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Our File: 9624574  
Notre dossier:

June 10, 2019

The Registrar  
Federal Court of Appeal  
90 Sparks Street  
Ottawa, Ontario K1A 0H9

Dear Sirs/Mesdames:

Re: **HOCIUNG, Radu v. CANADA (Public Safety and Emergency Preparedness)**  
**Court dockets: A-101-18 and A-102-18**

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These appeals were heard on May 23, 2019 at Toronto before Justices Gauthier, Webb and Rivoalen. The panel directed counsel for the Respondent to file a letter with the Court as to whether section 3(b)(i) of the *Crown Liability and Proceedings Act* allows for the federal Crown to be held vicariously liable in tort for a fraud committed by a Crown servant. Here, the alleged fraud involves the Appellant's allegations in the proposed amendments to his claim with respect to the conduct of certain Border Service Officers (BSOs). The panel gave the Respondent until June 9 to file the letter and we are filing today as June 9 was a Sunday.

The Federal Court has held that the term "tort" in section 3(b)(i) includes negligence as well as intentional torts such as fraud and threats of assault and battery: *Maroney v. Canada*, 2002 FCT 801, at paragraph 10; *Bergeron v. Canada*, 2016 FC 235, at paragraphs 6 and 9-13. Because the Appellant has sued the Crown, the Crown's liability would be vicarious pursuant to section 3(b)(i) of the CLPA, rather than primary.

In the event this Court agrees with the Federal Court and confirms that the coins are goods for the purpose of reporting under the *Customs Act*, the Appellant's allegations of fraud will fail, and the question of the Crown's vicarious liability will be moot.

Further to the Appellant's letter to the Court dated June 7, 2019, the Appellant repeats his assertion that the *Customs Act* derives its power from the *Excise Tax Act*. In fact, the two statutes operate independently. Taxes arising under the ETA are different from those under the *Customs Act* and *Customs Tariff*.

Yours very truly,

Eric Peterson  
Crown Counsel  
National Litigation Sector  
EP/dr; copy by mail and email to the Appellant

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