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Mr. Luc Portelance
President, CBSA
6th Flr., 191 Laurier Ave. W.
Ottawa, ON K1A 0L8

05/30/24

Subject: CBSA Seizure 4273-14-0724

Mr President,

I would like to request a reassignment of adjudicator for my currency seizure appeal, on the grounds that the present adjudicator, A KENDALL, has misrepresented the PCMLTFA in order to obtain from me a payment of \$1606.97. This act contravenes section 380 of the Criminal Code, R.S.C., 1985, c. C-46.

The falsehood that A KENDALL committed can be found in her letter to me dated November 3, 2014, 2nd last paragraph, which I quote below (I preserved A KENDALL's original underlining and quotes):

Please be advised that the coins are classified as goods, as there is a tariff code for collectable [sic] coins. Further to this I should inform you that I have confirmed that under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, currency includes all foreign and domestic bank notes, and “circulation coins”. Based on the seizure, the silver and gold coins are considered as “uncirculated”, they are not considered to be currency and consequently, the seized coins are classified as goods, which must be declared in accordance with section 12 of the *Customs Act*.

While A KENDALL claims to be quoting the PCMLTFA, the underlined quotation “circulation coins” **does not exist** in the PCMLTFA, nor does this Act define currency. Her styling implies the phrase was copied literally from the text of the Act.

The legal definition of currency in Canada is found in the Currency Act, R.S.C., 1985, c. C-52. The legal definition of currency in the United States is found in US Code Title 31, and it explicitly lists the coins in question.

The legal definition of financial instruments is found in the Excise Act R.S.C., 1985 c. E-15, Part IX, section 123(1), and it includes precious metals, “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”.

When I requested an explicit reference to the section of PCMLTFA she claimed to quote, her response on December 11, 2014 was (I preserved A KENDALL's original italics and quotes):

You requested clear assertions and specific references to Acts the CBSA invokes and the legislative section number(s) that define currency. You further requested the Act name and section number that makes the determination for: “...*silver and gold coins are considered as uncirculated, they are not considered to be currency...*” In response, although the PCMLTFA does define 'monetary instruments' neither the PCMLTFA nor the CA defines 'currency.' It is the position of the CBSA that, for the purposes of administering Part 2 of the PCMLTFA, gold coins are not considered currency (circulation coins) and thus, there is no requirement to report the import or export of these items pursuant to the PCMLTFA or the related regulations. However, and as indicated above, as gold coins are considered commodities, they do fall within the reporting provisions of the CA and must be reported upon importation.

In this response she admits the quote she gave on Nov 3 does not exist. Also, she changes her claim from “collectable [sic] coins” to “commodity”, even though she's replying to a Sworn Affidavit by the Minister of Finance who explicitly provides a list of Canadian-issued gold/silver/platinum coins, and explicitly declares they are currency and therefore not subject to tax.

I would also note that after her letter on November 3rd, I followed up with a phone call on December 9th, when I pointed out that according to her interpretation, banknotes such as the C\$1000 would also not be considered currency, as they are presently withdrawn of circulation, and are presently collectible. Following this call, on Dec 11, A KENDALL changed her claim from 'collectable' to “commodities” in a renewed attempt to prove that money is subject to the Customs Act.

I would not have believed that such illegal behaviour would be possible from a public service employee, however all the evidence is in writing. Therefore I kindly request you reassign my appeal to a law abiding officer instead.

Sincerely,

Radu Hociung

Attachments