

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

MOTION RECORD

Radu Hociung
246 Southwood Drive
Kitchener, Ontario
N2E 2B1
Tel: (519) 883-8454
Fax: (226) 336-8327
email: radu.cbsa@ohmi.org

TO:

The Registrar
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO:

Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

AND TO:

Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

INDEX

TAB 1	4
NOTICE OF MOTION.....	5
TAB 2	7
WRITTEN REPRESENTATIONS.....	8
TAB 3	10
Schedule “A”.....	10
STATEMENT OF CLAIM.....	11

TAB 1

**FORM 359 - Rule 359
NOTICE OF MOTION**

T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the plaintiff will make a motion to the Court in writing under Rule 75 of the Federal Courts Rules.

THE MOTION IS FOR:

1. Leave to amend the Statement of Claim to add and substitute a new cause of action arising from substantially the same facts in respect of which the Plaintiff has already claimed relief in the action;

THE GROUNDS FOR THE MOTION ARE:

1. New evidence was discovered by the Plaintiff during Examination of Discovery of the Defendant, in addition to new evidence discovered independently since the filing of the Statement of Claim.
2. The CBSA being a servant of the Crown, the Crown is liable for damages in respect of torts committed by the CBSA, a servant of the Crown, as per *Crown Liability and Proceedings Act* s.3(b)(i)
3. Rules 75(1), 75(2)(a) and 201 of the Federal Court Rules.
4. The defendant has not yet conducted Discovery in accordance to the Federal Court Rules, and the Plaintiff does not require further Discovery of the Defendant with respect to the Amended Statement of Claim, thus no prejudice to the Defendant exists.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Amended Statement of Claim attached as Schedule "A"

DATE: February 20, 2017



Radu Hociung
246 Southwood Drive
Kitchener, Ontario
N2E 2B1
Tel: (519) 883-8454
Fax: (226) 336-8327
email: radu.cbsa@ohmi.org

TO:
Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

AND TO:

Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

TAB 2

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

WRITTEN REPRESENTATIONS

1. The Plaintiff has initiated Written Examination for Discovery of the Defendant on July 19, 2016.
2. The Defendant used multiple tactics of delaying answering the written questions, including a failed motion to strike the statement of claim in its entirety. Presently the examination is on-going.
3. On August 30th, 2016, the Plaintiff requested from the Court that the proceeding be continued as a Specially Managed Proceeding.
4. On September 31st, 2016, the request for case management was granted.

5. A case management judge was appointed and on December 22nd, 2016, a case management conference was held in chambers by teleconference with Prothonotary Kevin Aalto
6. At the case management conference, Prothonotary Aalto ordered that the Defendant serve written answers to the examination questions by January 31st, 2017
7. At 2pm EST on January 31st, 2017, the Defendant served partial answers to the Written Examination Questions. Out of 40 questions asked, 10 were responded with an objection statement, and no preliminary answer; 5 were non-responsive, where the answer did not relate o the question, 5 answers gave rise to further questions, and the rest were answered completely.
8. The Defendant has not made motions of objection seeking to strike out questions he did not answer, and the Plaintiff pointed out that these objections must be made properly, so they can be argued, and requesting answers for the other questions that were non-responsive or incomplete.
9. The answers that were completely answered contained evidence that gave rise to the further claims in the Amended Statement of Claim that makes the object of this motion.
10. Futhermore, independent research by the Plaintiff since the initial filing of Statement of Claim lead to discovery of further evidence, to support the new claims. This evidence is summarized in Claim 12. of the amended Statement of Claim, in order to provide the Defendant with particulars he will need to properly defend his case at trial.
11. Furthermore, as the new cause of action seeks the shutdown of the CBSA, the CBSA was also

named as an added party, pursuant *Crown Liability and Proceedings Act*, s 23(1)

12. As the CBSA is a servant of the Crown, the Crown is liable for the tort of fraud claimed against the CBSA and some of its employees, pursuant the *Crown Liability and Proceedings Act*, s 3(b) (1), and thus was named as an additional defendant.
13. Discovery of the defendant is not yet complete, and given the defendant's track record of delaying as much as possible, this timely motion seeks to avoid delay in presenting to the defendant a full record of claims, so that he may have ample opportunity to defend his case. However, as discovery continues, further amendments may become necessary to reflect additional evidence that the defendant may provide in his answers.
14. The Plaintiff has made every effort as to not cause the Defendant prejudice in amending the Statement of Claim.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Hociung', with a stylized flourish at the end.

Radu Hociung.

TAB 3

Schedule “A”

ACTION

T-1450-15

~~(Court File No.)~~

FEDERAL COURT

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

and

Canada Border Services Agency

and

Her Majesty the Queen in Right of Canada

Defendants

Defendant

AMENDED STATEMENT OF CLAIM

STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

| February 17, 2017

| ~~(Date)~~

|
Issued by: _____

(Registry Officer)

Address of local office: _____

| TO: ~~(Name and address of each defendant)~~

|
Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario

| AND TO:

| Deputy Attorney General of Canada

284 Wellington Street
Ottawa, Ontario K1A 0H8

CLAIM

This is an Action pursuant section 135 of the Customs Act. Re Ministerial Decision CS-74472/4273-14-0724, and/or pursuant Criminal Code s.469, as the case may be.

1. The plaintiff, Radu Hociung, claims against the Defendant, Minister of Public Safety and Emergency

Preparedness:

- a) On October 21, 2014, the Plaintiff entered Canada at the Queenston Bridge point of entry, in Niagara Falls, Ontario. Upon entry, he declared all goods brought into Canada, namely a pair of auto tires, several tablets of Advil medication and a bottle of water. These goods were declared pursuant section 12 of the Customs Act, and are not in dispute in this Action.
- b) The Plaintiff also had United States Currency, in form of four \$50 Gold Buffalo coins, and twenty \$1 Silver Eagles coins, issued by the United States Mint pursuant United States Code Title 31, sections 5112(a)(11) and 5112(e) respectively ("the coins"). USC Title 31 also declares these coins Legal Tender in sections 5103 and 5112(h).
- c) Being under the prescribed amount of C\$10,000, the plaintiff did not declare the currency pursuant to Section 12 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).
- d) Upon a random secondary inspection, the CBSA officer Christopher DEBSKI (CBSA badge #11276) discovered the currency, and claimed it was unreported goods and thus would be seized and destroyed. This is unlawful, as currency cannot be used as anything other than currency, pursuant USC Title 31 Section 5111(d), as well as the Currency Act section 11. Both laws provide severe fine and imprisonment for any person melting or using otherwise than as currency any coin that is current and legal tender in Canada and the United States respectively. He then seized the coins. ("the seizure")
- e) The Plaintiff informed officer Debski that the coins are United States legal tender currency issued by the United States government, and thus cannot be considered goods, but are financial instruments as defined by the Excise Tax Act. As such, they are not subject to

declaration under the Customs Act, but under the PCMLTFA, subject to the prescribed amount requirement.

- f) Officer Debski's narrative report filed October 21, 2014 contains several material errors:
 - i. The officer requested the Plaintiff's WALLET, keys and passport, and coins not the "keys, passport, license, ownership and gold coins".
 - ii. As the Plaintiff turned the gold and silver currency to officer Debski, the officer asked "Where do you have so much money from?", to which the Plaintiff responded "It is my family's savings". This question and answer are not mentioned in the officer's narrative report.
 - iii. The officer threatened the Plaintiff with violence, raising his voice and saying three distinct times that "this is an arrestable offence", while assuming an aggressive posture with his gun prominently displayed. These threats were not mentioned in the narrative report.
 - iv. One of the questions the Plaintiff asked the officer was "How many such \$50 coins can I enter the country without declaring them under the PCMLTFA". The officer's answer was that there is no limit, and they need not be declared in accordance with PCMLTFA as long as they are declared under the Customs Act and the tax is paid. The officer omitted this question and his answer from his narrative report. His answer is incorrect, as bringing more than \$10,000 of currency into Canada would be required to be reported pursuant section 12 of the PCMLTFA.
- g) The GST/HST Memorandum 17.1 explicitly defines "financial instruments" to include precious metal coins that have been issued by a government authority, and clarifies that they are thus exempt from tax.
- h) Officer Debski was informed by the CBSA superintendent of the contents of GST/HST Memorandum 17.1 (document # ME-17-01-9901-E) and the officer even quoted the Memorandum verbatim in his narrative report, while claiming the opposite of the Memorandum's intent, that currency is "goods".
- i) The CBSA superintendent informed officer Debski of the contents of an operational bulletin titled "Information Bulletin – Precious Metals – Bullion and Coin" ("the bulletin"), which quotes the

Excise Tax Act ss 123(1) definition of "Financial Instruments (precious metals)" as well as PP192, a policy statement by Canada Revenue Agency that clarifies that precious metals in bar, ingot, coin or wafer form are financial instruments, and that gold or silver coins issued by a government authority qualify for exemption from consumption or importation taxes. However, the bulletin instructs officers to treat these forms of gold as "goods", and not as "financial instruments". This bulletin is part of a money-laundering scheme ("the scheme") by CBSA, officer Debski relied on it exclusively in his decision to seize the coins and demand a terms of release payment.

- j) Had the plaintiff agreed with officer Debski, and either reported the coins as goods, or paid the terms of release, he would have participated in the money-laundering scheme.
- k) Officer Debski furnished an "Online rating Report" showing that coins that are not legal tender are subject to 13% GST/HST. This report is unlawful, as it misrepresents legal tender currency as "not legal tender coins" in order to justify a tax claim. The report was generated by CBSA officer #17097.
- l) Officer Debski decided that the sum of \$1606.97 must be paid as terms of release of the Plaintiff's currency.
- m) While he was aware of the GST/HST memorandum 17.1, which clearly states foreign precious metal currency is not subject to tax, officer Debski conspired with officer #17097 to commit fraud over \$5000 as defined by section 380(a)~~agent #17097 to commit fraud as defined by section 380~~ of the Criminal Code, R.S. C. 1985, c. C-46.
- n) Based on the interaction by officer Debski with the Plaintiff, it is clear that the officer:
 - i. Knew the coins are currency as he was requesting them to be turned over (question about the provenance of the money)
 - ii. Intended to confiscate the money for non-declaration pursuant to section 12 of the PCMLTFA~~under non-declaration~~. For this he needed to establish either a reasonable suspicion of criminal provenance, as well as a sum exceeding \$10,000 (which is why he requested the wallet, in order to search for additional currency), without which arrest and confiscation could not be reasonably justified.

iii. Knew that the PCMLTFA applies to the coins, and not the Customs Act, when he threatened arrest. Arrest is not a possible outcome of violations of the Customs Act, but it is an automatic outcome of violations of the PCMLTFA.

iv. Willfully committed fraud as defined by CC 380(a)~~ed fraud~~ by seizing and demanding payment for the return of currency, when he clearly understood that no violation of the Customs Act or the PCMLTFA had occurred.

v. Knew and admitted in his narrative report that the coins were currency.

vi. Acted maliciously by seizing, and thus depriving the plaintiff of property valued at \$6427.89.

vii. By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

o) On October 23, the Plaintiff started the process of a request for Minister's decision pursuant Customs Act section 129, seeking to overturn officer Debski's seizure on the grounds that currency is not subject to declaration under section 12 of the Customs Act, and thus the Plaintiff had not contravened the Act.

p) During the ensuing requests for additional documentation, the CBSA has made several false claims, misrepresenting the PCMLTFA

2. The enforcement and the Minister's decision to uphold it are incorrect, as the coins in question are currency, and not subject to any provisions of the Customs Act, including section 12. It is not the object of the Customs Act to control the flow of currency across Canada's borders~~On November 3, 2014, A Kendall, the Adjudicator assigned to the request, attempted the explanation that the seized coins are "collectable" [sic], and thus goods. She also misrepresented the PCMLTFA by stating it defines currency to exclude un-circulated coins. In fact, the PCMLTFA does not define currency. However, the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation (PCMLTFR) defines "cash" to include "coins or bank notes of countries other than Canada", though it states no circulation qualifiers. As this misrepresentation was committed in support of the demand for payment of \$1606.97. Adjudicator Kendall's misrepresentation constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.~~

3. With respect to Ann Kendall, the plaintiff claims:

- a) On November 3, 2014, A Kendall, the Adjudicator assigned to the appeal, working at the Recourse Directorate of the CBSA in Ottawa, Ontario, in a letter to the plaintiff, attempted the explanation that the seized coins are “collectable” [sic], and thus goods. She also misrepresented the PCMLTFA by stating it defines currency to exclude un-circulated coins. In fact, the PCMLTFA does not define currency. However, the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation (PCMLTFR) defines “cash” to include “coins or bank notes of countries other than Canada”, though it states no circulation qualifiers. As this misrepresentation was committed in support of the demand for payment of \$1606.97 and the seizure of \$6427.89, Adjudicator Kendall's misrepresentation constitutes fraud as defined by section 380(a) of the Criminal Code, R.S. C. 1985, c. C-46.

1. The full definition of “cash” given by the PCMLTFR is:

““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*)”

2. To be clear, the PCMLTFR definition of “cash” does include the word “circulation”, used to qualify only “notes issued by the Bank of Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada”. The “circulation” qualifier originates from the Bank of Canada Act section 25(5), and it is used to make the distinction between bank notes used as currency and bank notes not used as currency, ie, promissory notes and bills of exchange, neither of which are currency, though they are bank notes issued by the Bank of Canada.
3. It is clear from the PCMLTFR's definition's wording that “cash” includes foreign legal tender coins and bank notes, without limitation to their circulation status, as well as Canadian coin currency without limitation to its circulation status.
4. The version of the “cash” definition that Ann Kendall used is: “Currency includes all foreign and domestic bank notes and circulation coins”. This alternate definition of cash, used to substitute the definition given by the PCMLTFR, constitutes “making of regulations” by the CBSA. Its purpose is to except coins that the CBSA believes not to circulate from cross-border monetary reporting requirements, and is a further part of the CBSA money-laundering scheme.

~~November 6, 2014 the Plaintiff responded and further clarified that neither is the circulation requirement stated in the PCMLTFA, nor does the PCMLTFA, include a definition of "currency". Further, the US Code Title 31 explicitly states that uncirculated coins issued under its authority are current, legal tender, and thus the adjudicator's view is an untruthful fabrication.~~

- b) On November 6, 2014 the Plaintiff responded in a letter and further clarified that neither is the circulation requirement stated in the PCMLTFA, nor does the PCMLTFA, include a definition of "currency". Further, the US Code Title 31 explicitly states that uncirculated coins issued under its authority are current, legal-tender, and thus the adjudicator's view is an untruthful fabrication~~December 11, A-~~
Kendall responded, this time attempting a new explanation. She claimed that the coins are "commodities" and thus "goods" ~~She also admitted that the PCMLTFA does not contain a definition for currency. The misrepresentation that currency is "commodities" once again is made in support of the demand for payment of \$1606.97, and thus constitutes fraud.~~
- c) On December 11, A Kendall responded with a letter from Ottawa, Ontario, this time attempting a new explanation. She claimed that the coins are "commodities" and thus "goods" She also admitted that the PCMLTFA does not contain a definition for currency. The misrepresentation that currency is "commodities" once again is made in support of the seizure of \$6427.89 and demand for payment of \$1606.97, and thus constitutes fraud over \$5000 according to CC s380(a).
- d) On January 20, 2015, the Plaintiff wrote to the President of the CBSA, Mr. Luc Portelance, informing him of the fraud perpetrated by CBSA employee A Kendall, and requesting reassignment of the case to a law-abiding officer instead.
- e) On or about February 9, 2015, the President's secretary phoned the Plaintiff to acknowledge receipt of the request to reassign, that there appears something improper had taken place, and that the legal team had been informed and was investigating. She promised that an outcome of the lawyers investigation will be communicated to the Plaintiff in writing.
- f) Following two more phone calls from the Plaintiff to the President's office, requesting the written response or acknowledgment of the January 20th letter, the secretary promised a response will be given. However, as of August 27, no such letter was received by the plaintiff. It appears that the president of the CBSA is refusing to investigate the charge of fraud against A Kendall.

- g) On January 29, 2015, John Dancause, a Program Manager with the Recourse Directorate of the CBSA advised the adjudicator, Ann Kendall, that the correct classification of the coins is as currency, and that there is no support to the classification of goods, further recommending the enforcement action be reversed. ("the Dancause letter")~~March 9, 2015, a new CBSA employee, M Gagnon wrote to the plaintiff and attempted the explanation that foreign coins are not "cash" as they are not "intended for circulation". This is a misrepresentation of the PCMLTFA in support of the demand for payment of \$1606.97 and thus also constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.~~
- h) Ann Kendall, an adjudicator with the CBSA Recourse Directorate, knew, or should have known based on all evidence available to her, that the PCMLTFR does not exclude the coins from the reporting requirements, and that they are not "goods", subject to any provision of the Customs Acts it follows the request of reassignment to the president of the CBSA, it is clear that this instance of fraud comes as a result of instructions given by the president to M Gagnon.
- i) Ann Kendall acted maliciously in sustaining, and supporting the seizure, depriving the plaintiff of \$6427.89 worth of property~~On March 13, the Plaintiff responded to M Gagnon, clarifying that the wording of the "cash" definition applies the "intended for circulation in Canada" qualifier only to Canadian bank notes, and not to foreign currency, notes nor coins, nor Canadian coins.~~
- j) Ann Kendall in her duties as adjudicator ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are "goods", thus failing to impartially adjudicate~~On May 26, M Gagnon responded with an attempt to once more change the explanation why the coins are "goods". She claimed that they are collector coins as their true value is not the same as their face value.~~
- k) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

4. With regards to Martine Gagnon, the plaintiff claims:

- a) On March 9, 2015, a new CBSA adjudicator within the Recourse Directorate of the CBSA in Ottawa, Ontario, Martine Gagnon wrote to the plaintiff and attempted the explanation that foreign coins are not "cash" as they are not "intended for circulation". This is a misrepresentation of the PCMLTFA in

support of the seizure of \$6427.89 worth of property and demand for payment of \$1606.97 and thus also constitutes fraud over \$5000 as defined by section 380(a) of the Criminal Code, R.S. C. 1985, c. C-46.

- b) As it follows the request of reassignment to the president of the CBSA, it is clear that this instance of fraud comes as a result of instructions given by the president to Martine Gagnon.
- c) On March 13, the Plaintiff responded to Martine Gagnon, clarifying that the wording of the "cash" definition applies the "intended for circulation in Canada" qualifier only to Canadian bank notes, and not to foreign currency, notes nor coins, nor Canadian coins.
- d) On May 26, Martine Gagnon responded with an attempt to once more change the explanation why the coins are "goods". She claimed that they are collector coins as their true value is not the same as their face value.
- e) Martine Gagnon knew, or should have know based on information available to her that the coins were currency, and therefore the enforcement action was unwarranted.
- f) Martine Gagnon acted maliciously in supporting the enforcement, and recommending that plaintiff be deprived of \$6427.89 worth of property, absent his payment of "terms of release".
- g) Martine Gagnon in her duties as adjudicator ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are "goods", thus failing to impartially adjudicate.
- h) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

5. With regard to Joanne Lepage

- a) Working as a Senior Program Advisor for the CBSA in Ottawa, Ontario, Joanne Lepage facilitated money laundering per CC s462.31 on August 31, 2010 by providing assurances in writing to an anonymous importer seeking a ruling that the financial instruments (precious metals) and currency he/she was wanting to import into Canada would not be subject to reporting under PCMLFA rules.
- b) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.

6. With regard to Jeffrey Strickland, the Minister's delegate, the plaintiff claims:

- a) On June 1, 2015, the Minister rendered his decision to the Plaintiff signed by Jeffrey Strickland for the Minister of Public Safety. In his decision, the Minister also claims that there is a requirement for foreign currency to be intended for circulation in order to be considered “cash”, as provided by the PCMLTFA. In fact, as explained above, there is no circulation requirement for foreign coins, and the “intended for circulation in Canada” from the definition of “cash” applies exclusively to “bank notes issued by the Bank of Canada”, and not to Canadian coins, nor any coins or bank notes of countries other than Canada.
- b) Further, in his decision, the Minister lowered the demand for payment from \$1606.97 to \$321.39 as terms for release, without reference to any legal basis to support such a change. As such, the \$321.39 sum represents nothing but ransom.
- c) Jeffrey Strickland, the Minister's delegate, knew or should have known that the Customs Act does not apply to currency, that the coins were currency, and that the PCMLTFR does include the coins in the definition of “cash”, while claiming the opposite.
- d) Jeffrey Strickland maliciously deprived the plaintiff of \$6427.89 worth of property by sustaining the seizure.
- e) Jeffrey Strickland has committed fraud over \$5000 as defined by the CC s.380(a)
- f) Jeffrey Strickland in his duties as adjudicator and Minister's Delegate ignored evidence presented to her as to the nature of the coins, and formed recommendations based solely on the CBSA's pre-existing position that the coins are “goods”, thus failing to impartially adjudicate.
- g) By facilitating money laundering, an indictable offense, and participating and contributing to the activities of a criminal organization, is guilty of an indictable offense as per CC 467.11.
- 7. The CBSA has made regulation replacing the PCMLTFR. The scope of the regulation made by the CBSA is to replace the definition of “cash” with an alternate that arbitrarily excludes some forms of currency from the definition.
- 8. The CBSA making of regulation contravenes the *Canada Border Services Agency Act* s6(4) and s12(3)(b), which states that neither the CBSA, nor any of its employees, officers, president are permitted to make regulations, nor is the Minister permitted to delegate powers to make regulations.

9. The seizure is part of a money laundering scheme ("the scheme") run by the CBSA.
10. The CBSA facilitates money laundering, and has done so deliberately and consistently since its creation in 2003. The money laundering scheme works as follows:
 - a) The CBSA has created regulation to replace the PCMLTFR, and to install an alternate version of the definition of "cash", in order to exclude some forms of currency from PCMLTFA reporting requirements.
 - b) The CBSA has instructed its border security officers to not report, nor to allow reporting by travelers of precious metal financial instruments or precious metals currency pursuant the PCMLTFA, in an operational bulletin titled "Informational Bulletin – Precious Metals – Bullion and Coin" ("the bulletin")
 - c) The bulletin also recommends that financial instruments (precious metals) and precious metals currency be accounted for under several Customs Tariff headings. ("the tariff headings")
 - d) The bulletin also instructs the officers to seize and assess "terms of release" of travelers who have financial instruments (precious metals) and precious metals currency, and would otherwise properly report them pursuant the PCMLTFA, and thus refuse to participate in the scheme.
 - e) The CBSA has adopted a position that all gold and silver, in all its forms, is "goods", is subject to provisions of the Customs Act, and not subject to any provisions of the PCMLTFA.
 - f) The Legal Services Unit department of the CBSA ("the CBSA lawyers") provides advice with the effect of reinforcing the bulletin, and any seizures.
 - g) As a result of classifying all gold and silver importations under the same tariff headings, the accounting record contains a mix of legitimate and money-laundering importations, which makes it nearly impossible to investigate money laundering.
 - h) Without the scheme, the tariff headings would contain only importations and exportations that could be considered suspect for the purposes of money laundering investigations.
11. In connection with the scheme, the CBSA also provides a direct money laundering service ("the service"), which works as follows:
 - a) The TEPS software that the CBSA uses and controls for the calculation of duty calculates a tax rate of 13% on gold and silver coins.
 - b) The bulletin, dated October 2010 makes reference to this tax rate, and claims it is an error due to be

fixed in the next release; however, as of 21st October 2014, the “error” still exists.

- c) The bulletin further states that the correct tax rate for gold and silver coins is “Unconditionally Duty Free & Tax Exempt Goods”, and that officers are able to override the default 13% figure.
- d) Using the TEPS software, the CBSA charges travelers 13% of the melt value of any gold or silver coins being imported, and accepts payments in various forms, including cash, representing “GST/HST”. Tax payments to the CBSA are not subject to reporting under the PCMLTFA, regardless of the amount.
- e) Thus, the CBSA can accept proceeds of crime as GST/HST payments, in any amount.
- f) Following this tax payment transaction, the importers typically submit to the CBSA a B2G form (“CBSA Informal Adjustment Request”), requesting a refund of the GST/HST paid due to “misclassification”.
- g) In response to the B2G request, the CBSA issues a refund, in form of a Government of Canada cheque, payable to the importer, for the full amount of GST/HST paid at importation time.
- h) The Government of Canada cheque, is once again not subject to reporting requirements under the PCMLTFA, even in large amounts, and it is a payment that is unlikely to raise any suspicions from the banks; government cheques are “as good as gold”, in the eyes of the banks, ironically.
- i) By demanding and accepting payments for tax that is not owed, and later refunding it in the form of a government cheque, dirty money (proceeds of crime) can be inserted into the banking system (ie. laundered), completely bypassing all PCMLTFA provisions.

12. Since it was created, the CBSA has used the scheme multiple times, including:

- a) On or about November 10th, 2003, at the Lester Pearson airport in or near the City of Toronto, Ontario, allowed a Gowrkumaran Sellathurai to export two gold bars valued at \$20,000, by using the false dichotomy that the gold bars “were not currency”, in spite of believing Mr. Sellathurai was exporting proceeds of crime, and seizing \$123,000 CAD and \$400 USD from him for non-report pursuant PCMLTFA s12.
- b) On or about October 6th, 2009, at the Douglas Border Crossing at or near the City of Surrey, British Columbia, allowed a Khaled Mohammed Nawaya to import 812 Canadian \$50 gold coins, while treating them as goods valued at approximately \$800,000 CAD and being paid terms of release by Mr. Nawaya, despite seizing \$40,000 CAD and \$30,110 USD from him for non-report pursuant

PCMLTFA s12. Even though the CBSA believed Mr. Nawaya to possess proceeds of crime, they deemed the 812 coins to be not currency, and allowed him to keep them.

c) On or about August 31st, 2010, sending an email from Ottawa, Ontario, a Lepage Joanne, acting as Senior Program Advisor for the CBSA, provided written assurances to an anonymous person that he could import financial instruments (precious metals) in the form of gold bars and gold currency coins into Canada, without submitting any written reports pursuant the PCMLTFA, reasoning that the CBSA does not consider these forms of gold to be currency or monetary instruments, in spite of the the importer's statement that he intended to import them as "capital", and in spite of the importer's hiding his identity. The importer used the services of a US based gold dealer and a Canadian based customs brokerage to represent him in requesting this ruling.

d) On or about November 7, 2011, at the Lester Pearson airport at or near the city of Toronto, Ontario, allowed a Joseph Adam (based on his Canadian passport), a.k.a. Gamal Hegazy (based on his Egyptian passport) to export thirty two kilograms in gold bars, valued at \$1.867 million, which were proceeds of crime, representing fraud by a Omar Kalair and Yusuf Panchbhaya of UM Financial, which at the time was in receivership. While the gold bars were financial instruments, the CBSA treated them as "goods", and enforced no PCMLTFA reporting requirements.

13. The adjudicators working within the CBSA's Recourse directorate do not in fact adjudicate, but instead advocate the CBSA's position and policies.

14. The Recourse Directorate department of the CBSA is a self-policing organization that does not police, but only serves reinforce pre-set CBSA policies.

15. For the CBSA as a whole, the plaintiff claims:

a) Being composed of approximately 12000 employees and officers in Canada, and having as one of its main purposes the facilitation of money laundering, which results in direct and indirect benefits to the organization, is a criminal organization as defined by CC s467.1

b) It is not able or willing to self-police

c) Instead of enforcing the PCMLTFA as required by the program legislation specified in the *Canada Border Services Agency Act*, dedicates itself to undermining the PCMLTFA.

d) Instead of correctly implementing the Customs Act, it implements it to fraudulently derive terms of

release income.

- e) It has interests opposite to the spirit and intent of the *Canada Border Services Agency Act*.
- f) Is composed of persons that regardless of the position (from junior border officers like officer Debski to Minister Delegate Jeffrey Strickland, and including program managers, senior program advisers, and adjudicators), are willing to participate in criminal activity without second thoughts, without complain or resistance.
- g) Is a deeply flawed organization that cannot be expected to be willing or capable of being turned into a lawful organization respecting the *Canada Border Services Agency Act*.
- h) Does not act in the public interest, not having public safety as a priority of its policies and activities.

16. The Plaintiff also claims:

- a) Since the PCMLTFA came into effect in 2000, the CBSA has routinely classified gold and silver legal-tender currency, both Canadian and foreign as “goods” in order to collect tax, duty and/or non-declaration fines.
- b) This policy of the CBSA subverts the intent of the PCMLTFA, which is to report large currency amounts transiting Canada's borders to the FINTRAC for analysis. The CBSA's actions thus impairs the ability of FINTRAC to detect criminal and terrorist activity, and therefore puts the safety of Canada.
- c) The CBSA circulates an internal operational bulletin, titled “Information Bulletin – Precious Metals – Coins and Bullion” (“the bulletin”), in which it instructs its Border Security officers to treat importations and exportations of financial instruments (precious metals) and precious metal currency as importations and exportations of “goods” and specifically to not report such financial instruments and currency to FINTRAC, pursuant the PCMLTFA~~It is a well-publicized fact that gold currency is treated as goods at Canada's borders, and it is reasonable to conclude that criminals and terrorists use this method of money transfer in order to make payments across Canada's border without scrutiny by authorities. While not all transfers of gold across the border are connected to criminal activities, it would be unreasonable to assume that all such transfer are innocent. Currently about \$133,000,000 in gold and silver currency are imported into Canada annually, and about \$1,800,000,000 are exported annually (2013 statistics from Industry Canada).~~

- d) It is a well publicized fact that gold currency is treated as goods at Canada's borders, and it is reasonable to conclude that criminals and terrorists use this method of money transfer in order to make payments across Canada's border without scrutiny by authorities. While not all transfers of gold across the border are connected to criminal activities, it would be unreasonable to assume that all such transfer are innocent. Currently about \$133,000,000 in gold and silver currency are imported into Canada annually, and about \$1,800,000,000 are exported annually under the tariff headings 7118.90.00.10, 7118.90.00.91 and 7118.90.00.99 as recommended by the bulletin; gold bars are imported in an amount of about \$9B annually, while \$16B are exported annually under the tariff heading 7108.00.12 as recommended by the bulletin.(2013 statistics from Industry Canada)Therefore the Minister of Public Safety, and the CBSA are, as a matter of policy, supporting and facilitating crime and terrorism.
- e) In the bulletin, the CBSA also instructs officers to not allow travelers to make reports of financial instruments (precious metals) and precious metal currency pursuant the PCMLTFA.
- f) In order to enforce the non-reporting policy, the bulletin instructs the officers to penalize law-abiding travelers by seizing their financial instruments and currency, and to offer them "terms of release" in exchange for their return.
- g) By preventing the monetary reports CBSA facilitates money laundering and terrorist financing.

17. The plaintiff requests the following from the Honourable Court:

- a) Punitive damages of \$15000 from the CBSA for the threats of violence by officer Debski and the fraud committed by the same. His behaviour is malicious, oppressive and high-handed, departing enormously from the ordinary standards of decent behaviour~~Damages of \$15000 from the CBSA for the threats of violence by officer Debski and the fraud attempted by the same, as well as CBSA employee 17097, A Kendall, M Gagnon, and for the instructions leading to fraud given by the president of the CBSA, Luc Portelance.~~
- b) Punitive damages of \$15000 from the CBSA for the fraud committed by CBSA employee 17097, A Kendall, M , M Gagnon, and for the instructions leading to fraud given by the president of the CBSA, Luc Portelance. Their behaviour is malicious, oppressive and high-handed, departing enormously from the ordinary standards of decent behaviour.

- c) Punitive damages of \$2000 for accusing the Plaintiff of smuggling and violating the Customs Act, which resulted in non-eligibility to US Nexus Trusted Traveler program. The CBSA's behaviour is malicious, oppressive and high-handed such it departs significantly from the ordinary standards of decent behaviour~~Damages of \$2000 for accusing the Plaintiff of smuggling and violating the Customs Act, which resulted in non-eligibility to US Nexus Trusted Traveller program.~~
- d) Costs incurred by the Plaintiff in relation to this incident, including travel to court and travel to the Queenston Bridge CBSA location to recover the currency.
- e) Punitive and exemplary damages of \$5,000,000 from the Ministry of Public Safety for CBSA's sustained policy and practice of aiding crime, and facilitating money laundering and terrorism in Canada, while deriving profits from it since the CBSA was created. The Minister's and CBSA's behaviour is malicious, oppressive and high-handed such it departs significantly from the ordinary standards of decent behaviour, and impact the safety and well-being of all people living in Canada~~the sustained policy of aiding crime and terrorism in Canada, while deriving profits from it since 2000.~~
- f) Clearing the Plaintiff's legal record that would result in heightened scrutiny and baggage searches, at border crossing beyond normal border procedures that would apply to a citizen in good standing.
- g) The maximum penalty available under the Criminal Code for officer Debski's fraud and facilitating money laundering.
- h) The maximum penalty available under the Criminal Code for each of Ann Kendall, Martine Gagnon and Jeffrey Strickland for fraud and facilitating money laundering.

18. The plaintiff further requests from the Honourable Court:

- a) A declaration that all US coinage listed within 31 USC as currency of the United States is considered as foreign currency and financial instruments in Canada, as provided by the Excise Tax Act, and not “goods”, and thus not subject to any provision of the Customs Act, which deals exclusively with “goods”, explicitly naming currencies such as commemorative issues and precious metal issues that

the CBSA may be unfamiliar with and thus declare to be “goods”.

- b) A declaration that all Canadian Coins issued by the Royal Canadian Mint pursuant to section 7 of the *Currency Act*, specifically including all the commemorative issues, gold, silver and platinum denominations specified in the *Royal Canadian Mint Act* are currency of Canada for the purposes of the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act [PCMLTFA], to reinforce the Minister's of Finance sworn and signed affidavit to the same effect.
- c) A declaration that all currency is not subject to declaration under the Customs Act, regardless of its circulation, commemorative, base metal, age, or collectible factor.
- d) A declaration that although all currency domestic and foreign may collectible, this does not mean it is “goods”. I.e, currency cannot arbitrarily be declared “goods”. This is also provided in the Currency Act and USC Title 31, which states currency may not be used for any other purpose than as currency.
- e) A declaration that even though some currency, including older notes and coins, and gold, silver and platinum coins, is worth more than its face value as collectible items, it does not mean it is “goods”, and remains “currency” as provided by the Currency Act sec. 11, and also 31 USC Sec. 5111. Even the Royal Canadian Mint directly sells many such coins for more than their face value, without charging GST/PST, implying they are exempt from tax under ETA. Even these collector coins are currency and may be used for circulation and thus are not “goods”. Other examples of contemporary, current Canadian coins worth more than their face value:
 - 1. 2012 25-cent coin uncirculated “war of 1812” Brock Colour, with a collector fair market value [FMV] of \$17,
 - 2. 2012 circulated version of the 25-cent colour Brock quarter FMV \$1.24,
 - 3. 1957 circulated 25-cent quarters FMV \$4.38,
 - 4. -1957 \$20 circulated note FMV \$60,
 - 5. 2006 \$5 uncirculated note, FMV \$72

- f) A declaration of the value of collectable currency (which really is any currency someone might want to keep rather than spend) for the purposes of the PCMLTFA even if this value is different than face value. The Currency Act provides that the gold \$50 coins are worth their face value as legal tender. The Bank of Canada redeems them for face value. The Currency Act prohibits melting all coins, including precious metal coins, and using them for purposes other than currency. Thus a \$50 coin cannot be legally melted and manufactured into jewelry or for industrial use. Thus whatever value the underlying metal may be, that value is unavailable for use.
- g) A declaration of the value of gold, silver and platinum currency domestic and foreign for the purposes of PCMLTFA, whether this value is the face value or another value. Due to melt restrictions on US currency, it appears the only possible value a US\$50 coin is US\$50.
- h) An order to the Minister's Public to immediately release the Plaintiff's currency without encumbrance.
- i) An order to the Minister of Public Safety to implement a phased plan of changing the CBSA policy to follow the intent of the PCMLTFA by considering all currencies domestic and foreign as "cash". As it is current practice to ship gold and silver currency across the border without PCMLTFA declaration, this needs to be a phased plan in which the traveling public as well as precious metals dealers be informed of the change, and a transition~~ing public as well as precious metals dealers be informed of the change, and a transitionary~~ period be allowed for.
- j) An order to the Prime Minister to create an oversight body to ensure lawful implementation of the PCMLTFA by the Minister of Public Safety.
- k) An order to the Minister of Public Safety to refund all taxes, duties, and any fines obtained by the CBSA in relation to shipments of gold and silver coins, and gold bullion in any form deemed a financial instrument by the Court, foreign and domestic, since the PCMLTFA was enacted.
- l) An order to the Minister of Public Safety to dismantle the present CBSA and to implement a new Agency that conforms to the requirements of the *Canada Border Services Agency Act*.
- m) Any other such remedies as the Court deems just.

The plaintiff proposes that this action be tried at Kitchener, or if not possible, Toronto.

|
| August 27, 2015
|

| February 17, 2017

| Sincerely,



| (~~Signature of solicitor or plaintiff~~)
|
|

| Radu Hociung

| ~~226 Willowdale Ave~~

| 246 Southwood Drive

| Kitchener, Ontario

| N2E 2B1

| ~~Waterloo, ON N2J 3M1~~

| Tel: (519) 883-8454

| Fax: (226) 336-8327 ~~(519) 574-4009~~