with what happened between you and the officer? Are
4 you taking issue with that particular officer in
5 this action?

6 A. I will not answer that at this time.
7 I may -- when I amend the Statement of Claim, there
8 may be additional claims.

9 53 Q. Okay. And then what happened next?
10 You weren't free to leave. That wasn't the end of
11 that.

12 A. Well, next, I had to go and pay the
13 taxes, import taxes for my tires ---

14 54 Q. Right.

15 A. --- and the other two items that I
16 brought. So, I went inside the customs office,
17 declared it to the officer what I had brought, which
18 was the tires and the other two items, and he
19 directed me to the cashier window, I paid the taxes
20 for the goods ---

21 55 Q. Right.

22 A. --- for the three items, and then he
23 said I was free to go, so I left ---

24 56 Q. Okay.

25 A. --- the customs office.

26 57 Q. Right, right. And then what happened
27 after that?

28 A. And then after that, on the way to my

1 car -- at this point, I didn't know that I was to be
2 secondarily inspected, so on the way to my car,
3 another officer, which is Officer Debski, came out
4 of his office with, I would say, a confrontational
5 greeting. He greeted me with a greeting, "What do
6 we have here?" Those were his exact words. I
7 remember them because they struck me as very odd.

8 I was, of course, a little taken aback,
9 not knowing if I'm in the back alley somewhere or at
10 the government building. I showed him my paper, my
11 paperwork, and I believe he asked me whether he can
12 look at my car. He asked me if the car -- if the
13 tires are mounted. I, of course, answered, "Yes,
14 they're mounted on." I think he had a very cursory
15 look at the tires, and I don't recall if he asked
16 for permission to search the car or not, but I
17 didn't oppose it anyway. So, he went on to search
18 my car.

19 58 Q. All right. And, that's when he found
20 the collectible coins; correct?

21 A. No.

22 59 Q. No. Okay.

23 A. That's when he found the receipt,
24 which I believe was on the front -- either on the
25 front seat of the car or -- on the passenger front
26 seat or in the glove compartment.

27 60 Q. Okay. And then ---

28 A. And then ---

1 61 Q. Yes, what happened next?

2 A. And then when he came out, he

3 confronted me. He asked me whether I reported

4 everything, whether I want to change my story, and

5 then I said, "No, I have nothing further to report."

6 So, he showed me the receipt and said, "What's

7 this?" And, I told him, "This is currency that I

8 purchased and I do not have to report it."

9 62 Q. Okay.

10 A. And, I'm not reporting it.

11 63 Q. Okay. And then what happened next?

12 They searched the vehicle and found the coins?

13 A. No, the coins were in my pocket.

14 So ---

15 64 Q. Oh.

16 A. --- all he did is he asked me, "Where

17 are the coins," because at this point he only had

18 the receipt from the car. So, I, of course, had the

19 coins in my pocket, as I keep all money. I don't

20 keep money around the car. And, I showed him, I

21 gave him the coins. He took them, fondled them

22 quite a bit I would say -- I might say. I think he

23 was quite inexperienced with coins like this. Maybe

24 he was happy to have them in his hand, I don't know.

25 And then he proceeded to explain a few

26 times that they are goods, goods, goods. And, of

27 course, I told him that they are stated on the Mint

28 website and the U.S. law that they are currency and

1 legal tender.

2 65 Q. Okay.

3 A. After which he -- he was very
4 confrontational. He was -- he took the stance --
5 his stance was also very confrontational. He made
6 me aware immediately that he was wearing -- or
7 carrying a gun. Like, his gun was, of course, in
8 his holster. He never drew his gun ---

9 66 Q. Right.

10 A. --- but he was facing me in such a
11 way that he was -- it seemed to me, I'm not
12 experienced with guns, but I was left with a feeling
13 that he's ready to pull it.

14 67 Q. Right.

15 A. And, he also said that this is a very
16 serious offence, and proceeded to explain that it is
17 an arrestable offence. He mentioned that at least
18 twice while outside ---

19 68 Q. Right.

20 A. --- that this was an arrest -- that
21 -- I don't believe -- I don't know if he used the
22 word "smuggling". I don't think he specifically
23 said what the offence was; however, he did say it's
24 an arrestable offence. He made it very clear that
25 he could have arrested me right then and there.

26 69 Q. Okay. And, but -- so what happened
27 next? At that point, did the conversation stop and
28 he let you go or...?

1 A. No, at that point, he went inside to
2 check with his supervisor or to do paperwork. He
3 ordered me to go to the -- inside the customs office
4 again and wait on the bench.

5 70 Q. Okay.

6 A. It was an order. He was yelling, at
7 this point, at me. I went inside, I waited for him,
8 it might have been maybe 15 minutes that I waited
9 for him. I think he came back one more time to ask
10 some questions about the coins. This was, of
11 course, about -- this was more than two years
12 ago ---

13 71 Q. Right.

14 A. --- and keeping in mind that I didn't
15 come to Canada to meet with you, so I didn't review
16 any of my papers, I didn't bring any of my notes.
17 I'm just recollecting memory that's two years old at
18 this point.

19 I believe my recollection is that he came
20 out one more time, at which point I -- that's when,
21 I believe, he told me that he would have to seize
22 them, and that's when I asked him what he would do
23 with them, what would happen with them, and
24 that's, I believe, at the point, he said that they
25 would be destroyed -- that I have to pay to get them
26 back. He wouldn't tell me how much, he hadn't
27 decided yet, but I asked him, "Who's going to
28 decide?"

1 72 Q. Right.

2 A. And, he responded that he would be
3 deciding. And, I asked him, "What happens if I
4 don't pay?" Of course, I knew that I don't owe a
5 penny since this do not have to be recorded --
6 reported, so I did not have -- I did not expect I
7 would have to pay anything to get my coins.

8 He said that if I do not pay his terms,
9 that the coins would be destroyed after either 30
10 days or 90 days. I don't recall the number he said,
11 but he gave a specific number like that, a multiple
12 of 30, and he said they would be destroyed if I
13 don't pay after that time.

14 73 Q. Okay.

15 A. After that, he went back into his
16 office to do more of paperwork or what he had to do.
17 Finally, when he came out, he cleared with the -- he
18 explained that he cleared with his supervisor that
19 he would not be arresting me, that it is not, in
20 fact, an arrestable offence as he had claimed
21 earlier, but he would have to continue with his
22 seizure paperwork.

23 74 Q. Okay. And then he gave you the
24 seizure paperwork?

25 A. And then he gave me the seizure
26 paperwork. I asked him a few questions when he
27 asked me the seizure paperwork, which he admitted
28 from his narrative report.

1 75 Q. Okay.

2 A. One specific question that I asked
3 him, since I knew that these coins would be
4 currency, I asked him -- and I knew there would be a
5 limit according to the *Proceeds of Crime and*
6 *Terrorist Financing Act*, there would be a limit up
7 to which -- under which they don't have to be --
8 currency does not have to be recorded, that is the
9 \$10,000.00 limit.

10 So, then, I asked him, what if somebody
11 were to come through the border with a suitcase of
12 gold coins like these that he thinks are goods?
13 Like, how would they have to be reported? And, he
14 said, "As long as they pay the tax, as long as they
15 report and pay the taxes, or the tax, then there's
16 no problem. They're free to go. You can bring any
17 amount," he said.

18 76 Q. Right.

19 A. Part of the paperwork that he gave me
20 was not just a seizure report and the -- not just
21 the seizure receipt and the terms, but also he gave
22 me a printout of a tax demand. I believe he showed
23 a tax rate of \$13.00 and he had quoted \$5,000.00
24 worth of gold coins.

25 77 Q. Right.

26 A. And, he decided 13 percent would be
27 the tax I would be assessed, and had I reported them
28 according to the currency -- excuse me, to the

1 Customs Act, that is the tax I would have been -- I
2 would have had to pay in order to sail through
3 without further questions.

4 78 Q. Okay. So, then ---

5 A. And then I left.

6 79 Q. Then you left? Okay.

7 A. I believe I returned one more to ask
8 whether -- this is just recollection. I believe I
9 returned one more to ask whether he would, or
10 whether the CBSA would ship me the coins when the
11 matter is finally sorted out, and I believe he
12 replied that they don't do -- that they don't ship,
13 that I would have to return in person to pick them
14 up.

15 80 Q. Okay. Do you recall what day of the
16 week was October 21st offhand?

17 A. I do not.

18 81 Q. Was it a week day or weekend?

19 A. I do not.

20 82 Q. Was the border crossing busy? Do you
21 remember?

22 A. No, it was completely not busy at
23 all.

24 83 Q. All right. Were you the only person
25 that you saw being detained in the secondary
26 inspection area?

27 A. I have no idea who else was detained.
28 There were a few people inside.

1 84 Q. All right. How long, approximately,
2 were you at the border crossing from the time you
3 pulled up for primary inspections to when you
4 ultimately pulled away again? Was it half an hour,
5 two hours, 10 hours...?

6 A. I believe -- no, I believe it was in
7 the order of two hours.

8 85 Q. Two hours. All right. So, prior to
9 pulling up and not declaring these coins, you had
10 did some research, you mentioned. Did you consult
11 with a lawyer or legal counsel?

12 A. No.

13 86 Q. All right. Did you contact my client
14 to ask for their preliminary opinion?

15 A. I did not.

16 87 Q. All right. Did you discuss whether
17 these coins would be declarable or not with anybody
18 in the coin collecting industry in Canada or the
19 U.S.?

20 A. I had read forums, internet forums of
21 other people that have imported coins from the U.S.
22 and from other countries, and I familiarized --
23 based on the forum conversations, I familiarized
24 myself with the import/export rules of currency at
25 borders ---

26 88 Q. Right.

27 A. --- at various borders. That's how I
28 learned that these coins are specifically minted by

1 the government as currency, so they can be imported
2 or exported freely within the confines, of course,
3 of the -- not the confines, but with the
4 requirements, with the reporting requirements of the
5 *Proceeds of Crime and Terrorist Financing Act.*

6 89 Q. All right.

7 A. Am I going to fast?

8 90 Q. No. Was this -- this was not your
9 first time crossing from Canada -- from the U.S.
10 into Canada by car; correct? You have crossed the
11 border previously?

12 A. I do not remember exactly, but I
13 believe so.

14 91 Q. Okay. Have you ever been detained
15 for a secondary inspection before or was this your
16 first time?

17 A. I believe I've been -- not detained,
18 but had to undergo the secondary inspection one time
19 on a trip by airplane, and I was arriving at
20 Pearson.

21 92 Q. Okay.

22 A. And, I had to open the luggage,
23 and...

24 93 Q. But, not at a land border?

25 A. I don't believe so.

26 94 Q. Okay. Was there anyone else that you
27 dealt with at the border on October 21st other than
28 Officer Debski that you are complaining about in

1 this lawsuit? Is he the only officer?

2 A. Well, I personally only dealt with
3 the reception officer that I first encountered when
4 I first went into the office, then with Officer
5 Debski and the cashier.

6 95 Q. Right.

7 A. I only interacted with three people
8 -- four people including the first response -- the
9 first line officer.

10 96 Q. Right. But, the only person that you
11 have a complaint with Officer Debski?

12 A. I don't know at this point.

13 97 Q. Okay. So, if that changes, you'll
14 let me know, but at this point in time, you're only
15 talking about Officer Debski?

16 A. If that changes, it will be in my
17 amended Statement of Claim.

18 98 Q. All right. All right. I think those
19 are all my questions. Thank you for coming.

20 A. You're welcome. May I ask what part
21 of this could not have been done in writing?

22 99 Q. The follow-up is intense. You can't
23 -- the rule states you have a right to examine
24 orally, and then if it ---

25 A. Yes ---

26 100 Q. --- doesn't pan out, then, whatever,
27 but there's no way I can judge what you're going to
28 say, and then, you know? It has to be done orally.

26

It takes the place of an examination in court, in front of a judge.

3 A. All right. You have told me a lot of
4 things I don't believe so -- but, that's fine.

5 101 Q. Okay.

6 A. That's fine. You realize ---

7 102 Q. We're done. We're done.

8

9 --- Upon adjourning at 10:21 a.m.

10

C E R T I F I C A T I O N

12

I, Jeanette Duda, a legal transcriber in the Province
of Ontario, hereby certify the foregoing pages to be
an accurate transcription of recordings to the best of
my skill and ability, and I so swear.

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20 Jeanette Duda, Legal Transcriber

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