

Federal Court



Cour fédérale

Date: 20180315

Docket: T-1450-15

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCTUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER

UPON MOTION by the plaintiff for leave to amend the Statement of Claim by adding Canada Border Services Agency and Her Majesty the Queen in Right of Canada as defendants, pleading criminal activities carried out by the proposed new defendants and their employees, amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*], pleading for additional relief, and updating the plaintiff's contact information;

UPON CONSIDERING the submissions of the parties concerning the proposed amendments;

AND UPON NOTING that the plaintiff's action is brought pursuant to section 135 of the *Customs Act* which states at subsection 135(1) "A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant";

AND UPON CONSIDERING that a decision of the Minister under section 131 of the *Customs Act* is limited to a determination by the Minister as to whether or not there has been a contravention of that Act and any other plea for relief must be pursued separately (*Customs Act*, subsection 131(1), *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 22, *Nguyen v. Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 at paras 19 and 20).

AND UPON CONSIDERING that the substantive aspects of the plaintiff's proposed amendments consist of pleas for criminal penalties, damages, and for extraordinary remedies pursuant to section 18.1 of the *Federal Courts Act* ;

AND UPON CONSIDERING the relief sought through the proposed amendments is beyond the scope and intent of section 135 of the *Customs Act*;

AND UPON CONSIDERING that a claim for damages arising from officers' performance of their duties under the *Customs Act* must be brought within the limitation period set out at subsection 106(1) of the *Customs Act*;

AND UPON CONSIDERING that the limitation period for the commencement of a proceeding pursuant to subsection 106(1) of the *Customs Act* has passed;

AND UPON CONSIDERING that the absence of a reasonable prospect of success is a valid basis upon which a Court may dismiss a motion for leave to amend (*Bauer Hockey Corp. v. Sport Mask Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 at para 16; *Teva Canada Limited v. Gilead Sciences Inc.*, 2016 FCA 176);

AND UPON CONSIDERING that while elements of the proposed amendments (see for example the proposed amendments at para 1(i) and para 2) supplement the original claim by adding some factual detail to the matter or update the plaintiff's contact information, these elements of the proposed amendments do not substantively update or change the claim;

AND UPON CONCLUDING that the proposed amendments expanding the plaintiff's claims do not demonstrate a reasonable chance of success in an action brought pursuant to section 135 of the *Customs Act* and therefore it cannot be said that it is in "the interests of justice" to allow the motion for leave to amend (*Maximova v. Canada (Attorney General)*, 2017 FCA 230 at para 15, citing *AbbVie Corp. v. Janssen Inc.*, 2014 FCA 242 at para 3);

THIS COURT ORDERS that:

1. The motion to amend is dismissed.
2. Costs in the cause.

"Patrick K. Gleeson"

Judge

Federal Court



Cour fédérale

Date: 20180315

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Citation: 2018 FC 298

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The defendant has brought a motion in writing, pursuant to Rules 221 and 369 of the *Federal Court Rules*, SOR/98-106 [Rules] seeking summary judgment. Specifically the defendant seeks:

Summary Judgment dismissing this action in its entirety, on the basis of the statement of claim as it presently stands and as it may be amended on the disposition of the Plaintiff's motion to amend.

[2] The Court has separately considered the plaintiff's motion for leave to amend the statement of claim by: (1) adding defendants; (2) pleading criminal activities; (3) amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*]; (4) pleading for additional relief; and (5) updating the plaintiff's contact information. That motion has been denied by way of separate Order. This motion for summary judgment has therefore been considered on the basis of the original statement of claim.

II. Background

[3] This action arises from the Canada Border Services Agency's [CBSA] seizure of United States Treasury gold and silver coins from the plaintiff upon his return to Canada from the United States. The coins, purchased in the United States at a cost of \$5,700 USD, consisted of four \$50 USD Buffalo Gold Bullion coins and twenty \$1 USD Silver Eagle coins. CBSA seized the coins as forfeit for contravention of section 12 of the *Customs Act* on the basis that the plaintiff failed to declare the coins as "goods" upon entry into Canada.

[4] Pursuant to section 129 of the *Customs Act* the plaintiff requested a decision of the Minister on the issue of whether the *Customs Act* had been contravened. The plaintiff maintains that: (1) the coins are money or currency, not goods, and therefore do not need to be declared under the *Customs Act*; and (2) the currency in his possession, including the gold and silver

coins, had a face value of less than \$10,000 and therefore did not trigger the reporting obligation under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [*Proceeds Act*].

[5] After reviewing the enforcement action the Minister's delegate determined that "[a]ll goods entering Canada, including gold and silver coins, must be reported to CBSA in accordance with the Customs Act." The Minister's delegate concluded, as provided for at section 131 of the *Customs Act*, there had been a contravention of this reporting requirement. The Minister's delegate further found, as provided for at section 133 of the Act, that upon the payment of \$321.39, to be held as forfeit, the coins would be returned to the plaintiff.

[6] The plaintiff commenced an action pursuant to section 135 of the *Customs Act*, appealing the contravention decision.

III. Position of the Parties

A. *Defendant's Submissions (the moving party on the motion for summary judgment)*

[7] In seeking summary judgment, the defendant submits that only two issues are raised in the plaintiff's action:

1. Whether the plaintiff may claim damages and seek *mandamus* in an appeal of a Ministerial decision by way of action brought under section 135 of the *Customs Act*; and
2. Whether collector coins are currency or goods for the purpose of the *Customs Act*.

[8] The defendant submits that on a motion for summary judgment, where the Court is satisfied there is no genuine issue for trial, the Court shall grant summary judgment. The defendant further submits that where the Court is satisfied the only genuine issue is a question of law the Court may determine the issue and grant summary judgment pursuant to Rule 215(2)(b) of the Rules.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action brought under section 135 of the *Customs Act*.

[9] The defendant submits that the sole issue before the Court in an action instituted under section 135 of the *Customs Act* is whether there was a contravention of the Act or its regulations. An action under section 135 does not permit a plaintiff to make claims for damages arising from CBSA officers' performance of their duties, nor does it allow for other damages or the extraordinary remedies available under section 18.1 of the *Federal Courts Act*, RSC, 1985, c. F-7. These remedies, the defendant submits, are available by way of separate action but that separate proceeding cannot be combined with a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[10] The defendant submits that the coins in issue are collector coins and as such they are goods rather than currency, and must be declared under the *Customs Act*. The defendant states that although the *Proceeds Act* requires currency over \$10,000 to be reported at the border, "currency" is not defined in the *Proceeds Act*. The defendant submits that collector coins have a market value far beyond their face value, are not intended for circulation, and therefore are not "currency" for the purposes of the *Proceeds Act*.

B. *Plaintiff's Submissions*

[11] The plaintiff submits the summary judgment motion is unnecessary and vexatious because it is identical to a prior failed motion to strike the plaintiff's pleadings and is simply an attempt to stall discovery.

[12] Although the plaintiff does not challenge the issues as identified by the defendant on this motion, the plaintiff submits there are additional issues identified in the statement of claim. These generally include whether the coins in issue are intended for circulation and the scope of an action and available remedies under section 135 of the *Customs Act*. The plaintiff invites the Court to determine any issues on this motion that may be determined based on the evidence.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action pursuant to section 135 of the *Customs Act*

[13] The plaintiff argues that he is not seeking *mandamus* in this matter and submits that section 135 of the *Customs Act* allows for a full action in the Federal Court. He further submits that all remedies otherwise available in actions before the Federal Court are available in a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[14] The plaintiff submits that the coins in issue are "currency," not "goods," and therefore need not be reported pursuant to subsection 12(1) of the *Customs Act* on importation to Canada.

He further submits that even if the coins are characterized as goods they are exempt from tax pursuant to the *Excise Tax Act*, RSC, 1985, c E-15.

[15] The plaintiff submits that whether the coins are collectable or in circulation does not affect their status as currency. He further argues that refusing to treat collector coins as currency is inconsistent with, and defeats the purposes and intent of, the *Proceeds Act*.

IV. Are there genuine issues for trial?

[16] The plaintiff does not dispute that the issues identified by the defendant are genuine issues. However, the plaintiff submits there are additional issues raised in the statement of claim to be addressed in the course of the action. I disagree.

[17] The claim does raise numerous allegations of general misconduct, including allegations of criminal misconduct in relation to various officers and officials. The statement of claim seeks the payment of damages in relation to the alleged misconduct. In addition the statement of claim seeks to have this Court direct specific action be taken by both the Prime Minister and the Minister of Public Safety and Emergency Preparedness.

[18] In my view these are all matters that fall within the scope of the defendant's first stated issue, "whether the plaintiff may claim damages and seek *mandamus* in an appeal of a Ministerial decision by way of action pursuant to section 135 of the *Customs Act*." However, to better reflect the true issue to be decided, I would reframe the defendant's issue statement as

“whether an action brought under section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act*.”

[19] The plaintiff also submits that there are numerous issues relating to the interpretation of the legislation that has been relied upon by the parties in advancing their respective positions. The parties have cited and relied on a number of different legislative provisions in advancing their positions, but these submissions all seek to resolve a single core issue in dispute as it relates to the contravention finding: “are collector coins “currency” or “goods”?”

[20] I am satisfied that the two issues identified by the defendant are genuine issues to be determined in this matter, and are the only issues to be determined.

V. Is the Court in a position to address the genuine issues and grant summary judgment?

[21] Determining whether an action commenced pursuant to section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act* involves interpretation of that Act. The plaintiff has not disputed the characterization of this matter as being a question of law. I also note there is no factual dispute relating to this discrete issue.

[22] I am of the opinion that “whether collector coins are currency or goods for the purpose of the *Customs Act*” is also a question of law. The core issues to be determined are: (1) are precious-metal coins “currency” that must be reported under section 12 the *Proceeds Act*; and (2) are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*? The defendant acknowledges in written submissions that the gold and silver coins in issue are issued

by the US Treasury, which “stipulates that its collector coins are legal tender.” Thus no findings of fact are required to determine the core issues.

[23] I am satisfied that both issues can be dealt with by way of summary judgment.

VI. Issues

[24] Having considered the submissions of the parties and the issues identified by the defendant, I have framed the issues as follows:

1. Is an action commenced pursuant to section 135 of the *Customs Act* limited to a determination of whether there has been a contravention of the *Customs Act*?
2. Are the precious-metal coins in question “goods” pursuant to the *Customs Act* and/or “currency” pursuant to the *Proceeds Act*? This issue requires addressing the following two sub-issues:
 - i. Are precious-metal coins “currency” that must be reported under section 12 the *Proceeds Act*? and
 - ii. Are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*?

VII. Analysis

- A. *Is an action pursuant to section 135 of the Customs Act limited to a determination of whether there has been a contravention of the Customs Act?*

[25] Subsection 106(1) and sections 131 and 135 of the *Customs Act* state:

106 (1) No action or judicial proceeding shall be commenced against an officer for anything done in the performance of his duties under this or any other Act of Parliament or a person called on to assist an officer in the performance of such duties more than three months after the time when the cause of action or the subject-matter of the proceeding arose.

[...]

131 (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

(b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so

106 (1) Les actions contre l'agent, pour tout acte accompli dans l'exercice des fonctions que lui confère la présente loi ou toute autre loi fédérale, ou contre une personne requise de l'assister dans l'exercice de ces fonctions, se prescrivent par trois mois à compter du fait générateur du litige.

[...]

131 (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :

a) le motif d'infraction à la présente loi ou à ses règlements pour justifier soit la saisie des marchandises ou des moyens de transport en cause, soit la signification à leur sujet de l'avis prévu à l'article 124;

b) le motif d'utilisation des moyens de transport en cause dans le transport de marchandises ayant donné lieu à une infraction aux mêmes loi ou règlements, ou le motif de cette infraction, pour justifier soit la saisie de ces moyens de transport, soit la signification à leur sujet de l'avis prévu à l'article 124;

contravened; or

(c) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a réellement eu non-conformité.

(1.1) A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.

(1.1) La personne à qui a été signifié un avis visé à l'article 130 peut aviser par écrit le ministre qu'elle ne produira pas de moyens de preuve en application de cet article et autoriser le ministre à rendre sans délai une décision sur la question.

(2) The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.

(2) Dès qu'il a rendu sa décision, le ministre en signifie par écrit un avis détaillé à la personne qui en a fait la demande.

(3) The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1).

(3) La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).

[...]

[...]

135 (1) A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in

135 (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette

the Federal Court in which that person is the plaintiff and the Minister is the defendant.

(2) The *Federal Courts Act* and the rules made under that Act applicable to ordinary actions apply in respect of actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

(2) La demande se fait par remise d'un avis au ministre par écrit, ou sous toute autre forme prévue par celui-ci.

[26] The plaintiff submits that subsection 135(1) allows for a full action in this Court including the joinder of claims. I am not persuaded.

[27] A decision of the Minister pursuant to section 131 relates solely to the question of whether there has been a contravention of the *Customs Act*. As Justice Michel Shore explained in *Nguyen v Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 [Nguyen] at para 19:

Subsection 131(3) of the Act is a privative clause within the *Customs Act* that requires decisions made pursuant to s. 131 of the Act be subject to review only as described in s. 135(1) of the Act. Subsection 135(1) of the Act requires that a Minister's decision made under s. 131 of the Act be appealed by way of an action.

[Emphasis in original]

[28] Although this type of situation has been described as “awkward and inconvenient” (*Dokaj v Canada (Minister of National Revenue)*, 2005 FC 1437 at para 39) and “anomalous” (*ACL Canada Inc v MNR* (1993), 107 DLR (4th) 736, 68 FTR 180 (TD) at para 55), the

subsection 135(1) statutory right of appeal has been consistently found to be limited to the section 131 decision.

[29] The jurisprudence has held that penalties imposed pursuant to section 133 and resulting from a subsection 131(1) contravention finding are not reviewable in a subsection 135(1) action (*Starway v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 23 [*Starway*]). Similarly, a subsection 131(1) decision has been found not to be reviewable in a proceeding challenging a penalty imposed under section 133 (*Nguyen* at para 20).

[30] The plaintiff argues that *Starway* does not stand for the principle that the exclusive issue to be determined in a subsection 135(1) action is a contravention of the *Customs Act*. I disagree. In *Starway* Justice Harrington states at para 27 that “[i]n accordance with section 135 of the Act, this is an ordinary action. The only special rule imposed is that the issue is limited to whether Mr. Starway made an untrue statement.” In other words although a section 135 action is in all other respects an ordinary action before this Court, it is an action that is limited to addressing whether there has been a *Customs Act* contravention. I agree with Justice Harrington.

[31] In reaching this conclusion I note that the limited scope of a subsection 135(1) action does not prevent a plaintiff from advancing broader claims or seeking broader relief in other proceedings. The *Customs Act* itself contemplates proceedings being brought against officers for acts done in the performance of their duties (subsection 106(1)); judicial review of some decisions (for example, penalties imposed under section 133) is available under the *Federal Courts Act*.

[32] I conclude that an action brought pursuant to subsection 135(1) of the *Customs Act* is limited to determining a single issue, whether there has been a contravention of that Act, and that this is the sole issue before the Court in the action. This action differs from judicial review as the Court is to make a *de novo* determination of the issue (*Starway* at para 24).

B. *Are the plaintiff's coins "goods" pursuant to the Customs Act and/or "currency" pursuant to the Proceeds Act?*

[33] In making the decision under appeal, the Minister's delegate found that circulation was a key factor in concluding the US Treasury coins were goods rather than currency:

In the context of this enforcement action, the coins were not intended for circulation. Consequently, they are not considered to be currency subject to the reporting requirements of the [*Proceeds Act*], but they are considered goods subject to the reporting requirements of the *Customs Act*.

[34] In advancing their respective positions, the parties in this action have similarly adopted the view that the coins in issue are to be characterized in a binary fashion. They are either "goods" under the *Customs Act*, as the defendant has argued, or "currency" pursuant to the *Proceeds Act*, as the plaintiff has argued.

[35] For the reasons that follow, I am of the view that, regardless of their circulation status or collectability, US Treasury-issued legal tender collector coins are both "goods" under the *Customs Act* and "currency" under the *Proceeds Act*. If I am correct in this view then reporting obligations under both the *Customs Act* and the *Proceeds Act* apply where such coins are imported.

- (1) Are the coins at issue “currency” that must be reported under section 12 of the *Proceeds Act*?

[36] The *Proceeds Act* imposes an obligation on every person to report the importation or exportation of currency or monetary instruments that equal or exceed a prescribed value:

12 (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

12 (1) Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l’agent, conformément aux règlements, l’importation ou l’exportation des espèces ou effets d’une valeur égale ou supérieure au montant réglementaire.

[37] The *Proceeds Act* in concert with the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [*Reporting Regulations*] prescribe an amount of \$10,000 as triggering the obligation to report the importation or exportation of currency or monetary instruments.

[38] Neither party takes the position that the coins are “monetary instruments”, a term that is defined at subsection 1(1) of the *Reporting Regulations*. The dispute arises in respect of the meaning of “currency,” which is not defined in the *Proceeds Act* or any of its regulations.

[39] Both parties rely on the definition of “cash” set out at subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*Proceeds Regulations*] to assist in interpreting the meaning of “currency”. However, such reliance is misplaced.

[40] Not all definitions in the *Proceeds Regulations* apply to its enabling Act. The *Proceeds Regulations* set out definitions at subsection 1(1) that “apply in the Act and these Regulations,” whereas the definitions at subsection 1(2) only “apply in these Regulations.” Cash is defined at subsection 1(2) and therefore the definition is of no application when interpreting the *Proceeds Act*. This conclusion is reinforced by the *Proceeds Regulations* definition of “funds,” also found at subsection 1(2), which distinguishes between “cash” and “currency.” Were this distinction to be extended to the *Proceeds Act* the requirement to report currency pursuant to subsection 12(1) would not include a requirement to report cash; such a result that would undermine the purpose of the *Proceeds Act*. I am of the view that the *Proceeds Regulations*’ definition of cash is of no assistance in this matter.

[41] The defendant also points to the Oxford English Dictionary definition of currency to support its position: “[t]hat which is current as a medium of exchange; the circulating medium (whether coins or notes); the money of a country in actual use”. Relying on this definition the defendant notes the market value of non-circulation collector coins, coupled with the value placed upon them by collectors, renders them much more valuable than their face value. As such they are not intended for circulation and are not “money of a country in actual use”.

[42] The defendant similarly relies on section 2 of the *Royal Canadian Mint Act*, RSC, 1985, c R-9, [*Mint Act*] which defines both circulation and non-circulation coins, and section 8 of the *Currency Act*, RSC, 1985, c. C.52, [*Currency Act*] which limits the legal tender value of coins.

[43] The defendant's argument might be best summarized as follows: (1) collector coins are significantly more valuable in the market place than the face value of the coins or the maximum value provided for such coins at section 8 of the *Currency Act*; (2) as a result a rational person would not tender collector coins to pay for goods and services; (3) the coins are non-circulation coins and therefore cannot be characterized as money in actual use even though "[t]he U.S. Treasury stipulates that its collector coins are legal tender;" and (4) as a result collector coins are not "currency" as that term is used in the *Proceeds Act*.

[44] The parties have cited Canadian legislation relating to non-circulation coins in support of their respective positions on whether such coins are "currency". The parties have also taken the position that the U.S. Treasury coins in issue would be characterized in the same manner as Canadian legal tender non-circulation coins. Having considered the legislation cited and relied upon by the parties I am of the view that Canadian legal tender non-circulation coins are "currency" and would extend this conclusion to include the coins that are the subject of this dispute.

[45] The *Currency Act*, at section 7, describes "Current Coins" as:

7 (1) A coin is current for the amount of its denomination in the currency of Canada if it was issued under the authority of

(a) the *Royal Canadian Mint Act*; or

(b) the Crown in any province of Canada before it became part of Canada and if the coin

7 (1) Ont cours légal, pour la valeur faciale qui y figure en monnaie canadienne, les pièces émises :

a) sous le régime de la *Loi sur la Monnaie royale canadienne*;

b) dans le cadre des attributions de la Couronne dans une province avant que

was, immediately before
October 15, 1952, current and
legal tender in Canada.

(2) No coin that is bent,
mutilated or defaced, or that
has been reduced in weight
otherwise than by abrasion
through ordinary use, shall
pass current.

[Emphasis added]

celle-ci ne fasse partie du
Canada et qui, avant le 15
octobre 1952, avaient cours
légal et pouvoir libératoire au
Canada.

(2) Les pièces tordues,
mutilées ou défigurées, ou dont
le poids a été réduit autrement
que par le frottement, n'ont pas cours
légal.

[Non souligné dans l'original]

[46] According to paragraph 7(1)(a) of the *Currency Act*, a coin issued under the *Mint Act*, is current for its face value in the currency of Canada. There is no distinction made between circulating and non-circulating coins, both of which are issued under the *Mint Act*.

[47] Non-circulation coins are defined in the *Mint Act* as follows:

non-circulation coin means a
coin composed of base metal,
precious metal or any
combination of those metals
that is not intended for
circulation and that is listed in
Part 1 of the schedule;

monnaie hors circulation Les
pièces de monnaie composées
de métal commun ou de métal
précieux, ou d'une
combinaison de ces métaux,
qui ne sont pas destinées à la
circulation et sont énumérées à
la partie 1 de l'annexe.

[48] Section 6 of the *Mint Act* provides for the issuance of non-circulation coins and section 6.31 states the following:

6.31 Non-circulation coins of
the currency of Canada in the
denomination of \$350 that are
dated 1999, 2000, 2001, 2002,
2003, 2004, 2005 or 2006 are
current and legal tender in

6.31 Toute pièce de monnaie
hors circulation dont la valeur
faciale est de trois cent
cinquante dollars et sur
laquelle figure l'année 1999,
2000, 2001, 2002, 2003, 2004,

Canada as of the year that they are dated.	2005 ou 2006 a cours légal et pouvoir libératoire au Canada depuis l'année qui y figure.
--	--

[49] The *Mint Act* describes the coins of Canada, encompassing non-circulation coins addressed at sections 6 – 6.31 and circulation coins addressed at sections 6.4 – 6.6. Section 7 describes non-circulation coins and circulation coins collectively as “coins of the currency of Canada”:

7 (1) All coins of the currency of Canada that are produced at or supplied by the Mint shall be delivered to the Minister of Finance or such person as the Minister of Finance may designate.

(2) The Mint shall comply with such instructions as the Minister of Finance may give respecting the storage of coins of the currency of Canada or the preparation and movement of shipments of such coins to or from the Mint.

(3) Payments for the production, storage, preparation or movement of coins of the currency of Canada shall be made out of the Consolidated Revenue Fund on the authorization of the Minister of Finance.

[Emphasis added]

7 (1) Toutes les pièces de monnaie canadienne fabriquées ou fournies par la Monnaie sont remises au ministre des Finances ou à la personne désignée par celui-ci.

(2) La Monnaie est tenue de se conformer aux instructions du ministre des Finances concernant l'entreposage des pièces de monnaie canadienne ou la préparation de chargements de ces pièces et leur acheminement au départ ou à destination de l'établissement.

(3) Les fonds requis pour la production, l'entreposage, la préparation ou le transport des pièces de monnaie canadienne sont prélevés sur le Trésor avec l'autorisation du ministre des Finances.

[Non souligné dans l'original]

[50] Returning now to the *Currency Act*, section 8 describes when the payment of money is legal tender:

8 (1) Subject to this section, a tender of payment of money is a legal tender if it is made

(a) in coins that are current under section 7; and

(b) in notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* intended for circulation in Canada.

(2) A payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:

(a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;

(b) twenty-five dollars if the denomination is one dollar;

(c) ten dollars if the denomination is ten cents or greater but less than one dollar;

(d) five dollars if the denomination is five cents; and

(e) twenty-five cents if the denomination is one cent.

(2.1) In the case of coins of a denomination greater than ten dollars, a payment referred to in subsection (1) may consist of not more than one coin, and

8 (1) Sous réserve des autres dispositions du présent article, ont pouvoir libératoire :

a) les pièces qui ont cours légal en vertu de l'article 7;

b) les billets destinés à circuler au Canada et émis par la Banque du Canada aux termes de la *Loi sur la Banque du Canada*.

(2) Les offres de paiement effectuées avec des pièces visées au paragraphe (1) ont pouvoir libératoire jusqu'à concurrence des montants suivants :

a) les pièces de deux à dix dollars : quarante dollars;

b) les pièces de un dollar : vingt-cinq dollars;

c) les pièces de dix cents et plus mais de moins d'un dollar : dix dollars;

d) les pièces de cinq cents : cinq dollars;

e) les pièces de un cent : vingt-cinq cents.

(2.1) Dans le cas des pièces de plus de dix dollars, toutefois, l'offre ne peut consister en plus d'une pièce; son pouvoir libératoire correspond alors à

the payment is a legal tender
for no more than the value of a
single coin of that
denomination.

la valeur faciale de la pièce.

(3) For the purposes of
subsections (2) and (2.1),
where more than one amount is
payable by one person to
another on the same day under
one or more obligations, the
total of those amounts is
deemed to be one amount due
and payable on that day.

(3) Pour l'application des
paragrophes (2) et (2.1),
plusieurs paiements à faire le
même jour par la même
personne au même créancier,
qu'il s'agisse ou non de la
même créance, sont réputés
constituer un paiement unique.

[Emphasis added]

[Non souligné dans l'original]

[51] In sum: (1) section 7 of the *Currency Act* provides that a “coin is current for the amount of its denomination in the currency of Canada” if issued under the authority of the *Mint Act*; (2) non-circulation coins are issued under the *Mint Act* and are therefore current under section 7 of the *Currency Act*; (3) section 8 of the *Currency Act* provides that payment in coins that are current is a legal tender; and (4) section 6.31 of the *Mint Act* explicitly acknowledges the existence of “[n]on-circulation coins of the currency of Canada.”

[52] While it may be irrational to use non-circulation collector coins to purchase goods and services, section 7 of the *Currency Act* does not prevent one from doing so. The defendant has, in my view, conflated the concept of “the money of a country in actual use” with the concept of “money of a country in frequent or regular use”. While non-circulation collector coins are not frequently or regularly used as currency, they are legal tender and as such are, in my opinion, in actual use in Canada.

[53] In the context of Canadian-issued coins, considering the relevant provisions of the *Mint Act* and the *Currency Act*, I am satisfied that non-circulation coins that are legal tender are “currency” as that term is used in the *Proceeds Act*. The reporting obligations provided for at section 12(1) of the *Customs Act* are therefore triggered where, on import or export, the denominational or face value of the non-circulation coins together with any other currency or monetary instruments being imported or exported is of a value that is equal to or greater than the prescribed amount at section 2 of the *Reporting Regulations*.

[54] So what then, of the plaintiff’s coins? The defendant acknowledges in its submissions that the principles in respect of non-circulation coins as set out in the *Mint Act* are the principles that apply in respect of US Treasury Buffalo Gold Bullion Coins and silver coins. They too, the defendant acknowledges, are legal tender.

[55] I therefore conclude that the plaintiff’s US Treasury-issued, legal tender coins are currency that is subject to the reporting requirements set out in the *Proceeds Act*. However as the face or denominational value of the coins was \$220 USD, the plaintiff was under no obligation to report the importation of this currency under the *Proceeds Act*. The currency in his possession was well below the amount at section 2 of the *Reporting Regulations*.

- (2) Are the coins at issue “goods” that must be reported under section 12 of the *Customs Act*?

[56] The plaintiff also submits that he had no obligation to report the collector coins having a face value of \$220 USD as goods despite having paid \$5,700 USD to a coin broker to acquire the

coins. He submits that they are currency, not “goods” as that term is defined in the *Customs Act*. I disagree. As stated above, I am of the opinion that the legal tender non-circulation collector coins are both “currency” and “goods”.

[57] The plaintiff further submits that even if the coins are “goods” they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act*, RSC, 1985 c. E-15, [*Excise Tax Act*] due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. As discussed below, there is a difference between goods being “exempt from taxes” under the *Excise Tax Act* and “exempt from reporting” under the *Customs Act*.

(a) *Goods under the Customs Act*

[58] Goods are very broadly defined at subsection 2(1) of the *Customs Act*:

<p>goods, for greater certainty, includes conveyances, animals and any document in any form; (<i>marchandises</i>)</p>	<p>marchandises Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support. (<i>goods</i>)</p>
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[59] This broad declaratory definition does not seek to exclude items from its scope but rather ensures items that might not normally be viewed as goods, including conveyances, animals and documents are captured within the scope of the definition.

[60] The *Customs Act* definition of goods is adopted at Part IX, subsection 123(1) of the *Excise Tax Act* where “money” is also defined as follows:

money includes any currency, **argent** Y sont assimilés la

cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value; (*argent*)

[Emphasis added]

monnaie, les chèques, les billets à ordre, les lettres de crédit, les traites, les chèques de voyage, les lettres de change, les bons de poste, les mandats-poste, les versements postaux et tout autre effet, canadien ou étranger, de même nature. La présente définition exclut la monnaie dont la juste valeur marchande dépasse la valeur nominale dans le pays d'origine et celle fournie ou détenue pour sa valeur numismatique. (*money*)

[Non souligné dans l'original]

[61] For the purpose of Part IX of the *Excise Tax Act*, currency with a fair market value higher than its face value is no longer money. Its status as currency does not change, but its treatment under the law does.

[62] Although I have found collector coins may be proffered as legal tender in exchange for goods or services on the basis of their denominational or face value, it is accepted by the parties that the plaintiff's non-circulation legal tender collector coins have a market value far in excess of their face value. It is this unique characteristic, coupled with the *Customs Act*'s broad definition of "goods" that leads me to conclude the plaintiff's coins are goods that must be reported under that Act. I also note that treating currency whose fair market value exceeds its face value as "goods" under the *Customs Act* is consistent with the definition of "money" at Part IX of the *Excise Tax Act*: fair market value establishes the line at which those instruments we normally think of as "money" may become "goods."

(b) *Exemption from tax*

[63] The plaintiff argues that even if the coins in issue are found to be goods, they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act* due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. This seems to be true. The Minister's delegate acknowledged in a postscript to the decision in issue that the coins were "duty free and tax exempt."

[64] However, the issue raised in this action is not whether taxes or duties are payable but whether the plaintiff had contravened the *Customs Act*. In that respect section 12(1) imposes a duty to report goods that are imported:

12 (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.

12 (1) Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions réglementaires, toutes les marchandises importées doivent être déclarées au bureau de douane le plus proche, doté des attributions prévues à cet effet, qui soit ouvert.

[65] The plaintiff has not argued that the coins, if found to be goods, are exempt from the reporting requirement set out at subsection 12(1). In addition, he does not dispute that he purchased the coins in the United States, was importing them into Canada, and failed to report them to customs officials.

[66] My conclusion that non-circulation legal tender collector coins are “goods” recognizes the unique characteristics of this form of “currency” and reflects the broader purpose and scheme of the *Customs Act* and subsection 12(1) in particular. All “goods” subject to prescribed circumstances and conditions are to be reported on importation. There are no reasons to exclude highly valuable collector coins from this reporting obligation.

[67] Tax-exempt or not, the plaintiff was required to report the importation of these coins. I conclude that the plaintiff’s failure to do so did, as found by the Minister’s delegate, contravene the *Customs Act*.

VIII. Overlapping Legislative Provisions

[68] Having concluded both the *Customs Act* and the *Proceeds Act* apply concurrently to non-circulation legal tender coins I will address the issue of overlapping legislative provisions.

[69] Where two or more legislative schemes apply to the same set of facts, the common law presumes legislative coherence. There is a presumption that “the legislature knows its own statute book and intends all additions to that statute book to produce consistent rules and coherent schemes” (Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law, 2016) at 317 [Sullivan]).

[70] The courts have recognized that the scope and application of different legislative provisions may conflict and overlap. This circumstance was addressed by Justice Cromwell,

writing for the majority of the Supreme Court of Canada in *Thibodeau v Air Canada*, 2014 SCC

67, where he states at paras 89 and 92:

[89] Courts presume that legislation passed by Parliament does not contain contradictions or inconsistencies and only find that they exist when provisions are so inconsistent that they are incapable of standing together. Even where provisions overlap in the sense that they address aspects of the same subject, they are interpreted so as to avoid conflict wherever this is possible.

[...]

[92] The legal framework that governs this question is not complicated. First, courts take a restrictive approach to what constitutes a conflict in this context. Second, courts find that there is a conflict only when the existence of the conflict, in the restrictive sense of the word, cannot be avoided by interpretation. Overlap, on its own, does not constitute conflict in this context, so that even where the ambit of two provisions overlaps, there is a presumption that they both are meant to apply, provided that they can do so without producing absurd results. This presumption may be rebutted if one of the provisions was intended to cover the subject matter exhaustively. Third, only where a conflict is unavoidable should the court resort to statutory provisions and principles of interpretation concerned with which law takes precedence over the other. This case turns on the first two of these principles and I will explore them in somewhat more detail.

[71] In effect it is presumed that Parliament does not intend contradictions or inconsistencies between legislative provisions and that a restrictive approach is to be taken to what constitutes a conflict. A true conflict between legislative provisions arises “only if it would be impossible or contradictory or would defeat the legislature’s purpose if both provisions were applied” (Sullivan at 319). Overlap on its own does not constitute a conflict.

[72] In this case no true conflict arises. Treating non-circulation legal tender collector coins as “goods” for the purposes of the *Customs Act* is not inconsistent with treating them as “currency”

under the *Proceeds Act*. It is neither impossible nor contradictory to impose a dual reporting requirement in those circumstances where both the *Customs Act* and the *Proceeds Act* reporting obligations are triggered. In my opinion this result ensures both the *Customs Act* and the *Proceeds Act* are interpreted and applied in a manner that best ensures the attainment of their objects and the intent of legislature.

IX. Conclusion

[73] Having concluded that the coins in issue are “goods” and subject to the duty to report at subsection 12(1) of the *Customs Act*, the plaintiff’s appeal of the section 131 determination that there was a *Customs Act* contravention is dismissed. However, in dismissing the appeal, I have also found the plaintiff’s position to have merit.

[74] In light of the mixed result the parties shall each bear their own cost.

[75] In addressing the plaintiff’s motion seeking leave to amend the Statement of Claim, I ordered that costs were to be determined in the cause. My conclusion that costs are to be borne by each party applies equally to the motion seeking leave to amend the Statement of Claim.

JUDGMENT IN T-1450-15

THIS COURT'S JUDGMENT is that:

1. The motion for summary judgment is granted and the action is dismissed.
2. The parties are to bear their individual costs including their costs relating to the plaintiff's motion for leave to amend the statement of claim.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1450-15

STYLE OF CAUSE: RADU HOCIUNG v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT
TO RULE 369 OF THE *FEDERAL COURTS RULES***

REASONS AND JUDGMENT: GLEESON J.

DATED: MARCH 15, 2018

WRITTEN REPRESENTATIONS BY:

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