



Department of Justice
Canada

Ontario Regional Office
The Exchange Tower
130 King St. West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Ministère de la Justice
Canada

Bureau régional de l'Ontario
la tour Exchange
130 rue King ouest
Pièce 3400, CP 36
Toronto (Ontario)
M5X 1K6

Tel: (647) 256-7550
Fax: (416) 973-5004
Email: eric.peterson@justice.gc.ca

Our File: 9624574
Notre dossier:

Your File:
Votre dossier:

February 26, 2019

Radu Hociung
246 Southwood Drive
Kitchener, Ontario
N2E 2B1

Dear Sir:

Re: **HOCIUNG, Radu and Minister of Public Safety and Emergency
Preparedness**
Court File No.: A-101-18

Please find enclosed the Respondent's Memorandum of Fact and Law regarding the above noted matter which is being served upon you pursuant to *Federal Court Rules*.

Yours truly,

Eric O. Peterson
Counsel
National Litigation Sector

Encl.

Canada



Department of Justice
Canada

Ontario Regional Office
120 Adelaide Street West
Suite #400
Toronto, Ontario
M5H 1T1

Ministère de la Justice
Canada

Bureau régional de l'Ontario
120, rue Adelaide Ouest, pièce 400
Toronto, Ontario
M5H 1T1

Tel: 647-256-7550
Fax: (416) 973-5004
Email: eric.peterson@justice.gc.ca

Our File: 9624574
Notre dossier:

February 27, 2019

Federal Court of Appeal
90 Sparks Street
Ottawa, Ontario
K1A 0H9

Attention: The Registrar

Dear Sirs/Mesdames:

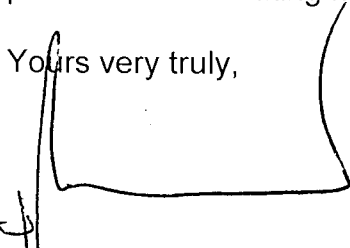
Re: **HOCIUNG, Radu v. CANADA (Public Safety and Emergency Preparedness)**
Court dockets: A-101-18 and A-102-18

I am counsel to the Respondent in the above-noted appeals. Please find enclosed the Respondent's Memorandum of Fact and Law for each appeal, with proof of service.

The Respondent notes that the Appellant has already attempted to file the requisitions for hearing. The Respondent objects to the Appellant's time estimate of two and a half days for the appeals. The Respondent submits that a total of two hours is sufficient for oral argument for the appeals. The Respondent suggests that an hour and fifteen minutes be allocated for the Appellant's submissions, half an hour for the Respondent's submissions, and fifteen minutes for any reply.

The Respondent requests a direction as to the duration of time for the appeal hearings. The Respondent also request a direction allowing the parties to file separate books of authority for each appeal rather than joint books, due to past difficulties between the parties in coordinating matters pertaining to this litigation.

Yours very truly,



Eric Peterson
Crown Counsel
National Litigation Sector
EP/dr
Encls.
Copy to the Appellant

Canada

TO: **Registrar**
Federal Court of Appeal
Suite 200, 180 Queen Street West
Toronto, Ontario
M5V 3L6

TO: **Radu Hociung**
246 Southwood Drive
Kitchener, Ontario
N2E 2B1
Tel: (519) 883-8454
Fax: (226) 336-8327

Appellant

Court file no.: A-101-18

FEDERAL COURT OF APPEAL

BETWEEN:

RADU HOCIUNG

Appellant

and

**MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

**RESPONDENT'S MEMORANDUM OF FACT AND LAW
(Appeal from Summary Judgment)**

PART I – STATEMENT OF FACTS

1. This is an appeal of the Federal Court Judgment of Justice Gleeson, dated March 15, 2018 in which he granted the Respondent's motion for summary judgment in Court file number T-1450-15 at first instance.¹ The summary judgment motion was granted after the motions judge considered and then dismissed the Appellant's motion to amend his statement of claim, filed

¹ Notice of Appeal; Appeal Book, tab 1

pursuant to section 135 of the *Customs Act*. The Judgment under appeal was therefore granted on the basis of the original unamended statement of claim.²

2. The Appellant's action was a statutory appeal of a decision of the Minister's delegate confirming that the Appellant contravened of the *Customs Act*, n by failing to declare various United States Treasury collector coins that he purchased in Buffalo, New York.³

3. On October 21, 2014, the Appellant entered Canada from the United States at the Queenston Bridge. The Appellant had in his possession four Fifty Dollar Gold Buffalo coins and twenty One Dollar Silver Eagle coins, issued by the United States Mint (the "collector coins"). The Appellant had purchased these collector coins in the United States at a total cost of \$5,700 USD.⁴

4. There is no dispute that the Appellant wilfully chose not to declare the collector coins to the Canada Border Services Agency (CBSA). The Appellant takes the position that the collector coins are not goods but rather currency. Because the face value of the currency is less than \$10,000 CAN, the Appellant contends that there was no obligation to report.⁵

² Judgment and Reasons, at paragraph 2; Appeal Book, tab 2

³ Statement of Claim in Federal Court file T-1450-15; Appeal Book, tab 3

⁴ Statement of Claim, above, at paragraph 1 (a) and (b); Appeal Book tab 3. Judgment and Reasons, at paragraph 3; Appeal Book, tab 2.

⁵ Statement of Claim, above, at paragraph 1 (a), (b), (c), and (e); Appeal Book, tab 3

5. The CBSA seized the Appellant's collector coins for his failure to report them as goods subject to the reporting requirements of the *Customs Act*. The appeal of this enforcement action to the Minister of Public Safety and Emergency Preparedness was confirmed by the Minister's delegate -, and that decision was upheld by the motions judge. This appeal follows.⁶

PART II – POINTS IN ISSUE

6. The Respondent submits that there are two points in issue in this appeal:

(1) What is the standard of review for an appeal from a decision of a judge of the Federal Court granting summary judgment at first instance?

(2) Did the motions judge commit a reviewable error in determining that there is no genuine issue requiring a trial and granting summary judgment on the issue of whether the collector coins are goods or currency?

PART III – SUBMISSIONS

Appellate standard of review

⁶ Judgment and Reasons, at paragraphs 4 through 6; Appeal Book, tab 2

7. In reviewing a decision of the Federal Court granting summary judgment at first instance, absent palpable and overriding error, in findings on questions of mixed fact and law deference is required. Where a finding involves a pure question of law, this Court reviews for correctness.⁷

Test for summary judgment in actions under section 135 of the *Customs Act*

8. The Supreme Court in *Hryniak* decided that the test on a motion for summary judgment is whether there is a genuine issue requiring a trial.⁸

9. Here, the motions judge determined that there was not a genuine issue to be decided at trial. The issues to be determined in this action, namely, whether there had been a contravention of the *Customs Act* by virtue of the Appellant's refusal to report the foreign collector coins as goods could be determined in the summary judgement motion before him through the resolution of two questions. First, are non-circulating collector coins classified as "currency" for the purpose of the reporting requirements of the *Customs Act*? Second, are such coins classified as "goods" for that purpose?⁹

⁷ See *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, at paragraphs 80 through 84. The Supreme Court framed the test in the context of its own standard of review. It is submitted that this appellate standard of review applies equally to an appeal to this Court from a judge of the Federal Court deciding a motion for summary judgment at first instance.

⁸ *Hryniak*, above

⁹ Judgment and Reasons, at paragraphs 7, 17, 18, 20, and 24; Appeal Book, tab 2

10. The motions judge held that this genuine issue involved the determination of a pure question of law. The parties were agreed on this point.¹⁰

11. The motions judge also held that this issue was to be determined *de novo* because it was framed in the context of an action brought pursuant to section 135 of the *Customs Act*.¹¹ The record of proceeding before the administrative tribunal (in this case, the Minister's delegate) is not relevant in this context (in contrast to an application for judicial review with respect to the imposition of a penalty under the *Customs Act*, for example).

The collector coins are “currency”

12. In dealing with the question of “currency”, the motions judge considered the relevant legislation and regulations at length, citing several provisions from the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and Regulations, the Cross-border Currency and Monetary Instruments Reporting Regulations, the *Royal Canadian Mint Act*, and the *Currency Act*.¹²

¹⁰ Judgment and Reasons, at paragraphs 21 through 23; Appeal Book, tab 2

¹¹ Gleeson J. cited *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 on this point, and in particular, paragraph 24 of Justice Harrington's decision. See paragraph 32 of Justice Gleeson's Judgment and Reasons; Appeal Book, tab 2

¹² In particular, the motions judge reviewed the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, subsections 1(2) and 12(1); the *Proceedings of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, subsection 1(2) definitions of “cash” and “funds”; the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412; the *Royal Canadian Mint Act*, R.S.C., 1985, c. R-9, section 2 definitions of “circulation coins” and “non-circulation coins”, and sections 6 through 7;

13. The motions judge correctly determined that the collector coins are currency and may be used as legal tender. The motions judge noted that to use collector coins to pay for goods and services, as legal tender based on the face value of the coins, might be irrational.¹³

The collector coins are “goods”

14. The motions judge then canvassed the same legislation and regulations in the context of the question of whether the collector coins are “goods”. In addition, the motions judge considered the definition of “goods” in the *Customs Act* and the definition of “money” in the *Excise Tax Act*.¹⁴

15. The motions judge correctly concluded that where the fair market value of currency exceeds the face value, the currency becomes “goods” for the purpose of the reporting requirement in section 12 of the *Customs Act*.¹⁵

16. Here, there is no dispute that the fair market value of the collector coins far exceeds their face value. The total face value of the collector coins is

and the *Currency Act*, R.S.C., 1985, c. C-52, sections 7 and 8. See Judgment and Reasons, paragraphs 36 through 51; Appeal Book, tab 2.

¹³ Judgment and Reasons, paragraphs 51 through 55; Appeal Book, tab 2. However, it would be rational to use the *fair market value* of collector coins to pay for goods and services of equal value.

¹⁴ *Customs Act*, section 2 definition of “goods”, and section 12; *Excise Tax Act*, R.S.C., 1985, c. E-15, subsection 123(1) definition of “money”. See Judgment and Reasons, paragraphs 58 through 67; Appeal Book, tab 2.

¹⁵ Judgment and Reasons, paragraph 62; Appeal Book, tab 2

\$220 USD. The Appellant paid \$5,700 USD for the collector coins.¹⁶ As a result, the fair market value of the collector coins was 25.9 times the face value as of the date of the enforcement action.

17. Further support for the position that collector coins are goods is found in the *Customs Tariff*, S.C. 1997, c. 36, and in particular, tariff items 7118.90.00.10 (gold coins that are legal tender), 7118.90.00.99 (silver coins that do not have numismatic value), and 9705.00.00.00 (silver coins that have numismatic value). These coins are covered by the Tariff because of their distinctive value as precious metals. Note 4(A) to Chapter 71 of the Tariff defines “precious metal” as “silver, gold and platinum”.¹⁷

18. The Explanatory Notes to the Tariff confirm the position that the collector coins at issue in this appeal fall under this item of the *Customs Tariff*.¹⁸ The Supreme Court has held that the Explanatory Notes, while technically not binding, should nevertheless be considered in determining the classification of goods.¹⁹

¹⁶ See paragraph 3 above. By way of extreme example, the highest recorded price ever paid for a collector coin is \$10,016,875 paid at public auction in January of 2013 for a 1794 Flowing Hair Dollar coin. The Flowing Hair Dollar coin was the first dollar coin issued by the United States federal government. The same coin was previously sold in 2010 for what was then a record sum of \$7.85 million USD. See *Reuters* article by P. Reaney, “Rare 1794 silver dollar sells for record \$10 million at U.S. auction”, January 24, 2013.

¹⁷ The full text of these provisions of the *Customs Tariff* are found at Appendix A to this Memorandum.

¹⁸ World Customs Organization. *Explanatory Notes to the Harmonized Commodity Description and Coding System*, 5th ed. Brussels: Customs Co-operation Council, 2012.

¹⁹ *Canada (Attorney General) v. Igloo Vikski Inc.*, [2016] 2 S.C.R. 80, at paragraph 8, per Brown J. for the majority

19. In practical terms, if the foregoing tariff items apply to the collector coins, the coins would be subject to a zero rate tariff. However, as goods, they would be subject to the Goods and Services Tax and possibly provincial taxes. These taxes provide an additional basis to impose the reporting requirement under section 12 of the *Customs Act* for the collector coins.

20. The jurisprudence under the federal *Export and Import Permits Act*, R.S.C., 1985, c. E-19 (the “EIPA”), also lends support to the position that the collector coins are goods. In two reported decisions, *R. v. Behm*, 1969 CanLII 995 (Que. C.A.), and *R. v. Vanek, Ex Parte Cross*, 1969 CanLII 888 (Ont. S.C.), the courts found that collector coins and bullion are goods for the purpose of the EIPA. As the EIPA is a statute in relation to customs matters, the reasoning in these cases should apply to the classification of collector coins under the *Customs Act*. If something has been classified as a good under the EIPA, it should be a good under the *Customs Act*. Otherwise federal customs authorities would be faced with an enforcement gap.

21. Treating collector coins as goods is consistent with prior statements by this Court that goods are tied to the notion of sale and commercial value: *A & R Dress Co. Inc. v. Canada (Minister of National Revenue)*, 2006 FCA 298, at paragraph 5, where Justice Décary wrote for the Court:

[5] When examining the *Customs Tariff*, one must start from the premise that the word “goods” (“*marchandises*” in French) refers to “items in circulation on the commercial

market and destined to be sold; goods offered for sale” (see *Enterprises Kato Inc. v. Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)* (F.C.A.), November 21, 1983, A-481-82, by Marceau J.A.). The need to resort to an authoritative jurisprudential definition arises because even though section 4 of the *Customs Tariff* imports the definition contained in subsection 2(1) of the *Customs Act*, the definition of “goods” in that subsection is of no help in the case at bar. We appreciate that *Enterprises Kato* dealt with the *Excise Tax Act*, R.S.C. 1970, c.E-13, but since “duties” is defined in the *Customs Act* as “any duties or taxes levied on imported goods under the Customs Tariff, the *Excise Tax Act* ...”, it is fair to say that the ordinary and accepted meaning of “goods” applies to both statutes.

22. Justice Décarý’s comments in *A & R Dress Co.* also support the position that where two or more statutes are *in pari materia*, the meaning of terms should be the same as between the statutes, for the sake of coherence. On this basis, the meaning and classification ascribed to “goods” in the cases decided under the *Export and Import Permits Act* and the *Excise Tax Act* should extend to the *Customs Act*, on the basis that all of these Acts are *in pari materia*, namely, customs matters relating to the importation of goods into Canada.²⁰

No genuine issue requiring a trial

23. The motions judge correctly determined that an action under section 135 of the *Customs Act* is limited to the sole issue of whether there has been a contravention of the *Customs Act*. The motions judge reviewed the

²⁰ The long titles of these Acts, and various sections of each Act, establish that these Acts are *in pari materia*. These provisions are found at Appendix A to this Memorandum.

relevant provisions of the *Customs Act* dealing with (1) actions under section 135, (2) proceedings under subsection 106(1) against officers for acts done in the performance of their duties, and (3) applications for judicial review of penalties imposed under section 133.²¹ The motions judge then referred to and applied four decisions of the Federal Court dealing with this issue.²²

24. The motions judge found that the balance of relief sought in the statement of claim relating to the claim for damages and *mandamus* was outside the scope of an action under section 135.²³

25. As a result, the motions judge correctly determined that the genuine issue involving the pure question of law could be decided on the motion for summary judgment, without requiring a trial. The motions judge also correctly determined that there were no other issues to be decided in the action that were within the scope of section 135.

26. Accordingly, the motions judge correctly granted summary judgment and dismissed the Appellant's claim. There is no reviewable error in the decision of the motions judge that requires this Court to intervene.

²¹ Judgment and Reasons, paragraphs 25 and 31; Appeal Book, tab 2

²² *ACL Canada Inc. v. Minister of National Revenue* (1993), 107 D.L.R. (4th) 736, *Dokaj v. Canada (National Revenue)*, 2005 FC 1437, *Nguyen v. Canada (Public Safety and Emergency Preparedness)*, 2009 FC 724, and *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208. See Judgment and Reasons, paragraphs 26 through 32; Appeal Book, tab 2.

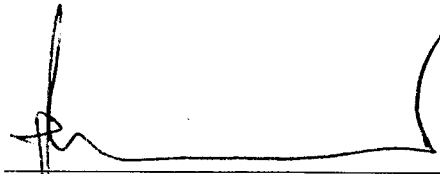
²³ Judgment and Reasons, paragraphs 16 through 20; Appeal Book, tab 2

PART IV – ORDER SOUGHT

27. The Respondent asks that this appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 27th day of February, 2019

A handwritten signature in black ink, appearing to read 'Eric Peterson', is written over a horizontal line.

Eric Peterson, Crown Counsel
Of Counsel for the Attorney General of
Canada

**DEPARTMENT OF JUSTICE
CANADA**

Ontario Regional Office, Toronto

Counsel to the Respondent

PART V – LIST OF AUTHORITIES

Cases

A & R Dress Co. Inc. v. Canada (Minister of National Revenue), 2006 FCA 298

Canada (Attorney General) v. Igloo Vikski Inc., [2016] 2 S.C.R. 80

Hryniak v. Mauldin, [2014] 1 S.C.R. 87

R. v. Behm, 1969 CanLII 995 (Que. C.A.)

R. v. Vanek, Ex Parte Cross, 1969 CanLII 888 (Ont. S.C.)

Secondary Sources

Reaney, P., “Rare 1794 silver dollar sells for record \$10 million at U.S. auction”, January 24, 2013”, *Reuters*, January 24, 2013

APPENDIX A - STATUTES AND REGULATIONS

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

An Act respecting Customs

Duties binding on Her Majesty

3 (1) All duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other law relating to customs are binding on Her Majesty in right of Canada or a province in respect of any goods imported by or on behalf of Her Majesty.

Report

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.

Federal Court

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.

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

An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof

Definitions

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

List of Tariff Provisions means the List of Tariff Provisions set out in the schedule.

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.

Elements of the List of Tariff Provisions

3 The List of Tariff Provisions is divided into Sections, Chapters and sub-Chapters.

SCHEDULE

Section XIV

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

Notes

1. Subject to Note 1 (a) of Section VII and except as provided below, all articles consisting wholly or partly: ...

(b) Of precious metal or of metal clad with precious metal, are to be classified in this Chapter.

4. (A) The expression "precious metal" means silver, gold and platinum.

<u>Tariff Item</u>	<u>Description of Goods</u>
71.18	Coin
7118.90.00.10	Gold coin
7118.90.00.99	Other

Section XXI

Chapter 97: Works of art, collectors' pieces and antiques

<u>Tariff Item</u>	<u>Description of Goods</u>
9705.00.00.00	Collections and collector's pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic, or numismatic interest

Explanatory Notes (from: *World Customs Organization. Explanatory Notes to the Harmonized Commodity Description and Coding System*, 5th ed. Brussels: Customs Co-operation Council, 2012)

71.18 – Coin (+).

7118.10 - Coin (other than gold coin), not being legal tender

7118.90 - Other

This heading applies to coins of any metal (including precious metals) of officially prescribed weight and design, issued under government control for use as legal tender. Consignments of individual coins or of sets of coins which are legal tender in the country of issue are classified in this heading even if they are put up for general sale in presentation cases. The heading includes coin which is no longer legal tender but it excludes collectors' pieces (see Explanatory Note to heading 97.05).

Coins are made by stamping out blanks from sheet metal; these are then "struck" with the appropriate dies to produce simultaneously the designs on the two faces.

The heading does not cover:

(a) Medals even if "struck" in the same way as coins; these usually fall in heading 71.13, 71.14 or 71.17 or heading 83.06 (see corresponding Explanatory Notes).

(b) Coins mounted in brooches, tie-pins or other objects of personal adornment (heading 71.13 or 71.17).

(c) Broken, cut or battered coins of a kind usable only as scrap or waste metal.

Subheading Explanatory Note.

Subheading 7118.10.

This subheading includes:

- (1) Coins which were legal tender but have been withdrawn from circulation.
- (2) Coins struck in one country to be put into circulation in another country; at the time of crossing the frontier, they are not yet issued as legal tender by the competent authority.

97.05 – Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest.

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

- (C) Collections and collectors' pieces of numismatic interest.

These are coins, banknotes which are no longer legal tender, other than those of heading 49.07, and medals presented as collections or as separate pieces; in the latter case, each consignment usually contains only a few examples of any one coin or medal, and these are classified here only if clearly intended for a collection.

The heading excludes coins and medals not regarded as collectors' pieces nor forming a collection of numismatic interest (e.g., large consignments of any one coin or medal); these generally fall in Chapter 71, but any such "coins" and "medals" so battered or bent that they are fit only for remelting, etc. are *prima facie* classifiable in the headings for scrap and waste metal.

Coins which are legal tender in the country of issue fall in heading 71.18 even if they are put up for general sale in presentation cases.

Coins or medals mounted as jewellery are excluded (Chapter 71 or heading 97.06).

Banknotes which are no longer legal tender, and which are not regarded as collectors' pieces nor as forming a collection, are classified in heading 49.07.

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, do not fall in this

heading as collections or collectors' pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

Export and Import Permits Act, R.S.C., 1985, c. E-19

An Act respecting the export and transfer of goods and technology and the import of goods

Customs officers' duties

24 All officers, as defined in the *Customs Act*, before permitting the export or transfer of any goods or technology or the import of any goods, shall satisfy themselves that the exporter, importer or transferor, as the case may be, has not contravened any of the provisions of this Act or the regulations and that all requirements of this Act and the regulations with reference to the goods or technology have been complied with.

Application of powers under the *Customs Act*

25 All officers, as defined in the *Customs Act*, have, with respect to any goods or technology to which this Act applies, all the powers they have under the *Customs Act* with respect to the importation and exportation of goods, and all the provisions of that Act and the regulations under it respecting search, detention, seizure, forfeiture and condemnation apply, with such modifications as the circumstances require, to any goods or technology that is tendered for export, transfer or import or is exported, transferred or imported or otherwise dealt with contrary to this Act and the regulations and to all documents relating to the goods or technology.

Federal Court Rules, SOR/98-106

Summary judgment - If no genuine issue for trial

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

Genuine issue of amount or question of law

(2) If the Court is satisfied that the only genuine issue is

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.