

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-102-18

Citation: 2019 FCA 214

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Toronto, Ontario, on May 23, 2019.

Judgment delivered at Ottawa, Ontario, on August 7, 2019.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**WEBB J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Hociung appeals from the judgment of the Federal Court (per Gleeson J.) granting the respondent's motion for summary judgment and dismissing his action (2018 FC 298).

[2] In a companion appeal in file A-101-18, Mr. Hociung appeals the order of the Federal Court (per Gleeson J.) dismissing his motion for leave to amend the statement of claim.

Although two notices of appeal were filed, these two decisions are linked and the findings in respect of the motion for summary judgment may have an impact on the merits of the proposed amendments.

I. Background

[3] The Canada Border Services Agency (the CBSA) seized four \$50 USD Buffalo Bullion coins and twenty \$1 USD Silver Eagle coins when Mr. Hociung failed to declare these precious metal coins as “goods” upon his entry into Canada from the United States allegedly in contravention of section 12 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) (the *Customs Act*).

[4] Mr. Hociung purchased the coins in the United States at a cost of \$5,700 USD, although their denomination or face value is \$220 USD. Mr. Hociung had been traveling to the United States for the day only (same day traveler); he was not questioned about the amount of “cash” or “currency” in his possession by the CBSA officer and the seizure did not relate to a failure to declare the coins under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2000, S.C. c. 17 (the Proceeds of Crime Act)* or the *Cross-border Currency and Monetary Instruments Reporting Regulations, S.O.R./2002-412 (the Reporting Regulations)*. The coins were discovered after Mr. Hociung was asked to present himself to the CBSA’s office for inspection after he declared having bought two new tires for his car in the United States (declared value \$500). There is no indication in the record that he was asked to pay any duties or taxes on the tires.

[5] Mr. Hociung contested the seizure and requested a decision from the Minister of Public Safety and Emergency Preparedness (the Minister) on the issue of whether the *Customs Act* had been contravened. Pursuant to section 131 of the *Customs Act*, the Minister's delegate found that there had indeed been a contravention of section 12 of the *Customs Act*, but as he was entitled to do pursuant to section 133 of the *Customs Act*, he reduced the penalty for the release of the seized coins from \$1,606.97 to \$321.39 (section 133 of the *Customs Act*). He dismissed Mr. Hociung's argument that the coins were "currency" as opposed to "goods" and therefore he did not need to declare them under the *Customs Act*. It is in this context that Mr. Hociung contested the CBSA's interpretation of the word "currency" in the *Proceeds of Crime Act* that contributed in his view to a misapplication of the *Customs Act* and the *Proceeds of Crime Act*, as well as the relevant regulations adopted under the latter statute.

[6] The denomination value of the coins (\$220 USD) if used as legal tender in the United States was less than \$10,000 CAD. Even if held to be currency within the meaning of the *Proceeds of Crime Act*, Mr. Hociung was not required to declare the coins under that statute as their value was below the limit set out in the *Reporting Regulations*. There is no dispute about this.

[7] The Minister's delegate issued his decision on May 28, 2015. On August 28, 2015, Mr. Hociung filed his action before the Federal Court. Although his action includes an appeal pursuant to section 135 of the *Customs Act*, it does include other claims and seeks additional relief, including damages based on alleged torts committed during the interaction between CBSA employees and Mr. Hociung, such as threats of violence and fraudulent misrepresentations.

[8] In his statement of claim, Mr. Hociung, a self-represented litigant, describes the seizure and the alleged misinterpretation of the *Customs Act*, the *Proceeds of Crime Act* and the *Currency Act*, R.S.C., 1985, c. C-52 (the *Currency Act*) by the CBSA as fraudulent and designed to (i) aid crime and terrorism in Canada, and (ii) make illegal profits from the taxation of “currency” as “goods”. He alleges that various employees involved in the seizure and his contestation of it are guilty of criminal conduct. Among the other relief sought are damages and various declarations, such as a declaration that Canadian and foreign precious metal coins fall within certain provisions of the *Proceeds of Crime Act* as opposed to the *Customs Act*. Mr. Hociung also seeks an order directing the Prime Minister to create an oversight body to ensure the lawful implementation of the *Proceeds of Crime Act*, as well as an order directing the refund of all taxes, duties, and any fines obtained by the CBSA in relation to shipments of gold and silver coins, foreign and domestic, since the *Proceeds of Crime Act* was enacted.

[9] In his motion to amend his statement of claim (the subject of the appeal in file A-101-18), Mr. Hociung seeks to add two defendants, including Her Majesty the Queen (vicarious liability), as well as claims against other employees of the CBSA involved in the process leading to the Minister’s final decision (see e.g., paragraphs 3(a)(4), 3(a)(4)(g), 5 and 6 of the proposed amended statement of claim). He also wishes to include various factual details, particularly with respect to the so-called “money laundering scheme run by the CBSA” (such as paragraphs 9, 10 and 11 of the proposed amended statement of claim), references to internal bulletins, and previous instances involving the alleged “misapplication” of the *Proceeds of Crime Act* and other statutes by the CBSA, of which he became aware after filing his action. Mr. Hociung also sought to amend his statement of claim to refer to section 469 of the *Criminal Code*, R.S.C. 1985, c. C-

46, which grants the power to every court of criminal jurisdiction to deal with certain types of offences, and to include additional relief such as an order directing 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*.

[10] In August 2016, after filing a brief statement of defence, the respondent filed a motion in writing seeking an order striking out the statement of claim in its entirety without leave to amend. In her order dismissing the said motion, Prothonotary Milczynski made it clear that the respondent had not relied on an alternative approach of challenging each type of claim and relief sought so that at least some portions of the statement of claim could be struck. Having found that it was not clear that the appeal pursuant to section 135 of the *Customs Act* was without merit and that Mr. Hociung had to institute a separate action for his other causes of action, the Prothonotary dismissed the motion. That said, she expressly noted that the respondent would not be prevented from seeking an order striking out portions of the statement of claim at a later stage, once Mr. Hociung filed the motion to amend he alluded to in his representations before her.

[11] On February 20, 2017, Mr. Hociung filed a motion in writing to amend his statement of claim. On March 1, 2017, the respondent filed the motion for summary judgment that resulted in the decision under appeal in this file. **Despite the Prothonotary's comments, once again, rather than relying on arguments targeted at each type of claim and relief sought, the respondent asked for the dismissal of the entire action,** even in its amended form based on what the respondent considered the only genuine issues. These consisted of two questions of law: (i) whether, in an action brought under section 135 of the *Customs Act*, a plaintiff may claim damages or seek

mandamus, and (ii) whether collector coins are “currency” or “goods” for the purpose of the *Customs Act*.

[12] It is not disputed that in an appeal pursuant to section 135 of the *Customs Act*, a plaintiff cannot contest decisions such as the imposition of a penalty made under other provisions of the *Customs Act*, for generally such decisions must be contested by an application for judicial review to be filed within 30 days of the decision, rather than an ordinary action filed within the 90 days from the notification of the ministerial decision (see for example *Nguyen v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 724; *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208) and very recently *Chen v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para. 9).

[13] Relying on the jurisprudence referred to in the Federal Court’s reasons (the Reasons) at paragraphs 27 to 29, the respondent sought to exclude any other claims or relief from the statement of claim on the basis that these were also outside the scope of section 135. Presumably, rather than dealing with the numerous legal issues arising from the nature of those allegations including jurisdiction and standing, this offered an easier way to dispose of the numerous claims and relief sought by Mr. Hociung.

[14] Obviously, unless the respondent succeeded on the first question of law, the answer as to the second question of whether Mr. Hociung’s collector coins were “goods” or “currency” could not warrant the dismissal of the statement of claim in its entirety (see Reasons at paras. 16 to 20). Indeed, as acknowledged by the respondent’s counsel at the hearing before us, unless a joinder of

causes of action is precluded, the answer to the second question clearly could not justify the dismissal of the claim for damages based on threats of violence by a CBSA officer.

[15] I ought to note that there are obvious difficulties arising when a party is self-represented and may lack legal knowledge and some or all of his claims may be without merit. Despite this reality, defendant's counsel has the duty to put before the court a motion including all of the appropriate grounds and authorities that will enable the Court to efficiently strike out or dismiss a claim on the basis that it has no merit. Efficiency and proportionality do not justify undue legal shortcuts.

[16] The Federal Court dismissed the action after reformulating the first question as follows: "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*?" It found that anything other than whether or not Mr. Hociung had contravened section 12 of the *Customs Act* was beyond the scope of a section 135 action and must be pursued in other proceedings (Reasons at paras. 25 to 32). Except for a brief mention at paragraph 26 of the Reasons that it had not been persuaded by Mr. Hociung that section 135 allows for a joinder of various causes of action, the Federal Court did not explain why it excluded the application of Rules 101 and 106 of the *Federal Courts Rules*, S.O.R./98-106 (the *Rules*), from the ambit of subsection 135(2) of the *Customs Act* (See paragraph 21 below).

[17] In respect of the second question, it held that the collector coins at issue are “goods” within the meaning of section 12 of the *Customs Act* and had to be declared. Thus, Mr. Hociung had contravened the *Customs Act* and his collector coins could be seized on that basis.

[18] Furthermore, the Federal Court found that even if in its view these type of coins may also have to be declared when their denomination value was over the limit of \$10,000 CAD or its equivalent in foreign currency (section 12 of the *Proceeds of Crime Act* and section 2 of the *Reporting Regulations*), the fact that these coins are also “goods” under the *Customs Act* does not create a true conflict between the relevant legislative provisions (Reasons at paras. 68 to 72).

[19] Importantly, the Federal Court also noted that the question of whether duties were payable on these “goods” was not the issue in the action, as the obligation to declare under section 12 of the *Customs Act* was not limited to “goods” on which duties are actually payable (Reasons at paras. 63 to 66).

II. Issues

[20] This appeal raises the following main issues:

- A. Did the Federal Court make a reviewable error in answering the two questions raised in the respondent’s motion?
- B. Is there a reasonable apprehension of bias as alleged by Mr. Hociung?

III. Relevant Statutory Provisions

[21] Subsection 12(1) and section 135 of the *Customs Act* read as follows:

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.

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.

Ordinary action

(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.

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.

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

Action ordinaire

(2) La *Loi sur les Cours fédérales* et les règles prises aux termes de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), sous réserve des adaptations occasionnées par les règles particulières à ces actions.

[22] Rules 101 and 106 as well as some of the other relevant provisions referred to herein are reproduced in Annex 1.

IV. Analysis

[23] It is well established that on a motion for summary judgment, the standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33, apply (*Hryniak v. Mauldin*, 2014 SCC 7 at paras. 81

and 84). Thus, the standard of correctness applies to questions of law, while questions of fact and of mixed fact and law are reviewed on the standard of palpable and overriding error.

A. *Did the Federal Court err in concluding that Mr. Hociung could not join any other cause of action in an action involving his appeal pursuant to section 135 of the Customs Act?*

[24] As mentioned earlier, Mr. Hociung's main argument is that Rule 101(1) allows him to request relief in his action in respect of more than one claim. Pursuant to Rule 101(3), not all parties to the action need have an interest in all relief claimed in the said proceeding. Mr.

Hociung submits that if Parliament intended to exclude the application of this Rule to actions instituted pursuant to section 135 of the *Customs Act*, it would have used explicit language similar to the one used in subsection 81.28(3) of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the *Excise Tax Act*), which deals with actions brought under that section. The relevant portion of the provision reads as follows:

(3) An appeal to the Federal Court under this Part is deemed to be an action in the Federal Court to which the *Federal Courts Act* and the rules made under that Act applicable to an ordinary action apply, except as varied by special rules made in respect of such appeals and except that

(a) the rules concerning joinder of parties and causes of action do not apply except to permit the joinder of appeals under this Part;

[...]

(3) Un appel à la Cour fédérale en vertu de la présente partie est réputé être une action devant celle-ci à laquelle la *Loi sur les Cours fédérales* et les règles établies conformément à cette loi s'appliquent comme pour une action ordinaire, sauf dans la mesure où l'appel est modifié par des règles spéciales établies à l'égard de tels appels, sauf que :

a) les règles concernant la jonction d'instances et de causes d'action ne s'appliquent pas, sauf pour permettre la jonction d'appels en application de la présente partie;

[...]

[25] Subsection 135(2) of the *Customs Act* clearly indicates that the *Rules* apply to an action instituted under subsection 135(1), except as varied by special rules made in respect of such actions. The *Customs Act* does contain some specific provisions such as its subsection 106(3), which deals with stays of actions and other proceedings that could be viewed as special rules within the meaning of subsection 135(2). However, the respondent did not direct us to any provisions of the *Customs Act* setting a special rule that could preclude the application of Rules 101 and 106. I have not found any.

[26] The case law holding that in an action pursuant to section 135, a party cannot seek judicial review of decisions other than whether there has been a contravention to the *Customs Act* is of no help here. None of the decisions relied upon by the Federal Court and the respondent deal with the issue before us or rely on reasoning that could be relevant to the interpretation of the current issue.

[27] The Rules are very liberal in their treatment of joinders of parties and causes of action. However, this right is subject to the overriding discretion and power of the Court to sever claims as provided by Rule 106. Before severing claims pursuant to that provision, the Court must carefully weigh the prejudice to the plaintiff, if any. Severing claims pursuant to Rule 106 is not the same as dismissing an action for summary judgment. It is a procedural order that is usually followed by appropriate directions detailing how to sever the claims. Certainly, it should be done in a manner that would not preclude a party from pursuing an otherwise valid claim because it would now be time-barred.

[28] In the same manner that the respondent's motion, which refers to Rule 221 as opposed to Rule 215, was considered a proper motion for summary judgment by the Federal Court, despite this error, Mr. Hociung's action must be considered for what it is – an action where he has included more than one cause of action and where he seeks more than an appeal of the Minister's decision under section 135 of the *Customs Act*.

[29] Because the Federal Court erred in its conclusion in respect of this first question, it could not simply dismiss the action in its entirety on the sole basis that there had been a contravention to the *Customs Act* without examining if and how all the causes of action and relief sought were affected by such determination.

[30] I will comment further on what order could be granted on this motion and in this appeal in section V of these reasons after reviewing whether the Federal Court erred in concluding that the coins at issue were "goods" that had to be declared under subsection 12(1) of the *Customs Act*.

B. *Are the coins at issue "goods" that must be reported under section 12 of the Customs Act?*

[31] Before us, Mr. Hociung argues that as the purpose of the *Customs Act* is to collect custom duties, the obligations set out in section 12 of the *Customs Act* can only apply to goods on which duties are payable. Even if his coins were "goods", a conclusion that he also contests, because they were either exempted from taxes or subject to a zero custom duty rate, there was no obligation to report them. I will deal with this argument first. If I find that the obligation to report

applies regardless of whether duties are payable, I will review whether as argued by Mr. Hociung, his coins fall outside of the ambit of “goods” as this word is used in section 12.

[32] Having considered the wording of section 12 in its context, harmoniously with the purpose and object of the scheme of the *Customs Act* and of this particular provision, I agree with the Federal Court that the obligation to declare is distinct from the obligation to pay duties which is dealt with under the title “Duties” starting at section 17 of the *Customs Act*. The obligation to report is not limited to goods that attract the payment of duties or other taxes.

[33] There is nothing in the ordinary meaning of the wording of subsection 12(1) that would justify such a limitation.

[34] When one considers the wording of subsection 12(1) in the context of section 12 as a whole, subsection 12(7) becomes relevant. It provides that subject to three cumulative conditions, goods described in tariff item 9813.00.00 or 9814.00.00 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, S.C. 1997, c. 36 may not be seized as forfeit by reason only that they were not reported under subsection 12(1). It is telling that “goods” that fall within the description of the aforementioned tariff items will only be exempted from such seizure if “their importation is not prohibited under the Customs Tariff or prohibited, controlled or regulated under any act of Parliament, other than this act or the Customs Tariff.” This is so, even if those goods are not charged with duties (see text of this provision in Annex 1).

[35] Moreover, I cannot agree that the interpretation suggested by Mr. Hociung is mandated by the main purpose of the *Customs Act*. The officers of the CBSA are the persons charged with determining whether or not duties are payable and whether or not goods can be imported into Canada without any restrictions under other statutes. They cannot fulfill their statutory responsibilities unless goods are reported to them. To claim the benefit on an exemption or a zero rate of duty, one must first report the goods.

[36] Section 13 of the *Customs Act* also creates another obligation quite distinct from the payment of duties. It is an obligation to answer questions about the goods imported and to present those goods for inspection to an officer of CBSA when required to do so. This obligation arises whether or not duties or other taxes are due.

[37] Then, the *Customs Act* provides at section 18 who is liable to pay the duties as defined in section 2(1) of the *Customs Act* (see also The *Excise Tax Act*, section 212 which refers to persons liable under the *Customs Act* to pay duties on imported goods confirming that such an obligation arises from the provisions of the *Customs Act* itself).

[38] There is no ambiguity, an exemption from the payment of taxes under the *Excise Tax Act*, or a zero custom duty rate in the *Customs Tariff* is not an exemption to report under subsection 12(1) of the *Customs Act*.

[39] It appears from the case synopsis (Appeal Book, Volume 4 at page 655 and 658) that in the CBSA's view, subsection 12(7) of the *Customs Act* did not apply to Mr. Hociung's coins,

which were imported for the first time into Canada. Mr. Hociung did not contest this particular finding. From my review of the description of the tariff items referred to in that provision, it is evident that he indeed had no basis to do so.

[40] Having determined that the obligation to report or declare all goods imported in Canada is not limited to “goods” which are subject to the payment of duties or other taxes, it is clear from the wording of the motion for summary judgment and the respondent’s written representations that the only other question that had to be determined is whether the actual coins seized were “goods” within the meaning of section 12 of the *Customs Act*.

[41] There is no need, and it would be unwise for this Court to attempt to give an exhaustive definition of the word “goods”, considering the *Customs Act* does not contain such an exhaustive definition. Indeed at section 2, it simply states:

goods, for greater certainty, includes conveyances, animals and any document in any form;
(*marchandises*)

marchandises Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support.
(*goods*)

[42] The word “goods” is intended to be used in the broadest sense possible considering that in its ordinary meaning; it would not usually be understood to include “any document in any form”.

[43] Neither party relied on any case law dealing with the ambit of section 12 of the *Customs Act* or on the legislative evolution of that section. However, Mr. Hociung and the respondent have referred to several statutes, including the *Customs Tariff*, the *Excise Tax Act*, the *Proceeds*

of *Crime Act*, the *Currency Act*, the *Royal Mint Act*, R.S.C., 1985, c. R-9 and related regulations. Although I have considered them, I need not refer to all of them for I find that the *Customs Tariff* provides the most useful indication of the legislator's intention as to whether coins that have legal tender such as those under consideration are included in the word "goods".

[44] Pursuant to section 4 of the *Customs Tariff*:

<p>Unless otherwise provided, words and expressions used in this Act and defined in subsection 2(1) of the <i>Customs Act</i> have the same meaning as in that subsection</p>	<p>Sauf indication contraire, les termes et expressions utilisés dans la présente loi et définis au paragraphe 2(1) de la Loi sur les douanes s'entendent au sens de ce paragraphe.</p>
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[45] Nothing in the *Customs Tariff* provides otherwise in respect of the word "goods". It is quite clear when one reads, for example, the definition of "Tariff Item" which basically is a description of "goods", and section 10 of the *Customs Tariff* (See Annex 1) which deals with the classification of "goods" in the List of Tariff Provisions, that generally something listed under a Tariff item is within the ambit of the word "goods" in the *Customs Act*, particularly as used in section 12.

[46] As explained in *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 2 S.C.R. 80 (*Igloo Vikski*), the *Customs Tariff* "implements Canada's obligation as a party to the International Convention Governing the Harmonized Commodity Description and Coding System... The Convention governs the Harmonized Commodity Description and Coding System (The "Harmonized System") by which approximately 5,000 commodity groups of imported goods are classified" (*Igloo Vikski* at para. 3) (my emphasis). This system was developed to foster predictability and stability in classification practices internationally. "The Harmonized System

uses an eight-digit classification system for tariff classifications, which is incorporated into the Schedule to the Customs Tariff” (*Igloo Vikski* at para. 5). Rather than using the example (Live Animals; Animal Products) used in *Igloo Vikski*, I will refer to some classification items related to what one would ordinarily consider “money” or “currency” such as issued banknotes that are legal tender (Tariff item No. 4907.00.00.12, see Annex 1), coins (Tariff item No. 71.18) including gold coins that are legal tender (Tariff item No. 7118.90.00.10 – see Annex 1), and silver or other metal coins (Tariff item No. 7118.90.00.99). There are other relevant Tariff items, but my point here is that the words “money” and “currency” are not used in the *Customs Tariff* or in the *Customs Act* except when a sum of money needs to be paid or value is considered (see for example sections 55, 132 and 133 of the *Customs Act*). Indeed the Harmonized System is a much more precise classification for imported goods. It is therefore not particularly useful to look at various statutory definitions of “money” or “currency” to construe section 12 of the *Customs Act*. It is also unnecessary to examine whether coins could be “financial instruments” under the *Excise Tax Act*.

[47] However, in light of Mr. Hociung’s argument that it would be contradictory to include anything falling within the definition of “currency” under the *Proceeds of Crime Act* in the definition of “goods” under the *Customs Act*, I must agree with the Federal Court that the interpretation of the *Proceeds of Crime Act* it adopted, even if it was not required in my view to do so to answer the question raised in the motion before it, does not result in a conflict between the *Proceeds of Crime Act* and the *Customs Act*. Those two statutes can both be applied without contradiction or conflict. The fact that under the *Proceeds of Crime Act* the obligation to report is more limited – it only applies to currency and monetary instruments over the limit set out in the

Reporting Regulations, cannot justify restricting the proper interpretation of section 12 of the *Customs Act* which Parliament clearly did not see fit to amend when it adopted the *Proceeds of Crime Act* in 2000.

[48] I therefore conclude that the Federal Court did not err in law when it concluded that the coins were “goods” subject to the obligation to declare provided for in section 12 of the *Customs Act*.

[49] As mentioned, to determine this appeal, it is not necessary for this Court to deal with the issue of whether or not the subject coins could fall within the definition of “currency” of the *Proceeds of Crime Act* in other cases. That said, I note that the respondent did not challenge the findings of the Federal Court in that respect, particularly those found at paragraphs 35 and 53 of the reasons.

C. *Reasonable apprehension of bias*

[50] Mr. Hociung alleges that the Federal Court judge was biased against him. He points specifically to paragraph 16 of the Reasons where the Federal Court states “the plaintiff does not dispute that the issues identified by the defendant are genuine issues. However, the plaintiff submits that there are additional issues raised in the statement of claim to be addressed in the course of the action. I disagree.”

[51] Mr. Hociung also indicates that bias can be inferred from the fact that the Federal Court relied on “evidence” that was not relied upon by the parties in paragraphs 58 and 60 of the

Reasons. At paragraph 58 of the Reasons, the Federal Court refers to the definition of “goods” at subsection 2(1) of the *Customs Act* and at paragraph 60 to section 123 of the *Excise Tax Act* where the word “money” is defined.

[52] The applicable standard here is a reasonable apprehension of bias (*Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at page 394). The apprehension must be a reasonable one and the test is: what would an informed person, viewing the matter realistically and practically – in having thought the matter through – conclude. This is a difficult test to meet. There is a strong presumption that judges are performing their duties in an unbiased way, and cogent evidence must be adduced to support such a serious allegation.

[53] I have no hesitation in concluding that Mr. Hociung’s allegation is baseless. Unfortunately, as is often the case with self-represented litigants, it appears to be the result of a misunderstanding of the law and the task to be performed by a court when required to construe legislation before it.

[54] The fact that the Federal Court may have reached the wrong conclusion at paragraph 16 is in no way evidence of a bias, real or apprehended. Otherwise all decisions reversed in appeal or quashed on an application for judicial review based on an error of law or any other reviewable error would raise such an apprehension. This is simply not so.

[55] Statutory provisions, including definitions in statutes put in play by the issues before a court, are not “evidence”. When asked to construe a statute, a court may refer to the provisions

that are clearly relevant as they are part of the context it must consider to reach its decision. I also note that there would have been no benefit to seek the parties' views on those legislative provisions which they allegedly fail to expressly refer to, for they are quite unambiguous, and were clearly relevant to the issues raised by them.

[56] In fact, when one considers the decision as a whole, especially the fact that the Federal Court dealt with the issue of whether collector coins could be included in the definition of "currency" under the *Proceeds of Crime Act*, it becomes clear that the Federal Court did not do what an allegedly bias decision maker would be expected to do. It did not accept the interpretation proposed by the respondent. It clearly endeavoured to answer Mr. Hociung's preoccupation with the CBSA's restrictive interpretation. Although Mr. Hociung may not agree with the interpretation of the Federal Court, the fact remains that he got more in that respect than he might otherwise have been entitled to on this motion.

D. *Could the Federal Court dismiss the action in its entirety and can this Court simply dismiss the motion for summary judgment and "order that the proceeding continue to trial" as requested by Mr. Hociung?*

[57] Having correctly concluded that there was a contravention to section 12 of the *Customs Act*, the Federal Court had the power, pursuant to Rule 215(3), to dismiss all the allegations relating to the appeal pursuant to section 135 of the *Customs Act* as it involves no other genuine issue. Its legal conclusion in respect of section 12 could also be sufficient to justify dismissing the claims for damages based on the allegations that the seizure constituted a fraud and a misapplication of the *Customs Act* in this case. On the other hand, as mentioned, it could not dismiss the claim based on alleged threats of violence.

[58] Although Mr. Hociung has attempted to summarize his various claims at paragraph 14 and again on page 15 of his memorandum of fact and law, I do not consider that this Court had the benefit of sufficient representations by the parties to render the decision that the Federal Court should have rendered had it properly exercised its power under section 215(3) of the *Rules*. Obviously, this Court cannot simply dismiss the motion for summary judgment, given its conclusion that there was a contravention to section 12 of the *Customs Act*. Thus, there is little choice but to return the matter to the Federal Court, who will be in a better position to deal with this issue after seeking additional written representations by the parties as this motion was made in writing pursuant to Rule 369.

[59] That said, before concluding, I ought to add some comments for the benefit of Mr. Hociung. Now that it is clear that his appeal pursuant to section 135 of the *Customs Act* and his claims based on fraud and misrepresentations as to the right of the CBSA to seize his coins do not raise any genuine issue for trial, I urge him to seek legal advice so that he may seriously reassess whether he wishes to pursue whatever claims or allegations may remain in his statement of claim.

[60] The fact that this appeal may be granted in part should not be construed in any manner as meaning that whatever claims or relief ultimately remaining have any chance of success. Clearly at this stage, this Court is not in a position to make such a finding, especially not having heard arguments from either side on the numerous legal issues raised by the melting pot of claims that may remain.

[61] Mr. Hociung is a well-educated and intelligent man who clearly devoted much effort to researching the law. However, the fact remains that the issues raised in his action are highly technical and complex.

[62] For example, he may not appreciate that the Federal Court does not have any inherent criminal jurisdiction to deal with offences under s. 469 of the *Criminal Code* or to impose penalties under the said *Code*. Also, in *S.A. Metro Vancouver Housing Corp.*, 2019 SCC 4, the Supreme Court of Canada recently reiterated at paragraph 60 that:

[d]eclaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought [...].

[63] It is certainly not clear to me at this stage, given that the only basis on which Mr. Hociung's coins were seized was a contravention to the *Customs Act*, that there is any real, as opposed to a theoretical dispute left, and that Mr. Hociung has a genuine interest (in the legal sense) in its resolution. This is why, among other things, legal advice at this stage would be most appropriate. It would also ensure that Mr. Hociung does not unduly expose himself to the payment of court costs should his remaining claims ultimately fail.

V. CONCLUSION

[64] The appeal should be granted in part; the judgment of the Federal Court dismissing the action in its entirety should be quashed. The matter should be returned to the Federal Court for determination of which claims and relief can properly be dismissed on the basis of the Federal

Court's finding that Mr. Hociung has contravened section 12 of the *Customs Act* and the CBSA was legally entitled to seize his coins under the *Customs Act*. Obviously, this should not be construed as limiting any other order the Federal Court may choose to issue under Rule 215(3).

[65] Given that success was divided on the issues raised in this appeal, I propose that each party pay their own costs.

“Johanne Gauthier”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
Marianne Rivoalen J.A.”

Annex 1

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Interpretation

Definitions

2(1) In this Act,

[...]

duties means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(b) and 65(1)(b), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the *Excise Tax Act*; (droits)

[...]

Report of Goods

Report

Certain goods not subject to seizure

12(7) Goods described in tariff item No. 9813.00.00 or 9814.00.00 in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*

Définitions et champ d'application

Définitions

2(1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

droits Les droits ou taxes imposés, en vertu de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les mesures spéciales d'importation*, du *Tarif des douanes* ou de toute autre loi fédérale, sur les marchandises importées. En sont exclues, pour l'application du paragraphe 3(1), des alinéas 59(3)b) et 65(1)b), des articles 69 et 73 et des paragraphes 74(1), 75(2) et 76(1), les taxes imposées en vertu de la partie IX de la *Loi sur la taxe d'accise*. (duties)

[...]

Déclaration

Déclaration

Marchandises soustraites à la saisie-confiscation

12(7) Ne peuvent être saisies à titre de confiscation en vertu de la présente loi, pour la seule raison qu'elles n'ont pas fait l'objet de la déclaration prévue au présent article, les marchandises, visées aux nos tarifaires 9813.00.00 ou 9814.00.00 de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*, pour lesquelles les conditions suivantes sont réunies :

(a) that are in the actual possession of a person arriving in Canada, or that form part of his baggage, where the person and his baggage are being carried on board the same conveyance,

a) elles sont en la possession effective ou parmi les bagages d'une personne se trouvant à bord du moyen de transport par lequel elle est arrivée au Canada;

(b) that are not charged with duties, and

b) elles ne sont pas passibles de droits;

(c) the importation of which is not prohibited under the Customs Tariff or prohibited, controlled or regulated under any Act of Parliament other than this Act or the Customs Tariff

c) leur importation n'est pas prohibée par le Tarif des douanes, ni prohibée, contrôlée ou réglementée sous le régime d'une loi fédérale autre que la présente loi ou le Tarif des douanes.

may not be seized as forfeit under this Act by reason only that they were not reported under this section.

[...]

[...]

Obligation to answer questions and present goods

Obligations du déclarant

13 Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall

13 La personne qui déclare, dans le cadre de l'article 12, des marchandises à l'intérieur ou à l'extérieur du Canada, ou qu'un agent intercepte en vertu de l'article 99.1 doit :

(a) answer truthfully any question asked by an officer with respect to the goods; and

a) répondre véridiquement aux questions que lui pose l'agent sur les marchandises;

(b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.

b) à la demande de l'agent, lui présenter les marchandises et les déballer, ainsi que décharger les moyens de transport et en ouvrir les parties, ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

[...]

[...]

Presumption of importation

Présomption d'importation

18 (1) For the purposes of this section, all goods reported under section 12 shall be deemed to have been

18 (1) Pour l'application du présent article, toutes les marchandises déclarées conformément à l'article 12

imported.

sont réputées avoir été importées.

Liability of person reporting goods short landed

Solidarité du déclarant et de son mandant

(2) Subject to subsections (3) and 20(2.1), any person who reports goods under section 12, and any person for whom that person acts as agent or employee while so reporting, are jointly and severally or solidarily liable for all duties levied on the goods unless one or the other of them proves, within the time that may be prescribed, that the duties have been paid or that the goods

(2) En cas d'application de l'article 12, le déclarant et son mandant ou employeur sont, sous réserve des paragraphes (3) et 20(2.1), solidairement responsables de tous les droits imposés sur les marchandises, sauf si, dans le délai réglementaire, l'un d'eux établit le paiement des droits ou, à propos des marchandises, l'un des faits suivants :

(a) were destroyed or lost prior to report or destroyed after report but prior to receipt in a place referred to in paragraph (c) or by a person referred to in paragraph (d);

a) elles ont été soit détruites ou perdues avant la déclaration, soit détruites entre le moment de la déclaration et leur réception en un lieu visé à l'alinéa c) ou par la personne visée à l'alinéa d);

(b) did not leave the place outside Canada from which they were to have been exported;

b) elles n'ont pas quitté le lieu de l'extérieur du Canada d'où elles devaient être exportées;

(c) have been received in a customs office, sufferance warehouse, bonded warehouse or duty free shop;

c) elles ont été reçues dans un bureau de douane, un entrepôt d'attente, un entrepôt de stockage ou une boutique hors taxes;

(d) have been received by a person who transports or causes to be transported within Canada goods in accordance with subsection 20(1);

d) elles ont été reçues par une personne qui fait office de transitaire conformément au paragraphe 20(1);

(e) have been exported; or

e) elles ont été exportées;

(f) have been released.

f) elles ont été dédouanées.

Rates of duties

Taux des droits

(3) The rates of duties payable on goods under subsection (2) shall be the rates applicable to the goods at the time they were reported under section

(3) Le taux des droits payables sur les marchandises conformément au paragraphe (2) est celui qui leur est applicable au moment où elles font

12.

l'objet de la déclaration prévue à l'article 12.

Regulations

(4) The Governor in Council may make regulations prescribing the circumstances in which such bonds or other security as may be prescribed may be required from any person who is or may become liable for the payment of duties under this section.

Rèlements

(4) Le gouverneur en conseil peut, par règlement, fixer les cautions ou autres garanties susceptibles d'être souscrites par les personnes effectivement ou éventuellement redevables de droits au titre du présent article et déterminer les circonstances de la souscription.

Federal Courts Rules, S.O.R./98-106

Joinder of claims

101 (1) Subject to rule 302, a party to a proceeding may request relief against another party to the same proceeding in respect of more than one claim.

Causes d'action multiples

101 (1) Sous réserve de la règle 302, une partie à une instance peut faire une demande de réparation contre une autre partie à l'instance à l'égard de deux ou plusieurs causes d'action.

Separate capacity

(2) A party may request relief in a separate capacity in respect of different claims in a single proceeding.

Réparation à titre distinct

(2) Une partie peut demander réparation à titre distinct pour diverses causes d'action faisant l'objet d'une instance.

Interest in all relief not essential

(3) Not all parties to a proceeding need have an interest in all relief claimed in the proceeding.

Réparation ne visant pas toutes les parties

(3) Il n'est pas nécessaire que chacune des parties à l'instance soit visée par toutes les réparations demandées dans le cadre de celle-ci.

[...]

[...]

Separate determination of claims and issues

106 Where the hearing of two or more claims or parties in a single proceeding would cause undue

Instruction distincte des causes d'action

106 Lorsque l'audition de deux ou plusieurs causes d'action ou parties dans une même instance compliquerait

complication or delay or would prejudice a party, the Court may order that	indûment ou retarderait le déroulement de celle-ci ou porterait préjudice à une partie, la Cour peut ordonner :
(a) claims against one or more parties be pursued separately;	a) que les causes d'action contre une ou plusieurs parties soient poursuivies en tant qu'instances distinctes;
(b) one or more claims be pursued separately;	b) qu'une ou plusieurs causes d'action soient poursuivies en tant qu'instances distinctes;
(c) a party be compensated for, or relieved from, attending any part of the proceeding in which the party does not have an interest; or	c) qu'une indemnité soit versée à la partie qui doit assister à toute étape de l'instance dans laquelle elle n'a aucun intérêt, ou que la partie soit dispensée d'y assister;
(d) the proceeding against a party be stayed on condition that the party is bound by any findings against another party.	d) qu'il soit sursis à l'instance engagée contre une partie à la condition que celle-ci soit liée par les conclusions tirées contre une autre partie.

Customs Tariff, S.C. 1997, c. 36

PART 1
Interpretation and General Interpretation

Definitions

2 (1) The definitions in this subsection apply in this Act.

[...]

tariff item means a description of goods in the List of Tariff Provisions and the rates of customs duty and the accompanying eight-digit number in that List and, if applicable, in the "F" Staging List. (*numéro tarifaire*)

[...]

Words and expressions in Act

4 Unless otherwise provided, words and expressions used in this Act and

PARTIE 1
Définitions et dispositions générales

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

numéro tarifaire Dénomination de marchandises, figurant sur la liste des dispositions tarifaires, marquée d'un numéro à huit chiffres et les taux figurant sur cette liste et, le cas échéant, au tableau des échelonnements. (*tariff item*)

[...]

Termes de la Loi sur les douanes

4 Sauf indication contraire, les termes et expressions utilisés dans la présente

defined in subsection 2(1) of the Customs Act have the same meaning as in that subsection.

loi et définis au paragraphe 2(1) de la Loi sur les douanes s'entendent au sens de ce paragraphe.

...

[...]

Classification of goods in the List of Tariff Provisions

Classement des marchandises dans la liste des dispositions tarifaires

10 (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

10 (1) Sous réserve du paragraphe (2), le classement des marchandises importées dans un numéro tarifaire est effectué, sauf indication contraire, en conformité avec les Règles générales pour l'interprétation du Système harmonisé et les Règles canadiennes énoncées à l'annexe.

Classification of “within access commitment” goods

Classement de marchandises « dans les limites de l'engagement d'accès »

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the Export and Import Permits Act and in compliance with the conditions of the permit.

(2) Des marchandises ne peuvent être classées dans un numéro tarifaire comportant la mention « dans les limites de l'engagement d'accès » que dans le cas où leur importation procède d'une licence délivrée en vertu de l'article 8.3 de la Loi sur les licences d'exportation et d'importation et en respecte les conditions.

Customs Tariff – Schedule

Section X: Pulp of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles Thereof

Section X : Pâtes de bois ou d'autres matières fibreuses cellulosiques; Papier ou carton à recycler (déchets et rebuts); Papier et ses applications

49 PRINTED BOOKS, NEWSPAPERS, PICTURES AND OTHER PRODUCTS OF THE PRINTING INDUSTRY; MANUSCRIPTS, TYPESCRIPTS AND PLANS

49 PRODUITS DE L'ÉDITION, DE LA PRESSE OU DES AUTRES INDUSTRIES GRAPHIQUES; TEXTES MANUSCRITS OU DACTYLOGRAPHIÉS ET PLANS

4907.00.00 Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title.

Banknotes being legal tender:

4907.00.00.12 Issued

[...]

Section XIV

Chapter 71: Natural or Cultured Pearls, Precious or Semi-precious Stones, Precious Metals, Metals Clad with Precious Metal, and Articles Thereof; Imitation Jewellery; Coin

7118 Coin

[...]

7118.90.00 Other

7118.90.00.10 Gold coin

7118.90.00.91 Canadian coin

[...]

7118.90.00.99 Other

4907.00.00 Timbres-poste, timbres fiscaux et analogues, non oblitérés, ayant cours ou destinés à avoir cours dans le pays dans lequel ils ont, ou auront, une valeur faciale reconnue; papier timbré; billets de banque; chèques; titres d'actions ou d'obligations et titres similaires.

Billets de banque, ayant cours légal :

4907.00.00.12 Émis

[...]

Section XIV

Chapitre 71 : Perles fines ou de culture, pierres gemmes ou similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie; monnaies

7118 Monnaies.

[...]

7118.90.00 Autres

7118.90.00.10 Pièces de monnaie d'or

7118.90.00.91 Monnaie canadienne

[...]

7118.90.00.99 Autres

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2000, c. 17

Currency and monetary instruments

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.

Limitation

(2) A person or entity is not required

Déclaration

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.

Exception

(2) Une personne ou une entité n'est

to make a report under subsection (1) in respect of an activity if the prescribed conditions are met in respect of the person, entity or activity, and if the person or entity satisfies an officer that those conditions have been met.

pas tenue de faire une déclaration en vertu du paragraphe (1) à l'égard d'une importation ou d'une exportation si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Sending reports to Centre

(5) The Canada Border Services Agency shall send the reports they receive under subsection (1) to the Centre. It shall also create an electronic version of the information contained in each report, in the format specified by the Centre, and send it to the Centre by the electronic means specified by the Centre.

Transmission au Centre

(5) L'Agence des services frontaliers du Canada fait parvenir au Centre les déclarations recueillies en application du paragraphe (1) et établit, dans la forme prévue par le Centre, une version électronique des renseignements contenus dans chaque déclaration qu'elle transmet au Centre par les moyens électroniques prévus par celui-ci.

Cross-border Currency and Monetary Instruments Reporting Regulations, S.O.R./2002-412

Minimum Value of Currency or Monetary Instruments

2 (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is \$10,000.

(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on

(a) the official conversion rate of the Bank of Canada as published in the Bank of Canada's Daily Memorandum of Exchange Rates that is in effect at the time of importation or exportation; or

(b) if no official conversion rate is set out in that publication for that

Valeur minimale des espèces ou effets

2 (1) Pour l'application du paragraphe 12(1) de la Loi, les espèces ou effets dont l'importation ou l'exportation doit être déclarée doivent avoir une valeur égale ou supérieure à 10 000 \$.

(2) La valeur de 10 000 \$ est exprimée en dollars canadiens ou en son équivalent en devises selon :

a) le taux de conversion officiel de la Banque du Canada publié dans son Bulletin quotidien des taux de change en vigueur à la date de l'importation ou de l'exportation;

b) dans le cas où la devise ne figure pas dans ce bulletin, le taux de

currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

conversion que le déclarant utiliserait dans le cours normal de ses activités à cette date.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE GLEESON

DATED MARCH 15, 2018, NO. T-1450-15

DOCKET:

A-102-18

STYLE OF CAUSE:

RADU HOCIUNG v. MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

MAY 23, 2019

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

WEBB J.A.
RIVOALEN J.A.

DATED:

AUGUST 7, 2019

APPEARANCES:

Radu Hociung

FOR THE APPELLANT
ON HIS OWN BEHALF

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