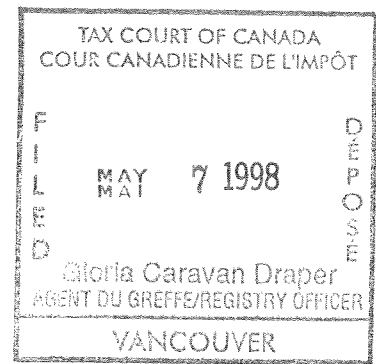


96-433(GST)G

**TAX COURT OF CANADA**



BETWEEN:

**BOMBAY JEWELLERS LTD.**

Appellant

- and -

**HER MAJESTY THE QUEEN**

Respondent

**CERTIFICATE OF COUNSEL**

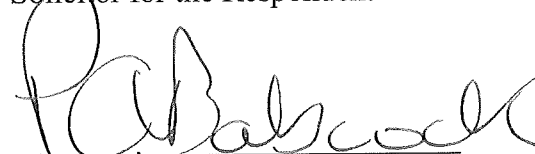
(pursuant to Rule 145(1)(b))

I attach a statement in writing signed by Alastair McIntyre, the proposed witness in this appeal. I am satisfied that this statement represents evidence that Alastair McIntyre is prepared to give in these matters.

DATED at the City of Vancouver, British Columbia, this 7th day of May, 1998.

George Thomson  
Deputy Attorney General of Canada  
Solicitor for the Respondent

Per:



Patricia A. Babcock  
Counsel for the Respondent

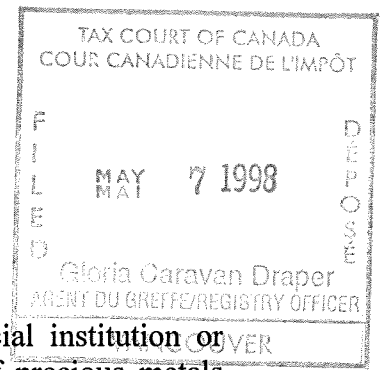
Department of Justice  
B.C. and Yukon Regional Office  
900 - 840 Howe Street  
Vancouver, BC  
V6Z 2S9

Telephone: (604) 666-0249  
Facsimile: (604) 666-2214

**TO:** Werner H.G. Heinrich  
Koffman Kalef  
Business Lawyers  
19th Floor, 885 West Georgia Street  
Vancouver, BC  
V6C 3H4

**AND TO:** Tax Court of Canada

## Statement of Proposed Evidence in Chief



My testimony is directed to the following question: Would a financial institution or precious metals markets and exchanges involved in the marketing of precious metals accept a non-standard form of gold coloured metal for purposes of security, acquisition or negotiation?

### 1. The Facts

- ❖ A jeweller purchased ingots, bars, wafers or coins from recognized suppliers of precious metals and then resold cut pieces of these bars, wafers or coins to its customers. The amount of gold the customer wished to purchase and the accuracy of the cutting determined the size of the pieces cut from the bars wafers or coins.
- ❖ The jeweller also melted the bars, wafers or coins and formed a smaller shaped piece of metal to the weight required by the customer.
- ❖ In addition, this jeweller took pieces of gold jewellery and melted them together and formed a shaped piece of metal in the weight that the customer wished to purchase.

### 2. Opinion

- ❖ For purposes of discussion, a financial instrument is cash, evidence of an ownership interest in equity, a contract or product that serves the purpose of completing a financial transaction or provides evidence of monetary value. Financial instruments in precious metals are recognizable products such as coins, bars, ingots and wafers. Minimum purity levels of .995 fineness for gold and platinum and .999 fineness for silver are the fineness levels required for the precious metal exchanges worldwide. Precious metals of these physical forms and fineness criteria are considered to be negotiable instruments. The fineness levels outlined are part of the definition of a precious metal within the Excise Tax Act.
- ❖ The precious metals markets and exchanges worldwide, such as, the London Bullion Metals Association, COMEX, TOCOM, ZGA, have stringent requirements for delivery of physical bullion to each exchange. Bars must be of a specific weight and fineness and must exhibit on the bar a hallmark of an approved melter or assayer. The delivery of physical precious metals on an exchange, market, or to a principle is the fundamental component of precious metals pricing.

- ❖ The most influential gold market is the London Bullion Market Association. The ultimate seal of approval on a gold bar is that it is up to the exacting standards of the LBMA. A "good delivery bar" must contain 350 to 430 troy ounces of gold with a minimum fineness of 995, and must bear a stamp of one of the 50 firms worldwide who are approved melters and assayers. The LBMA also states that the bars must be of good appearance. The good delivery bars are the medium for international trading and the gold spot price itself always relates to these bars. Bars, coins and wafers are priced in relation to the LBMA.
- ❖ For definition purposes, within the precious metals industry, a bar or ingot refers to a refined product of an approved melter and assayer (an "ingot" refers to the French language for bar). An unrefined "bar" is termed a dore bar and it is not deliverable on a precious metals exchange or market. The term bar implies a "good delivery bar".
- ❖ Sizes of bars vary from 1 kilo, 100 ounce, 400 ounces and 1,000 ounces. Odd weight bars such as tolas and tael bars are less common but are produced for the middle and Far East markets. Regardless of the size, all bars are stamped with a recognizable hallmark, a weight, a bar number and fineness. If these characteristics are absent from the bar, they are termed a non-good deliverable bar. These bars can not be delivered into a market or exchange and are not negotiable. It is always a precondition of pricing, in the bullion dealer community, to determine which geographic bullion market is being quoted. Again, the fundamental principle is that there is an underlying negotiable, recognized physical product to be delivered against the purchase or sale contract.
- ❖ A coin is produced at a national mint. For the purpose of the definition, a "coin" refers to a bullion investment coin. The coin is minted, or stamped with a specific (to the nation) obverse and reverse. The weight, fineness and date of minting are visible. A bullion coin will have a face value in the local currency. The Canadian Maple Leaf, The American Eagle and The Australia Nugget are some examples of bullion coins.
- ❖ A wafer is produced at an established refiner. They are often cast or stamped in various weights and sizes. Credit Swiss and Johnson Matthey are some examples of refiners that produce wafers. Regardless of size, on each wafer will be outlined the weight, fineness and stamp of the refiner. An unmarked piece of precious metals is not a wafer; it is simply an unmarked piece of an unknown item.
- ❖ Numismatic coins, commonly known as collector coins, are less than 995 pure. Numismatic coins will carry a varying collector's premium over the

precious metals content. Because of the collector's premium and fineness level of less than the required purity levels, they are not considered a precious metal financial instrument used to settle a precious metal contract.

- ❖ Granular gold meets the minimum purity levels for purposes of a precious metals requirement of a financial instrument but it does not meet the physical criteria. It is not in the required form of a bar, ingot, wafer or coin and therefore does not meet the criteria for a financial instrument for precious metals.
- ❖ Gold grain does not have any discernable properties and they are not individually negotiable. Granular gold is packaged, sealed and labeled by recognized smelters and refiners. It is produced for the manufacturing industry and it is not used to settle an exchange contract. Tampering with the packaging will compromise the authenticity of the manufactured contents. A dealer would not purchase or sell a damaged or tampered container of granular gold.
- ❖ Bars, coins and wafers are produced at approved mints, melters and assayers. Each product clearly exhibits established hallmarks, stamps, weights and fineness. These easily recognized and identifiable precious metals products are produced with international standards to promote the ease of commerce and delivery on exchanges. Each approved mint, melter and assayers must adhere to a strict code of standards, prior to acceptance, and to retain membership.
- ❖ A bullion dealer, who buys and sells precious metals, will only do so if customer is known and the product is in its original form from an approved melter or assayer. Tampering, altering, or defacing a bar, wafer or coin will produce a product of unknown origin, composition or fineness. If a bullion dealer received a bar, wafer or coin with the hallmark, weight and fineness evident, but had been cut or altered would render the product as unmarketable and non-negotiable. The dealer would request a replacement that satisfied the criteria of the precious metal instrument.
- ❖ Product in any form deviating from the standard will void the purchase agreement. Without the characteristics of the original bar, coin, or wafer there is no proof of value or evidence that the bar, wafer or coin contains the stated weight or fineness. It cannot be used to fill the exchange contract, or physical contract, or purchase agreement and could not be resold. It is not negotiable. For these reasons, the tampered product would not be acceptable to a financial institution or precious metals market and exchange.

- ❖ In order to determine the value of a tampered or altered precious metals product, it would have to be re-assayed to confirm the precious metal content prior to any financial settlement. A precious metals dealer would not purchase a tampered product for this reason. If it must be assayed to determine its precious metals content it is not an acceptable negotiable instrument.

In summary, coins bars and wafers that have been cut and tampered places doubts on the precious metals content, value and origin of the product. A product, such as a cut coin or bar, may contain precious metals, but, without the security of the hallmark, recognition of an approved melter or assayer, weight and fineness clearly visible on the bar or coin, it can not be determined how much precious metal it contains, if any. This can only be done definitively by an assay. The removal of any one of these physical properties offends the stringent international standards associated with manufacturing of the bars, coins and wafers and the associated pricing mechanics and physical delivery requirements of the exchanges.

Even established metal products such as numismatic coins or grain do not satisfy both the physical property and specific fineness required to constitute financial instruments.

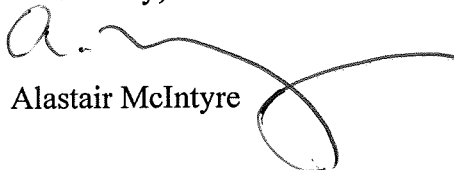
If a bar, coin or wafer, originally meeting both the physical and fineness properties of a precious metal, had its market delivery criteria altered, or the item is no longer in its original form, it would not meet the physical or fineness criteria for a precious metal or a financial or negotiable instrument. The product is no longer a negotiable precious metal capable of satisfying a purchase or sale contract. There is no assurance that the product is a precious metal or contains an alleged amount of a precious metal. Financial instruments are defined by their ability to support the free flow of goods and services. An unrecognized instrument of unknown value or origin clearly hinders this effort.

For the reasons outlined a financial institution or bullion dealer would not accept gold coloured metal prepared in any of the three methods set out in the facts as a precious metal.

### **3. Limitation**

This opinion is provided in my capacity as an independent witness and not in my capacity as Director of Scotia Capital Markets. My opinion does not reflect the opinion of the Bank of Nova Scotia. This opinion is provided solely for the limited purpose of analyzing the facts in this particular matter and may not be provided to or relied upon by any other person or for any other purpose.

Yours truly,



Alastair McIntyre

1504 Oakhill Drive  
Oakville, Ontario  
L6J 1Y5

# Alastair McIntyre

---

**Experience**      Jan 1995-Current    Scotia Capital Markets      Toronto

## **Director, Marketing Precious and Base Metals**

- Design and implement precious and base metals risk management solutions for producers, manufacturers, financial institutions and central banks in North America.
- Through timely contact and with a client focused, team approach, create structured products and recommend strategies to minimize risk exposures and enhance revenues.
- Proactively seek cross selling opportunities through daily contact with the precious and base metals, F/X, swap, bond and money markets.

July 1988-Jan 1995    Royal Canadian Mint      Ottawa

## **Manager**

- Designed and implemented marketing and sales programs for the Royal Canadian Mint Refinery and Bullion Division.
- Negotiated refining contracts for all major gold producers, manufacturers and central and commercial banks in the Western Hemisphere.
- Increased sales by 25% and implemented manufacturing and accounting changes to increase profitability by 50%.
- Advised regarding the treatment of precious metals in the Excise Tax Act.

April 1986-July 1988 Coxheath Gold Holdings      Halifax

**Mine Geologist**

- Responsible for geological planning and ore grade control at the Tangier underground gold mine.
- Coordinated mineral reserves through exploration, development and into commercial production.

Apr 1985-Apr 1986 Seabright Resources Ltd.      Halifax

**Project Geologist**

- Responsible for outlining and developing potential mineral targets

**Education**      Dalhousie University      1979-1985      Halifax

- B.Comm., Business Administration and Economics.
- B.Sc., Geology

**Supplementary Courses**      Canadian Securities Course, McGill: Thinking on Your Feet, Sales and Management; Capital Markets: Derivatives, Options, F/X Interest Rate Products, Strategic Negotiations.

**Interests**      Treasurer St. Cuthbert's Nursery School, personal development, golf, music, cooking, gardening, carpentry, family, leisure and a balanced life.



PS/MS

Cour canadienne de l'impôt



Tax Court of Canada

December 1, 1997

REGISTERED

Werner H.G. Heinrich  
Koffman Birnie & Kalef  
Barristers and Solicitors  
19th Floor  
885 West Georgia Street  
Vancouver, British Columbia  
V6C 3H4

Dear Sir:

RE: BOMBAY JEWELLERS LTD.  
v. Her Majesty the Queen  
96-433 (GST) G

We enclose herewith a certified true copy of the formal  
Order in the above-noted matter.

Yours truly,

ORIGINAL SIGNED BY  
MICHEL SCHRYER  
A SIGNÉ L'ORIGINAL

For R.P. Guenette  
Registrar

Encl.

46E

ADDRESS ALL COMMUNICATIONS  
TO THE REGISTRAR

ADRESSER TOUTE DEMANDE  
AU GREFFIER

PRINCIPAL OFFICE / BUREAU PRINCIPAL  
200 KENT STREET  
200, RUE KENT  
OTTAWA, ONTARIO  
OTTAWA (ONTARIO) K1A 0M1  
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MONTRÉAL (QUÉBEC) H2Y 2W2  
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1-800-927-5499  
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VANCOUVER (C.-B.) V7Y 1A1  
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1-800-927-5499  
FAX / TÉLÉCOPIEUR : (604) 666-7967

Cour canadienne de l'impôt



Tax Court of Canada

December 1, 1997

REGISTERED

Deputy Minister  
Revenue Canada  
Customs, Excise and Taxation  
21st Floor, Albion Tower  
25 Nicholas Street  
Ottawa, Ontario  
K1A 0L8

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Cour canadienne de l'impôt



Tax Court of Canada

December 1, 1997

REGISTERED

Tax Litigation Section  
Department of Justice  
900 - 840 Howe Street  
Vancouver, British Columbia  
V6Z 2S9

Dear Sir:

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Tax Court of Canada



Cour canadienne de l'impôt

96-433(GST)G

BETWEEN:

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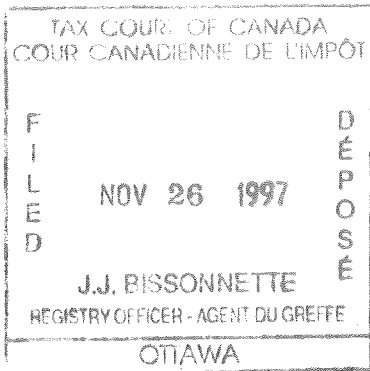
Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

ORDER



Teskey, J.T.C.C.

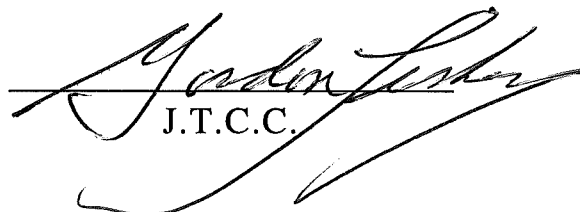
Status hearing held on November 6, 1997  
at Vancouver, British Columbia.

The parties are directed to prepare a list of documents pursuant to section 81 of the *Tax Court of Canada Rules (General Procedure)* and to file and serve the list on each other not later than November 30, 1997.

The examinations for discovery shall be completed not later than February 28, 1998 and any undertakings arising therefrom shall be completed not later than March 30, 1998.

This appeal is set down on a peremptory basis for hearing commencing at 9:30 a.m. on June 8, 1998, for a duration of one day, at the Tax Court of Canada, 17th Floor, Pacific Centre, 700 West Georgia Street, Vancouver, British Columbia.

Signed at Ottawa, Canada, this 25th day of November 1997.

  
J.T.C.C.

Tax Court of Canada



Cour canadienne de l'impôt

96-433(GST)G

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BOMBAY JEWELLERS LTD.,

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"Gordon Teskey"

J.T.C.C.