

**FEDERAL COURT OF CANADA**

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

**LETTER TO THE COURT  
Re: REASSIGNMENT OF CASE MANAGEMENT JUDGE**

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

**Honourable Court,**

I am writing to respectfully request reassignment of this case to a different case management judge, and will further explain the grounds for this request.

Also, I would like to request the case be reviewed pursuant Federal Court Rule 97, and default judgement be entered (rule 97(d)), or the Defendant be ordered to answer the Written Examination Questions (rule 97(b)), as the Court deems just.

***History of the case (only dates relevant to this request)***

On July 19, 2016, the Defendant was served Written Examination for Discovery questions.

On August 30, 2016, almost a year ago, the Plaintiff requested the Court to place this case under Case Management, due to the fact that the Defendant was refusing to answer the Written Examination for Discovery.

On August 30, 2016, the Plaintiff sent a copy of the request for Case Management to the Defendant at 11:04am EST

On August 30, 2016, at 11:35am, the Defendant served the Plaintiff by email a Motion Record to Strike the Statement of Claim in its Entirety. Given the timing of this motion, it is clear the defendant had the motion prepared in advance and was waiting for the opportune time to submit it.

On September 21, 2016, the request for Case Management was granted, and the motion to strike was denied.

On November 9, 2016, Mr. Prothonotary Kevin Aalto was assigned as Case Management

Judge.

On December 22, 2016, a case management teleconference was held, and dates were set for the both Plaintiff and Defendant discoveries to occur. The Defendant was ordered to answer the Written Examination by January 31<sup>st</sup>, 2017

On January 31, 2017, at 14:08 EST, the Defendant delivered by fax partial answers to the Written Examination, in which only 20 of the 40 questions were answered completely (see attached). Ie, the partial answers were delivered the last possible moment, giving the appearance of compliance with the December 22 order to answer.

On February 2 and February 7, 2017, the Plaintiff requested the Defendant to answer the remaining questions or properly make objections in the form prescribed by Federal Court Rules 94, 95 and/or 99 (attached)

On March 1, 2017, the day before the second scheduled Case Management Schedule, the Defendant entered a written motion for Summary Judgement. The text of the motion is nearly identical to the unsuccessful motion to Strike the Statement of Claim he had submitted on August 30, 2016. The Defendant also requested that Mr. Aalto suspend Case Management until his motion is decided.

On March 2, 2017, a second and final Case Management Conference was held, where the plaintiff requested in writing that the Defendant be ordered to answer the Examination questions pursuant Rule 97. Mr. Aalto declined to apply Rule 97, and granted the Defendant's request to suspend Case Management.

### ***Grounds for request to reassign Case Management Judge***

The case has not progressed at all in the 6 months since Mr. Aalto became Case

Management judge (November 9, 2016 to the present, June 12, 2017). The Defendant was refusing to answer the Discovery questions, and is still refusing to this day.

Even though the criteria for executing Rule 97 of the Federal Court are met (a person fails to answer proper discovery questions within 30 days), and the Plaintiff requested Mr. Aalto to execute this rule, Mr. Aalto refused at the March 2, 2017 conference, justifying his decision by saying the motion for summary judgement must be first dealt with.

The Federal Court Rules on discovery do not provide for such a delay to discovery in case the party being discovered files motions.

The timing of the Defendant's motions, the fact that his motion is nearly identical to the unsuccessful motion he made 7 months prior, and his explicit request to Mr. Aalto that case management be suspended show that he is only interested in delaying discovery as much as possible.

At the March 2, 2017 case management conference, Mr. Aalto discussed the facts of the case, and offered his opinion that the case would not be successful, even though he admitted he had not seen the evidence (the response to the summary judgement motion was filed 20 days later, and included 70 documents as evidence, totalling 652 pages). He also advised the Plaintiff that he would not be wise to pursue the organized crime and fraud claims made in the proposed Amended Statement of Claim. His opinion and advice constitutes legal advice, and is not appropriate for Mr. Alto to give to a party.

However, at the March 2, 2017 conference, Mr. Aalto refused to consider moving the case along towards trial by dealing the the long overdue Discovery answers.

Furthermore, when asked to guide the discovery process along, Mr. Aalto recommended to the Plaintiff that he should make a motion seeking to compel the Defendant to provide answers to Discovery. There is no Federal Court Rule that would allow such a motion; on the contrary, Rule 97 provides that the Court may make an order to answer solely based on establishing a failure to answer a proper question, without any motion needed.

The Defendant is clearly willing to abuse process by filing frivolous motions instead of Discovery answers, and claims that the motions must be decided first, before Discovery can continue. However, Mr. Aalto, whose role is to see past these shenanigans, chooses to allow the Defendant's game.

In his role as Case Management Judge, Mr. Aalto's responsibility does not include fact-finding, which he is keen to perform, but does include managing the proceeding, which he declined to do.

Specifically, the Case Management Judge's powers, according to Federal Court Rule 385(a), are to give directions necessary for the just, most expeditious and least expensive determination of the proceeding, which Mr. Aalto refused to exercise.

At the March 2<sup>nd</sup> CMC, Mr. Alto declined to schedule a subsequent CMC. Combined with the fact that contact from the parties with Mr. Aalto is not permitted by the Registry, this leaves the case in a state of effective suspension. The plaintiff has no way to move this case forward, and no tools to persuade the Defendant to fulfill his obligations with respect to discovery.

As long as the Defendant is able to manipulate Mr. Aalto into not triggering rule 97, this case will never reach trial.

The motion game played by the Defendant is prejudicial to the Plaintiff, as two key Government witnesses are nearing retirement. At the present rate of progress, these witnesses will likely retire before the case reaches trial. Also, given that these witnesses are also accused of fraud, they would have every incentive to retire out of the country, eg. Florida, as many Canadians do. This would make the case very difficult for the Plaintiff to prove.

For all these reasons, in the Plaintiff's opinion, Mr. Aalto is ineffective as a Case Management Judge, and a more seasoned Case Management Judge should be assigned to this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Hociung'.

Radu Hociung

Plaintiff



Department of Justice Canada  
Ontario Regional Office

Ministère de la Justice Canada  
Bureau régional de l'Ontario

## FACSIMILE TRANSMISSION TRANSMISSION PAR TÉLÉCOPIEUR

SEND TO / ENVOYER À		FROM / DE	
<b>Name / Nom:</b> Radu Hociung		<b>Name / Nom:</b> Eric Peterson Counsel	
<b>Address / Adresse:</b> By fax only		<b>Address / Adresse:</b> Ontario Regional Office The Exchange Tower 130 King St. West Suite 3400, Box 36 Toronto, Ontario M5X 1K6	
<b>Fax # / No du télécopieur:</b>	<b>Tel. No. / No du Tél:</b>	<b>Fax # / No du télécopieur:</b>	<b>Tel. No. / No du Tél:</b>
226-336-8327		(416) 973-5004	(416) 952-6334
<b>Comments / Commentaires:</b> Re: HOCIUNG, Radu v. Minister of Public Safety and Emergency Preparedness Federal Court docket: T-1450-15 Please find attached the Defendant's response to the written examination for discovery.			
<b>SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ</b>			
Unclassified documents only VIA clear transmission. Protected information permitted within Justice secure FAX network. Documents non cotés à transmettre sans protection. Renseignements protégés par le réseau des télécopieurs protégés de la Justice.			
<b>Protected documents? / Documents protégés?</b> <input type="checkbox"/> Yes / Oui <input checked="" type="checkbox"/> No / Non			
<b>TRANSMISSION</b>			
<b>Pages (including cover sheet)</b>	<b>Date:</b>	<b>Time:</b>	
13	January 31, 2017		

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 Name / Nom: Donna Robiinson at / au: 416-952-6886

Court File No. T-1450-15

**FEDERAL COURT OF CANADA**

**BETWEEN:**

**Radu Sebastian HOCIUNG**

**PLAINTIFF**

**AND:**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**DEFENDANT**

**AFFIDAVIT OF TARA-LEE FRASER**

I, Tara-Lee Fraser, Senior Litigation Advisor, employed by the Canada Border Services Agency, Recourse Directorate, with an office located at 333 North River Rd, Tower A, 11<sup>th</sup> Floor, in the City of Ottawa, Province of Ontario,  
**SWEAR THAT:**

1. I am employed by the Canada Border Services Agency and have been authorized by the Defendant to make this Affidavit.
2. Attached hereto and marked as Exhibit "A" is the Defendant's Responses to Written Examination, being the Defendant's answers to the Plaintiff's written examination for discovery. I confirm that the answers therein are true, to the best of my knowledge.




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SWORN BEFORE ME at the City of  
Ottawa, in the Province of Ontario  
this 31<sup>st</sup> day of January, 2017.

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Commissioner for Taking Affidavits  
for the Province of Ontario

  
Tara-Lee Fraser

**Sherri-Lynn Catherine Foran,  
a Commissioner, etc., Province of Ontario,  
for the Government of Canada,  
Canada Border Services Agency.  
Expires August 24, 2018.**

**Sherril-Lynn Catherine Foran,**  
commissaire, etc., Province de l'Ontario au  
service du gouvernement du Canada,  
Agence des services frontaliers du Canada.  
Date d'expiration, le 24 août 2018.

Sherri-Lynn Catherine Foran,  
a Commissioner, etc., Province of Ontario,  
for the Government of Canada,  
Canada Border Services Agency.  
Expires August 24, 2018.

Sherri-Lynn Catherine Foran,  
commissaire, etc., Province de l'Ontario au  
service du gouvernement du Canada,  
Agence des services frontaliers du Canada.  
Date d'expiration: le 24 août 2018.

## EXHIBIT "A"

This is Exhibit « A » referred to  
in the affidavit of

Tara-Lee Fraser  
sworn before me

this 31 day of January A.D. 2017

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### DEFENDANT'S RESPONSES TO WRITTEN EXAMINATION

1. Please provide a full list of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs during each year between 2000 and 2015, including quantities, full descriptions, and date of importation/exportation. If data for the entire 2000-2015 time period is not available, provide all the data available in this period. Please provide the list in electronic format if possible.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).**

2. Please provide a summary of items imported into Canada and exported from Canada under the 7108.20.00, 7118.90.00 and 7118.10.00 tariffs for each year from 2000 to 2015 inclusive, including totals in quantity of coins, total number of troy ounces, and total value in dollars.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).**

3. Please provide a summary of gold and silver currency imported and exported from Canada during each year between 2000 and 2015 inclusive, which was reported on E-677 forms. Provide separate totals for gold and for silver coinage.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).**

4. Please provide a list of all seizures pursuant PCMLTFA where gold or silver coins were seized between years 2000-2015 inclusive. Please include date of seizure, total value seized, value of gold seized, value of silver seized, number of the PCMLTFA article invoked, and whether or not the currency was eventually returned.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).**

5. When was the policy that "gold and silver coins are not currency" first stated within CBSA. Include the document that first stated this policy and include complete references to legislation used to create the policy. Please include detailed accounts of how gold and silver coins were treated prior to this policy being created.

The CBSA does not have a specific policy in relation to the reporting of collector coins, gold and silver coins or precious metals as currency.

Commodities made of precious metals have to be reported upon importation pursuant to the *Customs Act*. The reporting requirement for precious metals under the *Customs Act* did not change following the creation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and its related regulations.

Canada's *Customs Tariff* is based on the World Customs Organization's Harmonized Commodity Description and Coding System (HS). The HS was developed and is maintained by the WCO, an independent intergovernmental organization with over 200 countries. The HS is the standard coding structure and related product descriptions used in international trade. HS compliance is the mandatory classification and declaration of goods coming into or leaving Canada. The importer or exporter is responsible for the correct use of HS when declaring goods. Canada has been a member of the WCO since 1971. Items made of precious metals, including coins, are listed in the HS.

There is no express reference in Part 2 of the *PCMLTFA* or the *Cross-border Currency and Monetary Instruments Reporting Regulations*. Part 1 of the *PCMLTFA* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, however, provide the following definitions:

"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;

"funds" means either:

- (a) cash; or
- (b) currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's or entity's title or right to, or interest in, them; and

"precious metal" means gold, silver, palladium or platinum in the form of coins, bars, ingots or granules or in any other similar form".

By relying on statutory interpretation, foreign coins intended for circulation are considered currency for reporting purposes under the *PCMLTFA*. Whereas, foreign coins not intended for circulation are to be reported as goods in accordance with the *Customs Act*.

6. When was the policy that "gold and silver coins are not currency" first enforced within the CBSA, was it challenged, and what was the outcome? Include documentation.

The CBSA does not have a specific policy in relation to collector coins, gold and silver coins or precious metals as currency, and to best of our knowledge, the CBSA's position that foreign coins (collector coins) are goods has not been challenged in a court of law.

7. When did Jeffrey Strickland first state or endorse the policy that "gold and silver coins are not currency"?

**Mr. Strickland was introduced to the CBSA's position that foreign coins (collector coins) are goods for the purposes of reporting under the *Customs Act* in or about April 2011.**

8. When did Jeffrey Strickland commence employment with the CBSA?

**August 2004**

9. Has Jeffrey Strickland ever known gold and silver coins to be currency during his career with the CBSA? Please include written evidence of the same.

**Mr. Strickland has understood that non-circulation coins do not fall within the definition of currency since 2011, and has no recollection of being introduced to the subject, or having a position on the subject prior to this point in time.**

10. When did Joanne Lepage first state or endorse the policy that "gold and silver coins are not currency"?

**The determination that gold and silver coins constitute "goods" within the meaning of the *Customs Act* is derived from legal opinions dating back several years. Joanne was first made aware of this legislative interpretation in 1997 which sets out that coins or banknotes being imported where the intrinsic value is higher than its fiduciary value - e.g. collector coins with a value higher than their face value - fall within the purview of the *Customs Act* and must therefore be reported under this Act.**

11. When did Joanne Lepage commence employment with the CBSA?

**May 1990**

12. Has Joanne Lepage ever known gold and silver coins to be currency during her career with the CBSA? Please include written evidence of the same.

**During the course of her career, Ms. Lepage only encountered instances pertaining to collector coins which were "goods" within the meaning of the *Customs Act* and not "currency" under the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or its associated regulations.**

13. How were gold coins issued by Canadian and foreign authorities of purity over 99.5% fine gold treated prior to the creation of the policy that they are not currency? Include any documentation available as proof.

**The above noted, namely that coins being imported where the intrinsic value is higher than its fiduciary value - e.g. collector coins with a value higher than their face value - fall within the purview of the *Customs Act* remains a constant. The characterization of collector coins as "goods" rather than "currency" was unaffected by the coming into force of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.**

14. Are there any gold or silver coins in existence in Canada or other countries that would qualify as domestic or foreign currency according to CBSA? Enumerate all the gold and silver coins types that the CBSA has classified, in the year 2000 or afterwards, as currency for *PCMLTFA* and/or *Customs Act* purposes. Include issuing country, coin description and denomination.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*; or in the alternative, is unreasonable, unnecessary or unduly onerous to require the Defendant to make such enquires in accordance with Rules 242(1)(c) and (d).**

15. Explain in detail how the seizing BSO came to have a copy of the plaintiff's citizenship card, given that he did not request it, according to his narrative report.

**BSO Debski does not recall. However, it is normal practice to make copies of information and evidence reviewed at the time of the examination where seizure is taken.**

16. Is it true that officer Debski requested the plaintiff's passport and wallet, not his passport, drivers' license and [car] ownership as he claimed in his narrative report?

**BSO Debski does not recall asking for Mr. Hociung's wallet.**

17. Did the seizing officer use the language "arrestable offense" when describing the "seriousness" of the offence he alleged in his narrative report?

**As stated in his narrative report, BSO Debski did advise Mr. Hociung that smuggling was an arrestable offence.**

18. Given the alleged behaviour clues from Radu Hociung (nervousness, pacing, raised voice), and officer Debski's conclusion that the coins were being "smuggled", would a conclusion that an arrestable offense may have occurred be appropriate according to CBSA officer's manual?

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the *Federal Court Rules*. Mr. Hociung was not arrested or charged with a criminal offence as a result of this incident. But rather a civil seizure action was taken against the goods (*in rem*) for non-report under the *Customs Act*.**

19. Why did officer Debski not report his verbal explanation of what "serious offense" means in terms of expected penalties?

**This question is unclear and as such the Defendant is unable to answer.**

20. Why did officer Debski not report asking the question "Where do you have so much money from?" and the answer he received, in his written report?

**BSO Debski has indicated that the question was meant to instigate conversation and possibly show verbal and physical indicators that Mr. Hociung may have been exhibiting. This question was not pertinent to the seizure action.**

21. Is his inquiry as to the provenance of funds related to the *PCMLTFA* or to the *Customs Act*? Include the section of the officer manual that explains the purpose and relevance of this question.

**In the performance of their duties, BSOs may ask routine questions with respect to goods, currency and/or monetary instruments, to ascertain the nature of the goods being imported in order to determine what reporting obligations have been engaged under either (or both) the *Customs Act* as well as the *PCMLTFA*.**

22. Why did officer Debski not report generating an "online rating" for the coins, showing supposedly owed taxes? What was the purpose of producing this rating?

The online rating form was not provided to Mr. Hociung by BSO Debski nor did he review it before it was handed to Mr. Hociung.

As indicated in BSO Debski's narrative report, a copy of the online rating report was provided to Mr. Hociung to illustrate an approximate amount of tax calculated for the coins.

23. Explain in detail how the "online rating" came to show a 13% tax rate for the gold coins, while a call to CRA to clarify the same question yielded a conclusion that the gold and silver coins are tax exempt?

The online rating report is populated from the Traveller Entry Processing System (TEPS). The system is used to determine the duties and taxes owing on imported goods. The system automatically generates the related rates of duty/taxes based on the Customs Tariff classification code that is entered. The system has various methods to help classify items such as common commodity types or keyword searches to apply the applicable HS codes.

In this case, the calculation was made based on Customs Tariff classification code no. 7118.10.00.00.

However, during the ministerial review, it was later determined that the coins were tax exempt, and as such, the amount owed for the terms of release was lowered accordingly.

24. Did officer Debski intend to charge the plaintiff 13% of the value of the coins, as shown on the "online rating", had they been reported according to *Customs Act* section 12?

At the time of the seizure, terms of release for the return of the seized coins was calculated by the Integrated Customs Enforcement System in the amount of \$1,606.97, as indicated on the Seizure Receipt.

As mentioned above however, during the ministerial review, it was determined that the coins were tax exempt due to purity levels, and as such, the amount owed for terms of release was lowered accordingly.

25. Is the 13% tax typically charged for all importations of gold and silver coins into Canada? Provide detail as to how the CBSA determines which coins are subject to this tax.

The rate of duty and taxes applicable to imported gold and silver coins is dependent upon the purity level of the coins in question. If coins meet the required purity level, they are unconditionally duty free and tax exempt. However, if they fall below the purity level, then HST is applicable.

26. In his narrative report, the Officer Debski quoted "only coins issued [...]". Include the complete reference to the document he is quoting, and the full text of the section quoted, and explain how he arrived at the conclusion that the stated criteria do not match the coins he seized as goods?

The criteria, as per his narrative report are:

- minted with metals at the required purity levels
- issued by a government authority

See attached – "Information Bulletin – Precious Metals – Bullion and Coin"

27. Why did the seizing Officer Debski feel he needed to consult the Superintendent? What questions did he ask the superintendent? Was it to confirm whether an arrest was appropriate? Please include the superintendent's officer notebook entries as evidence, and list all questions officer Debski asked the superintendent.

**BSOs are supposed to consult with a superintendent any time enforcement action takes place. Recollection is that the discussion focused on how the coins should be treated, as currency or a commodity. Superintendent Kroeker does not have any notes with respect to this discussion or enforcement action.**

28. When did Superintendent Kroeker commence employment with the CBSA?

**September 2002**

29. When did Officer Debski commence employment with the CBSA?

**November 2010**

30. Is the Superintendent's advice that gold coins that match the criteria in the document he referred to in question 26 incorrect according to CBSA's Legal Services Unit? Explain in detail your reasoning why the Superintendent was correct or incorrect.

**The information contained in the information bulletin at question 26 is correct and in line with the CBSA's current position with respect to gold and silver collector coins.**

31. Explain in detail how the CBSA "Online rating" software generates a tax rate as output. What inputs are used in the determination, and how are they processed to produce the output rating?

**Please refer to the answer provided in question 23.**

32. Please provide the video recording from security cameras or other recording sources within the CBSA control, showing the interaction between Officer Christopher Debski and Radu Hociung on Oct 21, 2014 between the approximate times of 17:48 and 19:15, and the transcript of the conversation.

**Video footage of the enforcement action is not available. The CBSA does not maintain transcripts of conversations had with the public.**

33. The seizing officer claimed that if the "terms of release" are paid, then no tax or duty are owed, not even the tax he claimed to be applicable as per his own online rating. Is this correct according to CBSA? Explain in detail, with complete references to applicable legislation, why the CBSA "terms of release" would absolve an importer from the obligation to pay taxes and duty. Does this policy apply only to gold and silver coins, or generally to any imported goods?

**Following the seizure of goods, BSOs may return the goods pursuant to subsection 117(1)(a) of the *Customs Act*, upon payment of an amount of money equal to the aggregate of the value for duty of the goods and the amount of duties levied thereon at the time of the seizure.**

**For the purposes of the *Customs Act*, the term "duties" means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*. That said, the amount of terms of release calculated for the return of goods is said to include all applicable duties and taxes.**

34. Is "Jeff" in John Dancause's Jan 29 letter the same as Jeff Strickland?

Yes.

35. Who is the author of the Feb 12, 2015 memo to "M Lefebvre" listed in the privileged documents?

**OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**

36. Explain in detail why Jeffrey Strickland omitted to mention or consider John Dancause's letter of Jan 29, 2015, which is supported by direct references to the *PCMLTFR* and the *Currency Act*, including underlining of the relevant paragraphs, in his case synopsis.

Joffrey Strickland was the Minister's delegate who rendered the decision under section 131 and 133 of the *Customs Act*. The Case Synopsis and Reasons for Decision was prepared by an adjudicator, Martine Gagnon, of the Recourse Directorate, for Mr. Strickland's consideration.

Further consideration was given to John Dancause's comments, as captured in the fifth paragraph on the second last page of the Case Synopsis and Reasons for Decision, which says:

*"...When applying the principles of statutory interpretation, the common denominator under the definition of "cash" as per the PCMLTFR is in the phrase "intended for circulation". As the PCMLTFR translates the term "cash" in French as "espèces" is to equate the term "currency" in the context of the PCMLTFA and PCMLTFR. Therefore, foreign coins intended for circulation would be considered as currency to be reported under the provisions of the PCMLTFA unless they are not intended for circulation, in which case they would be considered goods to be reported under the CA."*

37. Is John Dancause's Jan 29, 2015 recommendation that the coins are currency, wrong? Explain in detail your reasoning, whether the CBSA deems the conclusion correct or Incorrect.

The CBSA's position, as articulated to you in the Minister's decision on May 28, 2015, is that the gold and silver coins that were purchased in the U.S. are not considered currency subject to the reporting requirements of the *PCMLTFA*, but rather are considered goods that must be reported in accordance with the *Customs Act*.

38. Is the Minister of Finance's sworn affidavit on April 15th, 1999, regarding Canadian gold and silver coins, incorrect, according to the CBSA? Explain in detail your reasoning.

**OBJECTION – Not Relevant pursuant to Rule 242(1)(b) of the Federal Court Rules.**

39. Please include the full text of the legal opinion rendered by the Legal Services Unit on April 30, 2015, as claimed by Jeffrey Strickland. Also include the "statutory interpretation" he refers to in his case synopsis.

**OBJECTION – Solicitor-Client Privilege pursuant to Rule 242(1)(a) of the Federal Court Rules.**

40. Please include the full text of the legal opinion rendered by the Legal Services Unit on Feb 26, 2015.

**OBJECTION – Solicitor-Client Privilege.**





## Information Bulletin

Planning and Program Integration Division – Program Services

# PRECIOUS METALS – BULLION AND COIN TARIFF CLASSIFICATION AND HST EXEMPTION

In recent months, there has been an increase in the buying and selling of precious metals with many people looking to this commodity as an investment strategy, a "hedge" or safe haven against economic, political, social or currency issues. Gold is the most popular metal with silver, platinum and palladium the other major investment metals. All have risen in price over the past several years as demand has increased around the globe.

When imported into Canada, precious metals in certain forms are duty-free and GST/HST exempt. They will be duty-free by the application of the proper tariff classification and tax exempt by means of the Non-Taxable Imported Goods (GST/HST) Regulations (paragraph 3(a)). **Please note:** currently, the Travelers Entry Processing System (TEPS) is applying GST/HST to imported precious metals. This error is due to be corrected with the next release but until this takes place, the TEPS user can change the default GST/HST field. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed for precious metals importation at this time.

The purpose of this bulletin is to provide information to port-of-entry personnel that will assist them in identifying, classifying and documenting goods made of precious metals.

## What is a Precious Metal?

A metal is deemed to be precious if it is rare. A precious metal is defined in the Excise Tax Act as:

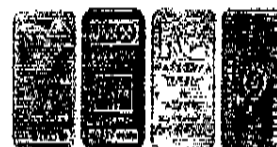
...a bar, ingot, coin or wafer that is composed of gold, silver or platinum and that is refined to a purity level of at least:

- (a) 99.5% in the case of gold and platinum, and
- (b) 99.9% in the case of silver.

A precious metal in the form of a bar, ingot or wafer at the required purity levels must be recognized and accepted for trading on Canadian financial markets. They will bear markings indicating their purity level and will also have an identification mark of the issuing financial institution or refinery. With respect to coins, only those metals at the required purity levels that have been issued by a government authority and that may be used as currency will qualify. (Although not specifically named in the Excise Tax Act, the accepted purity level for palladium is 99.5%.)

## Is There a Difference Between 'Bullion' and 'Coin'?

The bulk quantity of precious metals are referred to as **bullion** which describes a precious metal formed into bars, ingots or other forms, generally as distinguished from coins. Bullion is assessed by weight and purity level, and is traded on its intrinsic metal value. The weight of bullion is usually measured in troy ounces, where one troy ounce is equal to approximately 31g. A recognized bullion bar is one that was minted by a major, well-known refinery, such as the Royal Canadian Mint or Johnson-Matthey, and is accepted for trading on Canadian financial markets.



A coin is a piece of metal intended for use as legal tender and stamped with marks or inscriptions which show that it was issued by an authority that guarantees its weight and purity. The word 'bullion' is also used to refer to coins and many mints issue bullion in coin form. Although a precious metal coin is produced with a negotiable face value (also known as the denomination), the bullion content is typically much higher than the face value and such coins are bought and sold based on how much bullion they contain and the current market rates for the metal.

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Bullion coins are not to be confused with numismatic coins which are old or rare currencies that are collected for their historical significance and aesthetic quality. A numismatic coin can be a regular-issue coin or commemorative coin, token or trade dollar. Examples of this would be antique coins, such as the Greek coin or special Christmas issue of a Canadian 50-cent piece, pictured at right. They are collectible but the worth of these coins is generally determined by the finish, rarity, and design. Although numismatic coins can include precious metal coins that were once legal tender, the market is quite different than that for bullion coins which is based entirely on the value of the precious metal itself.



### Identifying Precious Metals

- **Manufacturer** – The entity that casts the bullion is identified on the surface. On bars, this is usually a company or government. On coins, it is a country's government mint.
- **Weight** – The weight of the bullion is listed in either ounces or grams. The weight refers to the weight of the metal contained in the bullion and not the overall weight of the coin or bar.
- **Purity** – The purity is listed as a decimal. For example, gold is shown as .9999 pure, or in karats like 24K, both of which are considered pure gold. If the gold bullion purity is not marked, it is 22K gold or 91.3 percent gold. Platinum will also show .9999 while silver and palladium will be marked from .995 (minimum) to .9999.
- **Date** – The year a bullion coin is minted is usually stamped on it. Most bullion bars do not have dates.
- **Identification** – Many bars have identification numbers stamped on them. Most coins do not.



Examples of precious metal. Left to right: Canadian \$50 gold coin; silver bullion bar; Royal Canadian Mint gold ingot; Credit Suisse platinum wafer.

### Tariff Classification

When imported, precious metals in bar, ingot or wafer forms are to be treated as goods for customs purposes and classified accordingly. Coins are also to be treated as goods and not as currency. Although the coins technically have legal tender status in Canada, the face value of a gold, silver or platinum bullion coin is purely symbolic and much lower than its actual market value. Only those coins minted with metals at the required purity levels and issued by a government authority qualify. A Cross-Border Currency or Monetary Instrument Report (E667 or E677) is not required to be filed by an importer or exporter at this time.

The following tariff classifications are recommended:

Silver bullion	7106.91.00.11	Silver bullion, unwrought forms, containing by weight 92.5% or more of silver
Gold bullion	7108.12.00.11	Gold bullion, unwrought forms, containing by weight not less than 99.95% of gold
Platinum bullion	7110.11.00.00	Platinum, unwrought or in powder form
Palladium bullion	7110.21.00.00	Palladium, unwrought or in powder form
Gold coins	7118.90.00.10	Gold coin, being legal tender
Silver or Platinum Canadian coins	7118.90.00.91	Canadian coins, other than gold, being legal tender
Silver, Platinum or Palladium coins	7118.90.00.99	Coin, other than gold or Canadian, being legal tender

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## Niagara / Fort Erie

### Document Completion and Applying Tax Exemption

It is advisable to complete a B15 Casual Goods Import Document for declared importations of precious metals. Given the values of such importations, it is in the importer's best interests to have documentation of such goods.

When completing a B15, go to the TEPS screen and select a commodity or enter a tariff item. When the calculation page opens up, the selected commodity or tariff item will be shown, along with the appropriate rate of duty (which should be nil) and an HST rate of 13%. At the bottom of the screen, it will say "Do you need to update any of the above information?" Enter Y for yes. Tab over to the GST/HST and enter zero. Tab down until the Declared Value box comes up, at which time a value should be entered and the process can continue as usual. (Please note that all B15s that are overridden in this manner will appear on the end of day report.)

For enforcement actions, in the Allegation area, select the appropriate allegation (i.e. non-report) and level then click Continue to proceed to the Commodity screen. From the drop-down commodity menu, select **Unconditionally Duty Free & Tax Exempt Goods**. At this time, this is the selection that will apply the appropriate Terms of Release for precious metals of this type, as outlined in the Enforcement Manual – Part 5, Chapter 2, section 101. Selecting the Metal Products, Precious Metals commodity will apply the grouping principle of calculating terms of release based on a percentage of combined rates of duty and taxes.

**In the event of a seizure of precious metals, Border Services Officers and Superintendents are requested to contact the Intelligence Unit at 905-354-6595, or after hours by using the duty-pager 1-800-263-1420, unit 352801.**

### Determining Value in the Absence of Receipts or Documentation

Legitimate importers of precious metals will most likely have sales receipts showing the purchase price of their goods, as well as full descriptions that will aid in classification. However, it does happen that receipts are lost or, in the case of undeclared goods, that documentation is not available or expected.

Should a receipt or other documentation not be available, it is suggested that an Internet search for current prices of precious metals be conducted. Such prices will not be available from the Bank of Canada as this agency does not provide them, unlike the daily currency exchange rates. It will, therefore, be necessary to rely on commercially-based websites. Some websites that are currently available and can be used for research are shown below. These sites report daily market quotes but it is suggested that more than one website be checked to determine an accurate and/or average price.

[www.scotiamocatta.com](http://www.scotiamocatta.com)

Scotia-Mocatta is the global bullion banking division of the Bank of Nova Scotia, formed in 1997 by the bank's acquisition of Mocatta Bullion from Standard Chartered Bank in London. Currently, up-to-the-minute prices for gold, silver, platinum and palladium are shown in a bar at the top of the home page. Prices are also available by going to Tools then Precious Metals Pricing and selecting the desired metal.

<http://www.kitco.com/market>

Kitco is an American-based precious metals retailer, with a location in Montreal. On the home page, a precious metals chart provides a Canadian dollar link to a one-page summary of current gold, silver, platinum and palladium prices.

<http://goldprice.org/>

Goldprice is an Australian website providing free gold information – they do not buy or sell precious metals. Prices for other types of precious metals can be accessed by clicking on the appropriate links on the website's home page or using their affiliated addresses: <http://silverprice.org/> - <http://platinumprice.org/> - <http://palladiumprice.org/>

### Further Information

For additional information or guidance, please contact Julia Cossitt, Program Services at 905-354-6595, ext. 241.

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Page 3 of 3

October 2010

**Subject:** T-1450-15 Examination for Discovery of the Defendant  
**From:** Radu Hociung <radu.cbsa@ohmi.org>  
**Date:** 02/02/2017 9:48 AM  
**To:** "Peterson, Eric" <Eric.Peterson@justice.gc.ca>, "Robinson, Donna" <Donna.Robinson@justice.gc.ca>

Good morning Mr. Peterson,

Thank you for your fax dated January 31st, 2017, containing partial answers to the Written Examination for Discovery served to you on July 19, 2016.

## **Objections**

I would like to point out to you that while your client is indeed permitted to make the objections listed under Rule 242 of the Federal Court Rules, the objections must be made in the form prescribed by Rules 94 (1), (2), 95 (1), (2) with respect to documents, and 99 (2) with respect to questions, that is to say your client must bring a motion to be relieved from the requirement to produce the documents, and to have the question struck out, respectively.

An objection is not an answer, but rather a non-answer, and as such the answer affidavit you served does not answer the questions your client was asked, and thus your client's obligation to provide provide written answers by 31-JAN-2017 was not fulfilled. Thus once again, your client finds itself at risk of default judgment, respecting Rule 97, and separately Rule 210(1).

If questions could be arbitrarily answered with "Objection", without the examining party having the opportunity to defend, all questions would be answered as such by the adverse party, and the entire process of Examination for Discovery would be an exercise in futility.

I would like to point out, that while in case of Rule 210, a motion for default judgment may be brought by the plaintiff at his own discretion, Rule 97 is not so kind. In that case, a motion by the plaintiff is not necessary, and it is the Court that decides at its own discretion whether to order your client to answer or to give default judgment.

## **Regarding answers to questions**

You may have noticed that I love handling your motions, including getting paid for it. Nevertheless, I would like to make some further comments, hoping to avoid further waste of time and expense:

With respect to the answers your client wishes to object to; Rule 95 gives your client the opportunity to avoid the expense associated with the motion by stating the objection and providing a preliminary answer, and having the propriety of the question determined at trial. It

appears your client has missed this opportunity.

With respect to **questions 39 and 40**, where your client asserted solicitor-client privilege; your client has already disclosed the summary and content of these communications in letters to me dated March 9, 2015 and the Decision rendered on June 1, 2015, and thus, they are no longer covered by the requirement of being made in confidence, and therefore your client has lost privilege. In other words, express waiver of privilege occurs where the client voluntarily and intentionally discloses confidential communication, as has happened in your client's letters to me.

With respect to **question 35**, the author of the memo is not privileged information, it is metadata. Furthermore, the way this document is identified in your client's affidavit of documents is ambiguous. M. Lefebvre may have received multiple memos on Feb 12, 2015.

With respect to the questions to which your client wishes to make a relevance objection, it should be clear from the Statement of Claim why they are relevant. For this reason, I will not explain them further here, but kindly make your motions, and I will be happy to elaborate in my (paid) reply.

With respect to the Informational Bulletin (**question 26**). The document requested is evidence, and as such it must be admissible as required by the *Canada Evidence Act*. I.e, you should provide an original or certified copy, and include a affidavit of authenticity and genuineness. Furthermore, on the date this document was used for enforcement, the document's author, Julia Cossitt, had been retired for more than a year. Who is the person that assumed authorship, ownership, and continued maintenance of this document following Mrs. Cossitt's retirement?

## Questions arising from your client's answers

With respect to question 19, the following question arises from your client's answer:

**Clarification of the question: During the interaction with the Plaintiff, officer Debski explained verbally that "serious offence" means a penalty of arrest. His words were "this is an arrestable offence". Why did officer Debski not report his "arrestable offence" in his narrative report, despite using this phrase three times during the interaction?**

With respect to question 6, the following question arises from your client's answer:

**Clarification of the question: The question requested the date of the first enforcement/seizure of gold or silver coins pursuant to the CBSA's position or the Customs Act, whether this was challenged in any form (for instance by submitting an**

**Enforcement Appeal Form), and what the outcome of that challenge/appeal was. The question is not limited to challenges in a court of law, which are public information.**

## **Closing**

I would like to hereby give your client the opportunity to revise their answers, and completely answer all the questions, and thus avoid paying me once more to for handling your motions of objection. Or, enter your motions and put a smile on my pretty face.

Either way, you should handle this matter before the next CMC, or risk default judgment at the discretion of the Court. As much as I would love to bring your client to an epic trial rather than bring motions pursuant Rule 210, there is nothing I can do to avoid the Court's wrath pursuant Rule 97.

Lastly, I full-heartedly recommend you review the Rules of the Federal Court at your earliest convenience.

Sincerely,  
Radu Hociung.

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Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): [radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)

**Subject:** Re: T-1450-15 Examination for Discovery of the Defendant  
**From:** Radu Hociung <radu.cbsa@ohmi.org>  
**Date:** 07/02/2017 12:42 PM  
**To:** "Peterson, Eric" <Eric.Peterson@justice.gc.ca>, "Robinson, Donna" <Donna.Robinson@justice.gc.ca>

Good morning Mr. Peterson,

I have reviewed the remaining answers your client submitted on January 31st. In addition to the comments I made on Feb 2nd, here are the questions arising from those remaining answers. Please have your client address them at their earliest convenience, and serve an updated

**Question 5.** The document you provided in response to question 26, as well as the "legal opinions" and "legislative interpretation" of 1997 that you referred to in answer to question 10, appear to make statements to the effect that gold and silver coins are not currency. Question 5 asks about the date these two documents were first adopted/approved, and it asks that the two documents be provided as the answer. Please provide the two remaining documents, and include an affidavit of authenticity and genuineness all three, as required by the Canada Evidence Act.

To be clear, the document "Information Bulletin - Precious Metals - Bullion and Coin" discloses no author. Kindly state in the affidavit of authenticity who the author(s) of this document are, and the date it was first published/approved/issued.

Likewise state the authors for the "legal opinions" and "legislative interpretation" documents of 1997, as well as the date of first publication/approval/issuance in the respective authenticity affidavit.

The answer you gave to question 5 on Jan 31st has nothing to do with the question. The question clearly requests a date ("**when**"), a document ("include **the document**") and the **references**.

**Question 6.** The point of this question is the date of the first enforcement, whether it was challenged in any way (eg. Enforcement Appeal Form), and what was the final outcome. (Was the "terms of release" paid, was the Minister's decision to cancel the enforcement, was a Federal Court Action initiated, was it settled, etc... ie, how was the enforcement resolved in the end).

The answer you gave ("the CBSA does not have a specific policy...") does not answer the question. The other answer, that there was no challenge in a court of law, does not answer the question "was it challenged (in any way)".

**Question 7.** The point of this question is not when Mr. Strickland learnt of the position, but when he stated it himself, or when he endorsed this position, such as he did in the email to Terry Boudreau, Lesley McIntosh, and Danielle Lacroix on April 11, 2011. Presumably this email was in his email inbox since about August 31st, 2010, when Joanne Lepage responded to the Treasure Island ruling request (possibly he was blind copied by Joanne). How did Mr. Strickland come to be aware

of Ms. Lepage's August 31st, 2010 email?

Based the Defendant's affidavit of documents, it appears Mr. Strickland was introduced to the position on August 31st, 2010, or earlier, not in April 2011 as you stated. Explain if this is not correct.

In any case, once again, the question was not about Mr. Strickland learning about the position, but about advising others of it (ie, state or endorse).

**Question 10.** The question was not about Joanne's first learning about the position, but about the time she first advised others (ie, state or endorse). One example of her stating it is the email dated August 31st, 2010 to [MMeyer@livingstonintl.com](mailto:MMeyer@livingstonintl.com) regarding "Treasure Island Coins - CBSA ruling request".

When was the earliest time that Joanne advised anyone else of this position in the 13 years between 1997 when she was introduced to it, and August 31st, 2010 when she clearly stated it?

Also please enter into evidence the Legal Opinions and the Legislative Interpretation of 1997 that you referred to, by attaching the documents to your reply, together with the respective affidavits of authenticity and genuineness.

**Question 11.** The CBSA was created on December 12, 2003. Explain how Joanne was employed with the CBSA since 1990 if the agency was created 13.5 years later? Was she perhaps employed with the Canada Customs and Revenue Agency prior to 2003? What was her first position and department within the CBSA? Was Joanne an officer of the CBSA Crown Corporation (ie, did she have the power to represent the corporation) on August 31st, 2010, or on the date she stated the position referred to in Question 10?

**Question 14.** I would like to change the question, by changing the phrase "**Enumerate all** the gold and silver coin types" to "**List any** gold and silver coin types..."

**Question 22.** Was the online rating provided at BSO Debski's request, and per his instructions with respect to amounts, goods descriptions and tariff classification? Were the instructions given after BSO Debski consulted with the Superintendent and learnt of how the coins are to be classified, or before? BSO Debski's narrative report states that the rating was provided as a courtesy. Who was extending this courtesy, if not BSO Debski? Did anyone else participate in the enforcement action taken by the CBSA on October 21st, 2014, and any related documentation created on that date in addition to BSO Debski?

**Question 23.** Is it routine practice for Customs officers to override the ratings given by the TEPS system, to lower the amount of tax payable to zero, or does a correction normally happen at a later time, when the importer submits a B2G form ("CBSA Informal Adjustment Request")? If overriding is routine practice, why does the rating show a 13% rating when clearly a 0% rate is more correct?

**Question 24.** The question concerns the tax that would have been charged on October 21, 2014,



had the coins been reported pursuant Customs Act section 12. If the plaintiff would have declared the coins, would the CBSA have required a 13% payment representing GST/HST tax, instead of a 25% payment representing terms of release? (Respecting the fact that neither officer Debski nor the officer who prepared the online rating were aware on October 21, 2014 that the coins were tax exempt)

Is it correct that officer Debski was not aware on October 21, 2014 that the coins were tax exempt (since he assessed a 25% terms of release rate)? Is it correct that zero-rated goods attract a 5% terms of release rate, while non-zero-rated goods attract a 25% rate?

Had the enforcement action not been necessary, and the 13% tax been paid at the time of importation, on October 21, 2014, would it have been refunded in full if the plaintiff later found out about the miscalculation and submitted a B2G form ("CBSA Informal Adjustment Request") ?

**Question 26.** Who is the vendor for the TEPS software, and who is responsible for providing the specifications on how the TEPS should operate? How are maintenance requests (bug reports, improvement requests) made and do they need approval of senior CBSA officers or legal opinion before they are implemented?

Please provide the bug report or document to that effect that requests the tax rating classification of precious metals be changed to not apply GST/HST to them. This bug report is mentioned in the 2nd paragraph of the first page of the "Information Bulletin - Precious Metals - Bullion and Coin". Include any additional documentation to show when the bug was filed, the description of the bug, when it was fixed, and which software release would include the bug fix, and any comments related to this bug. When did the fixed release enter service?

**Question 36.** The fifth paragraph on the second last page of the Case Synopsis and Reasons for Decision states the opposite of Mr Dancause's letter, as to contradict Mr. Dancause, but offers no rebuttal to Mr. Dancause's representations, which were backed up with underlined excerpts of the PCMLTFR and Currency Act. The letter is not even mentioned in the Case Synopsis. **Please explain** how Mr. Dancause's letter was considered even though it is not even mentioned, without being quoted, without a trace of any of its contents. After all, every other piece of correspondence is given a prominent heading in the Case Synopsis in chronological order of its receipt, followed by comments of the adjudicator.

Seeing how Mr. Dancause's letter was sent only to Ann Kendall, and it was not mentioned in the Case Synopsis, was Martine Gagnon aware of this letter when she prepared the Case Synopsis ? Was Mr. Strickland aware of Mr. Dancause's advice on the issue (seeing how he and Mr. Dancause had discussed the issue at length, per 1st para of the Dancause letter)?

Please also see below my previous email dated Feb 2nd further questions arising from your Jan 31st answers.

Kindly re-serve the Answers to Written Examination for Discovery in affidavit form as required by

Federal Court Rule 99(3), along with the requested documents, with affidavits of authenticity and genuineness.

Sincerely  
Radu Hociung.

Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): [radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)

On 02/02/2017 9:48 AM, Radu Hociung wrote:

Good morning Mr. Peterson,

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With respect to **question 35**, the author of the memo is not privileged information, it is metadata. Furthermore, the way this document is identified in your client's affidavit of documents is ambiguous. M. Lefebvre may have received multiple memos on Feb 12, 2015.

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Lastly, I full-heartedly recommend you review the Rules of the Federal Court at your earliest convenience.

Sincerely,  
Radu Hociung.

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Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): [radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)