

CS-74472 / 4273-14-0724

BETWEEN:

(CLAIMANT)

Radu Sebastian Hociung
Waterloo, ON

and

(ISSUING OFFICE)

Canada Border Services Agency (CBSA)
Niagara-on-the-Lake, ON

CASE SYNOPSIS AND REASONS FOR DECISION

The claimant is seeking a ministerial review of the above-noted enforcement action, which was issued by CBSA officials at Niagara-on-the-Lake, Ontario, on October 21, 2014.

The evidence in the reports made pursuant to section 128 of the *Customs Act* (CA) show that on October 21, 2014, the claimant presented himself at the Queenston bridge port-of-entry in Niagara-on-the-Lake, Ontario. He declared to the primary officer his purchase of two tires valued at \$500.00. The officer asked him whether he had bought or received anything other than the two tires and he replied "yes" as he had additionally purchased a bottle of Advil. The officer further proceeded to ask all the mandatory questions as outlined on the E-67 (Canada Border Services Agency Declaration Card) and the claimant was referred for a secondary examination.

Upon examination of his vehicle, the officer discovered undeclared gold and silver coins of a value of \$5,700.00 USD. These were seized for non-report and held for payment.

TERMS OF RELEASE (ORIGINAL):

GOODS – 4-USA \$50.00 gold coins & 20-USA \$20 silver coins	\$1,606.97
(GRP. 2/LEVEL 1 CONTRAVENTION - 25% OF \$6,427.89)	

TOTAL AMOUNT REQUIRED FOR RETURN OF GOODS	\$1,606.97
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TOTAL AMOUNT RECEIVED FOR RETURN OF GOODS	\$0
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Appeal

Following the issuance of this enforcement action, the claimant submitted a request for a decision of the Minister in accordance with section 129 of the CA. The claimant appealed this enforcement action stating that;

- The silver eagle coins were US legal tender and IRA eligible investments.
- The coins were classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which were thus monetary instruments was USD \$5,700.00 and as their value was below the \$10,000 CAD, he was not required to declare them, per CBSA regulations.
- He was not asked about cash or financial instruments he carried, which would have required him to disclose.

Notice of Reasons for Action

On November 3, 2014, the Agency served upon the claimant a Notice, pursuant to section 130 of the CA, informing the claimant that the enforcement action was taken as "the said goods (as per Statement of Goods Seized) are seized because they have been unlawfully imported by reason of Non-report" in contravention of section 12 of the CA.

In this correspondence, the senior appeals officer at the time (Ms. Kendall) advised that she would be thoroughly examining the merits of this enforcement action.

At that point in the review, Ms. Kendall explained that all goods entering Canada, regardless of how obtained or for whatever reason being imported and whether used or new, must be reported to the CBSA and that the onus to do so rested upon the individual bringing the goods into the country. The duty to report goods was not dependent on any questioning or prompting by an officer as to whether any goods were being brought into Canada.

Please note that the CA was contravened when an incorrect declaration was made by, or on behalf of, the importer even if that error was made with a lack of intent to mislead Customs. An inadvertent error in reporting imported goods does not affect the validity of a seizure of those goods.

Ms. Kendall advised that the coins were classified as goods, as there was a tariff code for collectable coins. Further to this, Ms. Kendall informed the claimant that she had confirmed that under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, currency included all foreign and domestic bank notes and "circulation coins". On the basis that the silver and gold coins were considered as "uncirculated" they are not considered to be currency under the *PCMLTFA*. Consequently, the seized coins were classified as goods, which must be declared in accordance with section 12 of the CA.

The claimant was also informed that any further representations should be submitted within 30 days.

A postscript was sent to the issuing office stating;

- "As the claimant is stating that he was never asked at primary about cash or financial instruments he carried, please have the primary officer submit a detailed narrative report with all questions posed to the claimant and his answers.
- Please submit the full documentation package including the E-67, etc.
- It has been concluded that the silver coins are considered to be goods and therefore, were required to be reported as per section 12 of the CA. As the claimant did not declare the silver/gold coins it appears there was a contravention of non-report as alleged.
- It appears the coins fall under tariff classification 7118.10.00.00. As the coins are silver/gold and are from the US (UST), it also appears they may be duty and tax free. However, as I am not an expert in reading the Customs Tariff I would ask that you please conduct a TEPs on-line rating to confirm the applicable duty and tax rate for these goods.
- For your information, Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:
 - Level 1 and less than \$2000 value, forced accounting;
 - Level 1 and \$2000 or over in value, 5 per cent of value;
 - Level 2 or 3 and less than \$1000 value, forced accounting; or
 - Level 2 or 3 and \$1000 or over in value, 10 per cent of value.
- On the basis this reference, if the coins are determined to be duty and tax free, and since they were seized level 1, it will be recommended to mitigate the terms of release to reflect the aforementioned. However, if it is determined that the coins are not duty and tax free it will be recommended to maintain the enforcement action and terms of release as originally assessed."

As requested, the issuing office forwarded additional submissions, including, the full documentation package.

Call from Claimant – November 12, 2014

The claimant telephoned Ms. Kendall on November 12, 2014 wanting to know where in the *PCMLTFA* it spoke of “circulation coins”. Ms. Kendall advised that all questions need to be submitted to her in writing and that she would provide a written response.

Issuing Office Response – November 14, 2014

The primary officer responded on November 14, 2014 with a NIL statement.

Additional Correspondence from Claimant – November 17, 2014

Following the Notice of Reasons for Action, the claimant submitted additional correspondence and representations. In review of his representations Ms. Kendall stated that irrespective of reporting requirements stipulated by other pieces of legislation which may or may not have required that he report the importation of the coins in question, for example the *PCMLTFA*, it remained that all goods imported into Canada must be reported in accordance with section 12 of the *CA*. Furthermore, as the goods in question were identified in the *Customs Tariff Schedule* under section XIV, chapter 71.18 and were being imported for the first time they did not meet the criteria outlined in section 12(7) of the *CA* to preclude them from seizure.

Additionally, the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, *US Public Law* document on ‘Buffalo Gold Bullion Coins’ and *US Code Title 31* he provided in support of his appeal had been given consideration, but did not provide relief from the aforementioned reporting requirement.

He requested clear assertions and specific references to Acts the CBSA invoked and the legislative section number(s) that defined currency. He further requested the Act name and section number that made the determination for: “...*silver and gold coins are considered as uncirculated, they are not considered to be currency...*” In response, although the *PCMLTFA* did define ‘monetary instruments’ neither the *PCMLTFA* nor the *CA* defined ‘currency.’ It was the position of the CBSA that, for the purposes of administering Part 2 of the *PCMLTFA*, gold coins were not considered currency (circulation coins) and thus, there was no requirement to report the import or export of these items pursuant to the *PCMLTFA* or the related regulations. However, and as indicated above, as gold coins were considered commodities, they did fall within the reporting provisions of the *CA* and must be reported upon importation.

The issuing office confirmed they had NIL responses / no further representations on December 18, 2014

Call from Claimant – December 17, 2014

The claimant stated in his telephone call that he had five follow-up questions. He was disputing everything Ms. Kendall had stated to him on the letters, re: seizure, NRA, ACK letter, “monetary instruments” description, etc. Ms. Kendall advised that he should send her the questions in order for her to put them on file and to respond as nothing stated over the phone could be taken into consideration. He told Ms. Kendall he knew what the answers would be, that she didn’t know what she was talking about and that he would see her in court. He also accused her of aiding and abetting terrorism.

Additional Correspondence from claimant to CBSA President – January 21, 2015

On January 21, 2015, the claimant sent a letter to the President of the CBSA, Mr. Luc Portelance, requesting a reassignment of adjudicator for his current appeal on the grounds that the present adjudicator, Ms. Kendall, had misrepresented the *PCMLTFA* in order to obtain a payment of \$1606.97 from him. On the same day, two letters were written to the Recourse Directorate. One submitting his interpretation of a telephone conversation he had with Ms. Kendall and the other one in response to Ms. Kendall’s letter of December 11 2014

Additional correspondence from Claimant – January 21, 2015

The claimant submitted representations noting that Ms. Kendall dropped the claim stating that his money is collectable coins but rather instead that Ms. Kendall had devised that the goods were commodities. According to the claimant, the law explicitly shows that this claim is illegal. The claimant also states that in her letter, Ms. Kendall states that since a tariff appears to match his money, it is subject to the *CA*. This fact, according to the claimant, is false as it is plainly stated on the inside cover of the *Customs Tariff* itself. Finally, the claimant states that Ms. Kendall had so far not provided clear references to any of her claims and thus making it clear that they were just her own personal opinions and not officially sanctioned. The claimant also states that there was no proof that Ms. Kendall had consulted with any legal professional as she had claimed in her December 9, 2014 telephone conversation.

Acknowledgment – February 3, 2015

The claimant's correspondence was further acknowledged by Ms. Kendall in a letter dated February 3, 2015 where she thanked the claimant for his representations and informs him that they have been duly noted and would be added to the file.

Request for Legal Opinion – February 12, 2015

On February 12, 2015, a legal opinion was requested from the CBSA Legal Services Unit in order to obtain their advice as to whether the foreign collector gold and silver coins are reportable as goods under the *CA* or currency under the *PCMLTFA* or if other reporting requirements exist through other legislation.

Change of Adjudicators – February 13, 2015

On February 13, 2015, I, Martine Gagnon, was assigned the file.

Letter to Claimant – Legal Opinion – March 9, 2015

The CBSA Legal Services Unit's opinion was received on February 26, 2015.

In the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR)*,

"cash" is defined as:

"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. (espèces)

In the French version of the *PCMLTFR*, the term "cash" is translated as "espèces". The English translation of "espèces" within the (*PCMLTFA*) is "currency". Therefore, it is concluded that it was Parliament's intent to equate "cash" and "currency" within the context of the *PCMLTFA* and *PCMLTFR*.

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".

On the basis of the foregoing, the CBSA is of the view that foreign coins intended for circulation would be considered as currency to be reported under the provisions of the *PCMLTFA*. However, foreign coins that are not intended for circulation are to be considered goods and are to be reported under the *CA*.

Following the CBSA Legal Services Unit's opinion, the CBSA sent a letter to the claimant on March 9, 2015 stating that, according to the CBSA, the goods are considered to be reportable under the *CA*.

Additional – March 17, 2015

On March 17, 2015, the claimant sent additional correspondence stating that on the basis of our March 9, 2015 letter, it appeared that I had not yet reviewed the documentation that had already

been provided as part of his request for ministerial decision and that I had provided an argument based on poor reading comprehension. The definition of cash under the *PCMLTFR* is defined as follows:

“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. (espèces)

According to the claimant, the CBSA made an important reading comprehension error. The correct phrase is “intended for circulation in Canada” followed by “or coins or bank notes of countries other than Canada”, therefore according to the *PCMLTFR*, cash is Canadian coins and notes that are intended for circulation in Canada or foreign coins or bank notes. The intended “for circulation in Canada” part applies only to currency issued under the authority of the *Currency Act*, while the “or coins or bank notes of countries other than Canada” part applies to the claimant’s coins. The claimant also wants to inform us of the fact that the part that applies to foreign currency does not include any circulation requirements.

Call from Claimant – April 2, 2015

On April 2, 2015, the claimant and I spoke on the telephone. He wanted me to have the file in front of me to discuss some issues. Before starting the conversation, I explained to him that we could discuss the issues over the telephone but that I would need to have all additional information in writing as well in order to respond to his queries as this process is a written one. He stated that he only thought of those issues after he had sent his latest correspondence. I responded by stating that he could send his additional queries by mail and that we would take them into consideration before responding. He stated that he would let us respond to his original letter and send further correspondence afterwards if need be.

Call from Claimant – April 7, 2015

On April 7, 2015, the claimant left a voice mail requesting to get the contact information for the Legal Services Unit. When calling him back, I responded, with acknowledgment and approval from my Manager, that I would not be able to give him this information. He responded he did not want to speak with the lawyer but rather wanted to talk to the Minister as he did not understand that we could not read and understand the definition of cash in the proceeds of crime regulations. I answered that we would respond to his letter shortly in writing and thus by stating this, acknowledged receipt of his letter over the telephone.

Legal Opinion – follow-up – April 30, 2015

On April 30, 2015, after requesting further clarifications from the Legal Services Unit with regard to the claimant’s interpretation of the term “cash” in the *PCMLTFR*, counsel confirmed that they were of the opinion that the preferred interpretation is that the foreign coins in question (silver eagles and gold buffalos) are collector coins. While they may have a face value, the true value in the coins relates to the collector aspect and as such these coins can be defined as goods under the *CA*. This is consistent with the CBSA’s position and can be supported by the law through statutory interpretation.

On May 26, 2015, the claimant’s letter dated March 17, 2015 was acknowledged informing him that his representations were carefully considered and reiterating the CBSA’s position that the silver and gold coins imported by the claimant are considered goods under the *CA*.

ANALYSIS

Under the provisions of section 12 of the *CA*, all goods imported into Canada must be reported in accordance with the *Regulations Respecting the Reporting of Imported Goods*.

The evidence submitted by the issuing office does establish that the claimant declared having purchased two tires valued at \$500.00. The officer asked him whether he had bought or received anything other than the two tires and he replied “yes” he had purchased a bottle of Advil.

Upon examination of his vehicle were discovered undeclared gold and silver coins with a value of \$5,700.00 USD.

The claimant appealed this action stating that;

- The silver eagle coins were US legal tender and IRA eligible investments.
- The coins were classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which were thus monetary instruments was USD \$5,700.00 and as their value was below the \$10,000 CAD, he was not required to declare them, per CBSA regulations.
- He was not asked about cash or financial instruments he carried, which would have required him to disclose.

The claimant made purchases which consisted of gold and silver coins and the receipt is dated October 21, 2014, the day of the seizure. The primary officer asked the claimant whether he had bought or received anything other than the two tires and he replied "yes" he had purchased a bottle of Advil. He failed to declare the gold and silver coins purchased that day.

The Agency's position remains that the imported foreign gold buffalos and silver eagles coins are collector coins and that their true value relates to the collector aspect. Notwithstanding their face value, it is the CBSA's position that the coins in question are thus considered goods under the CA, and henceforth require reporting upon importation.

As the goods in question were identified in the *Customs Tariff Schedule* under section XIV, chapter 71.18 and were being imported for the first time they did not meet the criteria outlined in section 12(7) of the CA to preclude them from seizure. The gold and silver coins do not fall under the PCMLTFA as the claimant has adamantly stated. 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" that is again translated as "currency", the CBSA is of the opinion that the term "cash" is to equate the term "currency" within 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.

For all the reasons noted above, I recommend maintaining the enforcement action however, as the goods are unconditionally duty free and tax exempt, the terms of release should be adjusted in accordance with EN Manual part 5, chapter 2 and paragraph 101. As the goods were not reported, *Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:*

- *Level 1 and \$2000 or over in value, 5 per cent of value;*

TERMS OF RELEASE (RECOMMENDED):

GOODS - 4-USA \$50.00 gold coins & 20-USA \$20 silver coins	\$321.39
(GRP. 2/LEVEL 1 CONTRAVENTION - 5% OF \$6,427.89)	

TOTAL AMOUNT REQUIRED FOR RETURN OF GOODS	\$321.39
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Under the provisions of section 131, the Minister shall consider and weigh the circumstances of this case and decide with respect to the gold and silver coins.

BE IT DECIDED THAT:

Under section 131 of the CA, there has been a contravention of the CA or the Regulations with respect to the seized goods;

Under section 133 of the CA, the goods under seizure be returned to the appellant upon receipt of an amount of \$321.39 to be held as forfeit. If release of the goods is not taken on the foregoing terms, within 90 days from the date of this notice, they will be forfeited and disposed of.


M. Gagnon, Senior Appeals Officer

May 28, 2015
Date



Signing Authority

May 29/15
Date