

FORM 337 - Rule 337

NOTICE OF APPEAL

APPEAL

FEDERAL COURT OF APPEAL

BETWEEN:

Radu Hociung
Appellant (plaintiff)

and

Minister of Public Safety and Emergency Preparedness

Respondent (Defendant)

NOTICE OF APPEAL

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The Registrar

Federal Court of Appeal
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AND TO:

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

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at **Toronto**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

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

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 26, 2018

Issued by: _____
(Registry Officer)

Address of local office: _____

TO:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
represented by
Eric Peterson, Counsel to the Defendant
DEPARTMENT OF JUSTICE

Ontario Regional Office
The Exchange Tower
130 King St. West
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Toronto, Ontario

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of Justice Gleeson, dated MARCH 15, 2018 on Motion for Summary Judgment in Federal Court file T-1450-15, by which the motion is granted and the action is dismissed.

THE APPELLANT ASKS that

1. The judgment be set aside.
2. An order that the action cannot be appropriately disposed by summary judgment.
3. An order that the proceeding continue towards trial.
4. Costs.
5. Any other relief that the Court of Appeal considers just.

THE GROUNDS OF APPEAL are as follows:

1. Mr Justice Gleeson, as motion judge erred in law by ignoring key elements of the authorities he used.
2. The Reasons include no standard of review analysis.

3. At para 27 of the Judgement and Reasons, the *Nguyen* proceeding was an application for judicial review, not an action. Also, Justice Shore's explanation included the key clarification "In other words, a decision made pursuant s. 131 of the Act must be challenged by way of action and not by way of application for judicial review". Thus, his comments were not intended to illustrate a limitation of scope of section 135 appeals, but to point out that the judicial review before him was not the proper way to make a section 135 appeal. He was determining an application, and would have made no sense for him to opine on actions brought pursuant to a different section to the one before him.
4. At para 28 of the Judgment and Reasons, in the *ACL Canada* action pursuant section 135, deals extensively with additional issues, thus invalidating J Gleeson's conclusion that the ACL Canada Case proved that the only remedy available in such an action is the disposition of the s.131 decision. In fact, in that case, the s.131 decision was not even appealed. It was the Minister's duty of care and his discretion in relation to penalties that was tested under the jurisdiction the court has under ss 18 and 18.1 of the *Federal Court Act*; In that case, Justice MacKay dismissed the parts of the action that related to section 135, but made judgements

in respect to the other claims, namely that in his decision under s.133 did not comply with the Defendant's duty of fairness. Justice Gleeson's error is that he understood precisely the opposite of what *ACL Canada* proved, so in determining the Motion for Summary Judgment, he relied on the opposite of existing jurisprudence.

5. Judge Gleeson's own examples of purported limitation of scope of an action that contains a section 135 claim prove that such an action is not limited to that claim.
6. Even common logic and natural justice suggests the opposite of Justice Gleeson's conclusion on jurisdiction. If multiple claims arise from the same facts, they may be brought into separate actions, but thanks to Rule 101 ("A party to a proceeding may request relief against another party to the same proceeding in respect of more than one claim") and Rule 3, General Principles ("These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits"), an ordinary action is not limited to one claims. Justice Gleeson made a fundamental error in law in not adopting the Rules of the Court, considering that the Customs Act itself does not place any such limitations to actions containing claims related to section 135.

7. Justice Gleeson erred in law by introducing evidence himself at paragraphs 58 and 60 of his Reasons and Judgment, and provided analysis of his evidence at paragraphs 59 and 61. The evidence at paras 58 and 60 was not offered by either party.
8. The evidence introduced by Justice Gleeson at paras 58, 60 would have been shown to be taken out of the context, and not helpful to proving the Defendant's case. However, as it was not part of the Defendant's representations, the plaintiff was robbed of the opportunity to cross and prove that it is irrelevant, immaterial and insufficient to establish proof of the Defendant's case. This violates the principle of natural justice.
9. Judge Gleeson was faced with conflicting evidence from the onset of his fact-finding. He did not explain how the clear conflicts in the evidence on jurisdiction should be resolved, and simply preferred the Defendant's version over the Plaintiff's. This conflict indicates that this particular action is not a good candidate for summary judgment.
10. With respect to his finding that the coins in questions are both "goods" and "currency", and the Customs Act applicability to them, Justice Gleeson erred in law by ignoring or partially ignoring the

Plaintiff's evidence adduced in the Motion Responding Record at paras 9-10, which explicitly shows that "foreign gold coins" and "coin of any metal, of authorized weight and design, issued for use as currency under the authority of the government of any country" are exempt from the provisions of section 50 of the *Excise Tax Act*, ie, not subject to tax "payable in accordance with with the provisions of the *Customs Act*". While he acknowledged this evidence at para 57 of his Judgement and Reasons, he overlooked section 50(1)(b) of the Excise Tax Act, which is exactly where the Custom's Act purpose is described. (... imported into Canada, payable in accordance with the provisions of the *Customs Act*...), ie, that the Customs Act describes how the tax is to be payed, but not whether or not tax is to be paid, or the rate of tax. In other words, these two paras from the Excise Tax Act are exactly what activate the Customs Act, and ignoring them was an error of law that renders Justice Gleeson's findings with respect to the "Currency or goods" question incorrect.

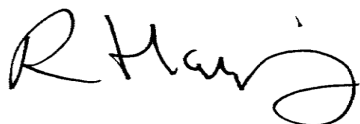
11. By introducing evidence, Justice Gleeson surrendered the impartiality he must maintain. As judge, he should only consider the evidence submitted by the parties, but not introduce any evidence himself. He failed to observe natural justice by choosing to become a party in a proceeding he was supposed to be fact finder in.

12. At paras 68-72 of the Reasons and Judgment, Justice Gleeson identified an apparent conflict in his own determination that the coins are both “currency” and “goods”, but erred in trying to explain away this conflict as “overlap”. He erred in law in not recognizing that he lacks the confidence necessary to make a summary judgment, and went on to make this summary judgment, which is fraught with inconsistency, controversy and conflicts.

13. The judge erred in law in casually dismissing claims relating to fraud by public servants, as the Criminal Code is within the jurisdiction of the Federal Court, and where the defendants include public servants, and the claim is for damages under the *Crown Liability and Proceedings Act*, the Federal Court also has original jurisdiction, as per Federal Courts Act s. 17(2) and 17(5)(b) – “relief sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant, or agent of the Crown”. These claims are properly joined with other claims arising from the same or materially same facts. Justice Gleeson erred in law in leaving these claims unresolved.

14. Justice Gleeson erred in law in treating this ordinary action as an application for judicial review in all material aspects. He arbitrarily selected only one claim to address, ignoring all others.

March 26, 2018



(Signature of appellant)

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SOR/2004-283, ss. 35 and 38