

FEDERAL COURT

B E T W E E N :

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Defendant

DEFENDANT'S SUBMISSIONS

PART I - STATEMENT OF FACTS

1. The Honourable Justice Gleeson requested the Respondent's position on a direction submitted June 9, 2020.¹

PART II - POINTS IN ISSUE

2. Is the decision of the Federal Court of Appeal binding on the Federal Court
3. Should specific paragraphs of the Plaintiff's amended Statement of Claim be permitted amendment?
4. Are there any parts of the Plaintiff's claim which may proceed
5. Are the Plaintiff's requests for declaratory relief valid?

¹ The Order of Justice Gleeson dated June 9, 2020

6. What are the Defendants position on the motions?

PART III – SUBMISSIONS

A. THE BINDING NATURE OF FEDERAL COURT OF APPEAL DECISIONS

7. Section 27 of the Federal Courts Act confers upon the Federal Court of Appeal the following powers:

“27 (1) An appeal lies to the Federal Court of Appeal from any of the following decisions of the Federal Court:²

(a) a final judgment;

(b) a judgment on a question of law determined before trial;

(c) an interlocutory judgment; or

(d) a determination on a reference made by a federal board, commission or other tribunal or the Attorney General of Canada.”

8. Section 52(b) of the *Federal Courts Act*³ allows the Court of Appeal to dispose of a decision of the Federal Court in the following manner:

“52 The Federal Court of Appeal may

(b) in the case of an appeal from the Federal Court,

(i) dismiss the appeal or give the judgment and award the process or other proceedings that the Federal Court should have given or awarded,

² R.S.C. 1985, c F-7, s. 27

³ *Ibid.*, s 52

(ii) in its discretion, order a new trial if the ends of justice seem to require it, or

(iii) make a declaration as to the conclusions that the Federal Court should have reached on the issues decided by it and refer the matter back for a continuance of the trial on the issues that remain to be determined in light of that declaration; and”

9. The Federal Court of Appeal has binding jurisdiction over the Federal Court by virtue of these paragraphs of the Federal Courts Act.

B. SHOULD SPECIFIC PARAGRAPHS OF THE PLAINTIFF’S AMENDED STATEMENT OF CLAIM BE PERMITTED AMENDMENT

10. In the Federal Court of Appeal’s decision in A-101-18, the Federal Court of Appeal writes:

“[5] In file A-102-18, this Court held that Mr. Hociung’s action was not limited to an appeal under [section 135](#) of the [Customs Act](#) and that [Rule 101](#), allowing for joinder of causes of action applied. That said, our Court also confirmed that the allegations relating to the appeal under [section 135](#) could be dismissed. This confirmation made it obvious that the officers involved in the seizure of Mr. Hociung’s coins, as well as the prosecution of his opposition to the said seizure, were acting in the performance of their duties when they concluded that Mr. Hociung had contravened [section 12](#) of the [Customs Act](#) when he failed to report these goods upon re-entering Canada after his day trip to the United States.

[6] This also means that any amendments to new claims in tort relating to the said seizure, or the fact that Mr. Hociung contravened [section 12](#) (see for example

the proposed amendment at paras 6 c) to g)) were properly dismissed for they clearly have no chance of success.

[7] Furthermore, the Federal Court has no inherent criminal jurisdiction, and I agree that any amendments, such as the references to courts having jurisdiction under [section 469](#) of the [Criminal Code, R.S.C. 1985, c. C-46 \(C.C.\)](#), to deal with allegations of fraud as defined under the [C.C.](#), to criminal conduct (such as indictable offences as per [section 467.11](#) of the [C.C.](#), and to criminal penalties were also properly dismissed.”⁴

11. It is submitted that the decision of the Federal Court of Appeal allows for paragraphs 1(f)(iii), 1(n)(iii), 17(a) and 17(c) of the Amended Statement of Claim to remain. All other paragraphs should be struck.

C. THE PLAINTIFF’S CLAIM FOR DAMAGES

12. It is submitted that Plaintiff may only make a claim for damages related to the alleged torts in threat.

13. The Plaintiff’s claim for damages is unclear at the moment and would require further submissions from both parties once the Plaintiff makes it clear what damages he is seeking.

⁴ *Hociung v. Canada (Public Safety and Emergency Preparedness*, 2019 FCA 215

D. ARE THERE ANY PARTS OF THE PLAINTIFF'S CLAIM WHICH MAY PROCEED

14. The Defendant takes the position that the Plaintiff's remaining claims for tort are not supportable as they are statute-barred by s. 106 of the *Customs Act* which provides:

106 (1) *No action or judicial proceeding shall be commenced against an officer for anything done in the performance of his duties under this or any other Act of Parliament or a person called on to assist an officer in the performance of such duties more than three months after the time when the cause of action or the subject-matter of the proceeding arose.*⁵

15. The Plaintiff's claim for damages (such as it may be) arises from actions allegedly taken by a Customs Officer on October 21, 2014. The Plaintiff initially filed a Statement of Claim on August 27, 2015 more than 90 days after they arose.

⁵ R.S.C. 1985, c. 1, s. 106

E. THE PLAINTIFF'S CLAIMS FOR DECLARATORY RELIEF

16. The Plaintiff has made a number of declarations in paragraphs 18(a) to (m) of his amended statement of claim.

17. The Federal Court of Appeal upheld the Federal Court's decision that no matter related to the contravention of s. 12 of the *Customs Act* could remain.

18. The Federal Court of Appeal wrote in its decision:

"[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."*⁶

19. Given that the decision of the Federal Court of Appeal is binding on the Federal Court and the Federal Court of Appeal determined that there was

⁶ *Hociung v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 214

no genuine issue for trial on the contravention of s. 12 of the *Customs Act*, all declaratory relief surrounding those allegations should also be struck.

F. THE DEFENDANT'S POSITION ON THE MOTIONS

20. In its submissions of November 29, 2019 the Defendant asked the Court to hold all matters in abeyance until there was a determination from the Supreme Court of Canada on the Plaintiff's application for leave.

21. The Application for leave to appeal was dismissed. The Defendant submits that the decision of the Federal Court of Appeal is upheld and binding upon the Federal Court.

22. The Defendant would seek to continue its motion to strike the allegations of threat made by the Plaintiff on the basis that the Plaintiff was jurisdictionally out of time pursuant to s. 106 of the *Customs Act*.

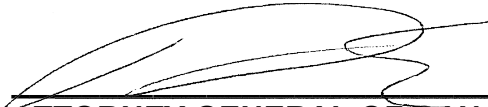
DATES FOR ORAL HEARING VIA VIDEOCONFERENCE

23. The parties have not discussed future dates for the hearing of a teleconference.

24. The Defendant is, however, available any time after July 15, 2020.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Toronto, in the Province of Ontario, this June 22, 2020.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 1T1

Fax: (416) 973-5004

Per: Derek Edwards

Tel: (647) 256-7493

E-mail: Derek.Edwards@justice.gc.ca

File: 8212493

Counsel for Defendant

TO: THE REGISTRAR
Federal Court
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: RADU HOCIUNG
246 Southwood Drive
Kitchener, Ontario
N2E 2B1

Tel: (519) 883-8454

Fax: (226) 336-8327

Email: radu.cbsa@ohmi.org

Plaintiff Acting in Person

LIST OF AUTHORITIES

1. *Hociung v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 215
2. *Hociung v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 214

APPENDIX A - STATUTES AND REGULATIONS

Customs Act, R.S.C. 1985, c. 1, s. 106

Limitation of action against officer or person assisting

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

Limitation of action to recover goods

(2) No action or judicial proceeding shall be commenced against the Crown, an officer or any person in possession of goods under the authority of an officer for the recovery of anything seized, detained or held in custody or safe-keeping under this Act more than three months after the later of

(a) the time when the cause of action or the subject-matter of the proceeding arose, and

(b) the final determination of the outcome of any action or proceeding taken under this Act in respect of the thing seized, detained or held in custody or safe-keeping.

Stay of action or judicial proceeding

(3) Where, in any action or judicial proceeding taken otherwise than under this Act, substantially the same facts are at issue as those that are at issue in an action or proceeding under this

Loi sur les douanes (L.R.C. (1985), ch. 1, s. 106

Prescription : action contre l'agent ou la personne requise de l'assister

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

Prescription : action en recouvrement

(2) Les actions en recouvrement de biens saisis, retenus ou placés sous garde ou en dépôt conformément à la présente loi, contre la Couronne, l'agent ou le détenteur de marchandises que l'agent lui a confiées, se prescrivent par trois mois à compter de celle des dates suivantes qui est postérieure à l'autre :

a) la date du fait générateur du litige;

b) la date du règlement définitif de toute instance introduite en vertu de la présente loi au sujet des biens en cause.

Suspension d'instance

(3) Lorsque dans deux actions distinctes, l'une intentée en vertu de la présente loi, l'autre non, des faits sensiblement identiques sont en cause, il y a suspension d'instance

Act, the Minister may file a stay of proceedings with the body before whom that action or judicial proceeding is taken, and thereupon the proceedings before that body are stayed pending final determination of the outcome of the action or proceeding under this Act.

dans la seconde action, sur demande du ministre présentée à la juridiction saisie, jusqu'au règlement définitif de la première action.

Federal Courts Act, R.S.C. 1985, c F-7, s. 27(1), s. 52

Loi sur les Cours fédérales (L.R.C. (1985), ch. F-7), s. 27(1), s. 52

Appeals from Federal Court

Appels des jugements de la Cour fédérale

27 (1) An appeal lies to the Federal Court of Appeal from any of the following decisions of the Federal Court:

27 (1) Il peut être interjeté appel, devant la Cour d'appel fédérale, des décisions suivantes de la Cour fédérale :

- (a) a final judgment;
- (b) a judgment on a question of law determined before trial;
- (c) an interlocutory judgment; or
- (d) a determination on a reference made by a federal board, commission or other tribunal or the Attorney General of Canada.

- a) jugement définitif;
- b) jugement sur une question de droit rendu avant l'instruction;
- c) jugement interlocutoire;
- d) jugement sur un renvoi d'un office fédéral ou du procureur général du Canada.

Powers of Federal Court of Appeal

Pouvoirs de la Cour d'appel fédérale

52 The Federal Court of Appeal may

52 La Cour d'appel fédérale peut :

- (a) quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith;
- (b) in the case of an appeal from the Federal Court,

- a) arrêter les procédures dans les causes qui ne sont pas de son ressort ou entachées de mauvaise foi;
- b) dans le cas d'un appel d'une décision de la Cour fédérale :

(i) dismiss the appeal or give the judgment and award the process or other proceedings that the Federal Court should have given or awarded,

(i) soit rejeter l'appel ou rendre le jugement que la Cour fédérale aurait dû rendre et prendre toutes mesures d'exécution ou autres que celle-ci aurait dû prendre,

(ii) in its discretion, order a new trial if the

(ii) soit, à son appréciation, ordonner un nouveau procès, si

ends of justice seem to require it, or

(iii) make a declaration as to the conclusions that the Federal Court should have reached on the issues decided by it and refer the matter back for a continuance of the trial on the issues that remain to be determined in light of that declaration; and

(c) in the case of an appeal other than an appeal from the Federal Court,

(i) dismiss the appeal or give the decision that should have been given, or

(ii) in its discretion, refer the matter back for determination in accordance with such directions as it considers to be appropriate.

(d) [Repealed, 1990, c. 8, s. 17]

l'intérêt de la justice paraît l'exiger,

(iii) soit énoncer, dans une déclaration, les conclusions auxquelles la Cour fédérale aurait dû arriver sur les points qu'elle a tranchés et lui renvoyer l'affaire pour poursuite de l'instruction, à la lumière de cette déclaration, sur les points en suspens;

c) dans les autres cas d'appel :

(i) soit rejeter l'appel ou rendre la décision qui aurait dû être rendue,

(ii) soit, à son appréciation, renvoyer l'affaire pour jugement conformément aux instructions qu'elle estime appropriées.

d) [Abrogé, 1990, ch. 8, art. 17]