

**FEDERAL COURT OF APPEAL**

BETWEEN:

**Radu Hociung**

Appellant (plaintiff)

and

**Minister of Public Safety and Emergency Preparedness**

Respondent (Defendant)

APPEAL BOOK

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# **TAB 1**

**Notice of Appeal**



**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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**AND TO:**

Eric Peterson, Counsel to the Defendant  
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Ontario Regional Office  
The Exchange Tower  
130 King St. West  
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## 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  
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## 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 question 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 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 paid, 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.

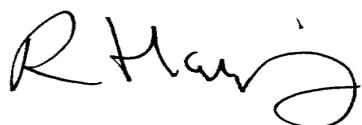
11. By introducing evidence, Justice Gleeson surrendered the impartiality he must maintain. As judge, he should only consider the evidence submitted by the parties, but not introduce any evidence himself. He failed to observe natural justice by choosing to become a party in a proceeding he was supposed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

12. At paras 68-72 of the Reasons and Judgment, Justice Gleeson identified a 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



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(Signature of appellant)

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SOR/2004-283, ss. 35 and 38



# **TAB 2**

**Justice Gleeson's Judgment and Reasons**



Federal Court



Cour fédérale

Date: 20180315

Docket: T-1450-15

Citation: 2018 FC 298

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**RADU HOICIUNG**

**Plaintiff**

and

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Defendant**

**JUDGMENT AND REASONS**

I. Overview

[1] The defendant has brought a motion in writing, pursuant to Rules 221 and 369 of the *Federal Court Rules*, SOR/98-106 [Rules] seeking summary judgment. Specifically the defendant seeks:

Summary Judgment dismissing this action in its entirety, on the basis of the statement of claim as it presently stands and as it may be amended on the disposition of the Plaintiff's motion to amend.

[2] The Court has separately considered the plaintiff's motion for leave to amend the statement of claim by: (1) adding defendants; (2) pleading criminal activities; (3) amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*]; (4) pleading for additional relief; and (5) updating the plaintiff's contact information. That motion has been denied by way of separate Order. This motion for summary judgment has therefore been considered on the basis of the original statement of claim.

## II. Background

[3] This action arises from the Canada Border Services Agency's [CBSA] seizure of United States Treasury gold and silver coins from the plaintiff upon his return to Canada from the United States. The coins, purchased in the United States at a cost of \$5,700 USD, consisted of four \$50 USD Buffalo Gold Bullion coins and twenty \$1 USD Silver Eagle coins. CBSA seized the coins as forfeit for contravention of section 12 of the *Customs Act* on the basis that the plaintiff failed to declare the coins as "goods" upon entry into Canada.

[4] Pursuant to section 129 of the *Customs Act* the plaintiff requested a decision of the Minister on the issue of whether the *Customs Act* had been contravened. The plaintiff maintains that: (1) the coins are money or currency, not goods, and therefore do not need to be declared under the *Customs Act*; and (2) the currency in his possession, including the gold and silver

coins, had a face value of less than \$10,000 and therefore did not trigger the reporting obligation under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Proceeds Act].

[5] After reviewing the enforcement action the Minister's delegate determined that “[a]ll goods entering Canada, including gold and silver coins, must be reported to CBSA in accordance with the Customs Act.” The Minister's delegate concluded, as provided for at section 131 of the *Customs Act*, there had been a contravention of this reporting requirement. The Minister's delegate further found, as provided for at section 133 of the Act, that upon the payment of \$321.39, to be held as forfeit, the coins would be returned to the plaintiff.

[6] The plaintiff commenced an action pursuant to section 135 of the *Customs Act*, appealing the contravention decision.

### III. Position of the Parties

#### A. *Defendant's Submissions (the moving party on the motion for summary judgment)*

[7] In seeking summary judgment, the defendant submits that only two issues are raised in the plaintiff's action:

1. Whether the plaintiff may claim damages and seek *mandamus* in an appeal of a Ministerial decision by way of action brought under section 135 of the *Customs Act*; and
2. Whether collector coins are currency or goods for the purpose of the *Customs Act*.

[8] The defendant submits that on a motion for summary judgment, where the Court is satisfied there is no genuine issue for trial, the Court shall grant summary judgment. The defendant further submits that where the Court is satisfied the only genuine issue is a question of law the Court may determine the issue and grant summary judgment pursuant to Rule 215(2)(b) of the Rules.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action brought under section 135 of the *Customs Act*.

[9] The defendant submits that the sole issue before the Court in an action instituted under section 135 of the *Customs Act* is whether there was a contravention of the Act or its regulations. An action under section 135 does not permit a plaintiff to make claims for damages arising from CBSA officers' performance of their duties, nor does it allow for other damages or the extraordinary remedies available under section 18.1 of the *Federal Courts Act*, RSC, 1985, c. F-7. These remedies, the defendant submits, are available by way of separate action but that separate proceeding cannot be combined with a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[10] The defendant submits that the coins in issue are collector coins and as such they are goods rather than currency, and must be declared under the *Customs Act*. The defendant states that although the *Proceeds Act* requires currency over \$10,000 to be reported at the border, "currency" is not defined in the *Proceeds Act*. The defendant submits that collector coins have a market value far beyond their face value, are not intended for circulation, and therefore are not "currency" for the purposes of the *Proceeds Act*.

B. *Plaintiff's Submissions*

[11] The plaintiff submits the summary judgment motion is unnecessary and vexatious because it is identical to a prior failed motion to strike the plaintiff's pleadings and is simply an attempt to stall discovery.

[12] Although the plaintiff does not challenge the issues as identified by the defendant on this motion, the plaintiff submits there are additional issues identified in the statement of claim. These generally include whether the coins in issue are intended for circulation and the scope of an action and available remedies under section 135 of the *Customs Act*. The plaintiff invites the Court to determine any issues on this motion that may be determined based on the evidence.

- (1) Whether a plaintiff may claim damages and seek *mandamus* by way of action pursuant to section 135 of the *Customs Act*

[13] The plaintiff argues that he is not seeking *mandamus* in this matter and submits that section 135 of the *Customs Act* allows for a full action in the Federal Court. He further submits that all remedies otherwise available in actions before the Federal Court are available in a section 135 action.

- (2) Whether collector coins are currency or goods for the purpose of the *Customs Act*

[14] The plaintiff submits that the coins in issue are "currency," not "goods," and therefore need not be reported pursuant to subsection 12(1) of the *Customs Act* on importation to Canada.

He further submits that even if the coins are characterized as goods they are exempt from tax pursuant to the *Excise Tax Act*, RSC, 1985, c E-15.

[15] The plaintiff submits that whether the coins are collectable or in circulation does not affect their status as currency. He further argues that refusing to treat collector coins as currency is inconsistent with, and defeats the purposes and intent of, the *Proceeds Act*.

IV. Are there genuine issues for trial?

[16] The plaintiff does not dispute that the issues identified by the defendant are genuine issues. However, the plaintiff submits there are additional issues raised in the statement of claim to be addressed in the course of the action. I disagree.

[17] The claim does raise numerous allegations of general misconduct, including allegations of criminal misconduct in relation to various officers and officials. The statement of claim seeks the payment of damages in relation to the alleged misconduct. In addition the statement of claim seeks to have this Court direct specific action be taken by both the Prime Minister and the Minister of Public Safety and Emergency Preparedness.

[18] In my view these are all matters that fall within the scope of the defendant's first stated issue, "whether the plaintiff may claim damages and seek *mandamus* in an appeal of a Ministerial decision by way of action pursuant to section 135 of the *Customs Act*." However, to better reflect the true issue to be decided, I would reframe the defendant's issue statement as

“whether an action brought under section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act*. ”

[19] The plaintiff also submits that there are numerous issues relating to the interpretation of the legislation that has been relied upon by the parties in advancing their respective positions. The parties have cited and relied on a number of different legislative provisions in advancing their positions, but these submissions all seek to resolve a single core issue in dispute as it relates to the contravention finding: “are collector coins “currency” or “goods”? ”

[20] I am satisfied that the two issues identified by the defendant are genuine issues to be determined in this matter, and are the only issues to be determined.

V. Is the Court in a position to address the genuine issues and grant summary judgment?

[21] Determining whether an action commenced pursuant to section 135 of the *Customs Act* is limited to a determination of whether there has been a contravention of the *Customs Act* involves interpretation of that Act. The plaintiff has not disputed the characterization of this matter as being a question of law. I also note there is no factual dispute relating to this discrete issue.

[22] I am of the opinion that “whether collector coins are currency or goods for the purpose of the *Customs Act*” is also a question of law. The core issues to be determined are: (1) are precious-metal coins “currency” that must be reported under section 12 the *Proceeds Act*; and (2) are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*? The defendant acknowledges in written submissions that the gold and silver coins in issue are issued

by the US Treasury, which “stipulates that its collector coins are legal tender.” Thus no findings of fact are required to determine the core issues.

[23] I am satisfied that both issues can be dealt with by way of summary judgment.

## VI. Issues

[24] Having considered the submissions of the parties and the issues identified by the defendant, I have framed the issues as follows:

1. Is an action commenced pursuant to section 135 of the *Customs Act* limited to a determination of whether there has been a contravention of the *Customs Act*?
2. Are the precious-metal coins in question “goods” pursuant to the *Customs Act* and/or “currency” pursuant to the *Proceeds Act*? This issue requires addressing the following two sub-issues:
  - i. Are precious-metal coins “currency” that must be reported under section 12 of the *Proceeds Act*? and
  - ii. Are precious-metal coins “goods” that must be reported under section 12 of the *Customs Act*?

## VII. Analysis

- A. *Is an action pursuant to section 135 of the Customs Act limited to a determination of whether there has been a contravention of the Customs Act?*

[25] Subsection 106(1) and sections 131 and 135 of the *Customs Act* state:

**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.

[...]

**131 (1)** After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

(b) in the case of a conveyance seized or in respect of which a notice was served under section 124 on the ground that it was made use of in respect of goods in respect of which this Act or the regulations were contravened, whether the conveyance was made use of in that way and whether the Act or the regulations were so

**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.

[...]

**131 (1)** Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :

a) le motif d'infraction à la présente loi ou à ses règlements pour justifier soit la saisie des marchandises ou des moyens de transport en cause, soit la signification à leur sujet de l'avis prévu à l'article 124;

b) le motif d'utilisation des moyens de transport en cause dans le transport de marchandises ayant donné lieu à une infraction aux mêmes loi ou règlements, ou le motif de cette infraction, pour justifier soit la saisie de ces moyens de transport, soit la signification à leur sujet de l'avis prévu à l'article 124;

contravened; or

(c) in the case of a penalty assessed under section 109.3 against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

**(1.1)** A person on whom a notice is served under section 130 may notify the Minister, in writing, that the person will not be furnishing evidence under that section and authorize the Minister to make a decision without delay in the matter.

**(2)** The Minister shall, forthwith on making a decision under subsection (1), serve on the person who requested the decision a detailed written notice of the decision.

**(3)** The Minister's decision under subsection (1) is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 135(1).

[...]

**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

c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a réellement eu non-conformité.

**(1.1)** La personne à qui a été signifié un avis visé à l'article 130 peut aviser par écrit le ministre qu'elle ne produira pas de moyens de preuve en application de cet article et autoriser le ministre à rendre sans délai une décision sur la question.

**(2)** Dès qu'il a rendu sa décision, le ministre en signifie par écrit un avis détaillé à la personne qui en a fait la demande.

**(3)** La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).

[...]

**135 (1)** Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette

the Federal Court in which that person is the plaintiff and the Minister is the defendant.

(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.

décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

(2) La demande se fait par remise d'un avis au ministre par écrit, ou sous toute autre forme prévue par celui-ci.

[26] The plaintiff submits that subsection 135(1) allows for a full action in this Court including the joinder of claims. I am not persuaded.

[27] A decision of the Minister pursuant to section 131 relates solely to the question of whether there has been a contravention of the *Customs Act*. As Justice Michel Shore explained in *Nguyen v Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 [Nguyen] at para 19:

Subsection 131(3) of the Act is a privative clause within the Customs Act that requires decisions made pursuant to s. 131 of the Act be subject to review only as described in s. 135(1) of the Act.  
Subsection 135(1) of the Act requires that a Minister's decision made under s. 131 of the Act be appealed by way of an action.

[Emphasis in original]

[28] Although this type of situation has been described as "awkward and inconvenient" (*Dokaj v Canada (Minister of National Revenue)*, 2005 FC 1437 at para 39) and "anomalous" (*ACL Canada Inc v MNR* (1993), 107 DLR (4th) 736, 68 FTR 180 (TD) at para 55), the

subsection 135(1) statutory right of appeal has been consistently found to be limited to the section 131 decision.

[29] The jurisprudence has held that penalties imposed pursuant to section 133 and resulting from a subsection 131(1) contravention finding are not reviewable in a subsection 135(1) action (*Starway v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 23 [*Starway*]). Similarly, a subsection 131(1) decision has been found not to be reviewable in a proceeding challenging a penalty imposed under section 133 (*Nguyen* at para 20).

[30] The plaintiff argues that *Starway* does not stand for the principle that the exclusive issue to be determined in a subsection 135(1) action is a contravention of the *Customs Act*. I disagree. In *Starway* Justice Harrington states at para 27 that “[i]n accordance with section 135 of the Act, this is an ordinary action. The only special rule imposed is that the issue is limited to whether Mr. Starway made an untrue statement.” In other words although a section 135 action is in all other respects an ordinary action before this Court, it is an action that is limited to addressing whether there has been a *Customs Act* contravention. I agree with Justice Harrington.

[31] In reaching this conclusion I note that the limited scope of a subsection 135(1) action does not prevent a plaintiff from advancing broader claims or seeking broader relief in other proceedings. The *Customs Act* itself contemplates proceedings being brought against officers for acts done in the performance of their duties (subsection 106(1)); judicial review of some decisions (for example, penalties imposed under section 133) is available under the *Federal Courts Act*.

[32] I conclude that an action brought pursuant to subsection 135(1) of the *Customs Act* is limited to determining a single issue, whether there has been a contravention of that Act, and that this is the sole issue before the Court in the action. This action differs from judicial review as the Court is to make a *de novo* determination of the issue (*Starway* at para 24).

B. *Are the plaintiff's coins "goods" pursuant to the Customs Act and/or "currency" pursuant to the Proceeds Act?*

[33] In making the decision under appeal, the Minister's delegate found that circulation was a key factor in concluding the US Treasury coins were goods rather than currency:

In the context of this enforcement action, the coins were not intended for circulation. Consequently, they are not considered to be currency subject to the reporting requirements of the [Proceeds Act], but they are considered goods subject to the reporting requirements of the *Customs Act*.

[34] In advancing their respective positions, the parties in this action have similarly adopted the view that the coins in issue are to be characterized in a binary fashion. They are either “goods” under the *Customs Act*, as the defendant has argued, or “currency” pursuant to the *Proceeds Act*, as the plaintiff has argued.

[35] For the reasons that follow, I am of the view that, regardless of their circulation status or collectability, US Treasury-issued legal tender collector coins are both “goods” under the *Customs Act* and “currency” under the *Proceeds Act*. If I am correct in this view then reporting obligations under both the *Customs Act* and the *Proceeds Act* apply where such coins are imported.

(1) Are the coins at issue “currency” that must be reported under section 12 of the *Proceeds Act*?

[36] The *Proceeds Act* imposes an obligation on every person to report the importation or exportation of currency or monetary instruments that equal or exceed a prescribed value:

**12 (1)** Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

**12 (1)** Les personnes ou entités visées au paragraphe (3) sont tenues de déclarer à l’agent, conformément aux règlements, l’importation ou l’exportation des espèces ou effets d’une valeur égale ou supérieure au montant réglementaire.

[37] The *Proceeds Act* in concert with the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [*Reporting Regulations*] prescribe an amount of \$10,000 as triggering the obligation to report the importation or exportation of currency or monetary instruments.

[38] Neither party takes the position that the coins are “monetary instruments”, a term that is defined at subsection 1(1) of the *Reporting Regulations*. The dispute arises in respect of the meaning of “currency,” which is not defined in the *Proceeds Act* or any of its regulations.

[39] Both parties rely on the definition of “cash” set out at subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [*Proceeds Regulations*] to assist in interpreting the meaning of “currency”. However, such reliance is misplaced.

[40] Not all definitions in the *Proceeds Regulations* apply to its enabling Act. The *Proceeds Regulations* set out definitions at subsection 1(1) that “apply in the Act and these Regulations,” whereas the definitions at subsection 1(2) only “apply in these Regulations.” Cash is defined at subsection 1(2) and therefore the definition is of no application when interpreting the *Proceeds Act*. This conclusion is reinforced by the *Proceeds Regulations* definition of “funds,” also found at subsection 1(2), which distinguishes between “cash” and “currency.” Were this distinction to be extended to the *Proceeds Act* the requirement to report currency pursuant to subsection 12(1) would not include a requirement to report cash; such a result that would undermine the purpose of the *Proceeds Act*. I am of the view that the *Proceeds Regulations’* definition of cash is of no assistance in this matter.

[41] The defendant also points to the Oxford English Dictionary definition of currency to support its position: “[t]hat which is current as a medium of exchange; the circulating medium (whether coins or notes); the money of a country in actual use”. Relying on this definition the defendant notes the market value of non-circulation collector coins, coupled with the value placed upon them by collectors, renders them much more valuable than their face value. As such they are not intended for circulation and are not “money of a country in actual use”.

[42] The defendant similarly relies on section 2 of the *Royal Canadian Mint Act*, RSC, 1985, c R-9, [*Mint Act*] which defines both circulation and non-circulation coins, and section 8 of the *Currency Act*, RSC, 1985, c. C.52, [*Currency Act*] which limits the legal tender value of coins.

[43] The defendant's argument might be best summarized as follows: (1) collector coins are significantly more valuable in the market place than the face value of the coins or the maximum value provided for such coins at section 8 of the *Currency Act*; (2) as a result a rational person would not tender collector coins to pay for goods and services; (3) the coins are non-circulation coins and therefore cannot be characterized as money in actual use even though “[t]he U.S. Treasury stipulates that its collector coins are legal tender,” and (4) as a result collector coins are not “currency” as that term is used in the *Proceeds Act*.

[44] The parties have cited Canadian legislation relating to non-circulation coins in support of their respective positions on whether such coins are “currency”. The parties have also taken the position that the U.S. Treasury coins in issue would be characterized in the same manner as Canadian legal tender non-circulation coins. Having considered the legislation cited and relied upon by the parties I am of the view that Canadian legal tender non-circulation coins are “currency” and would extend this conclusion to include the coins that are the subject of this dispute.

[45] The *Currency Act*, at section 7, describes “Current Coins” as:

7 (1) A coin is current for the amount of its denomination in the currency of Canada if it was issued under the authority of

(a) the Royal Canadian Mint Act; or

(b) the Crown in any province of Canada before it became part of Canada and if the coin

7 (1) Ont cours légal, pour la valeur faciale qui y figure en monnaie canadienne, les pièces émises :

a) sous le régime de la Loi sur la Monnaie royale canadienne;

b) dans le cadre des attributions de la Couronne dans une province avant que

was, immediately before October 15, 1952, current and legal tender in Canada.

(2) No coin that is bent, mutilated or defaced, or that has been reduced in weight otherwise than by abrasion through ordinary use, shall pass current.

[Emphasis added]

celle-ci ne fasse partie du Canada et qui, avant le 15 octobre 1952, avaient cours légal et pouvoir libératoire au Canada.

(2) Les pièces tordues, mutilées ou défigurées, ou dont le poids a été réduit autrement que par le frai, n'ont pas cours légal.

[Non souligné dans l'original]

[46] According to paragraph 7(1)(a) of the *Currency Act*, a coin issued under the *Mint Act*, is current for its face value in the currency of Canada. There is no distinction made between circulating and non-circulating coins, both of which are issued under the *Mint Act*.

[47] Non-circulation coins are defined in the *Mint Act* as follows:

**non-circulation coin** means a coin composed of base metal, precious metal or any combination of those metals that is not intended for circulation and that is listed in Part 1 of the schedule;

**monnaie hors circulation** Les pièces de monnaie composées de métal commun ou de métal précieux, ou d'une combinaison de ces métaux, qui ne sont pas destinées à la circulation et sont énumérées à la partie 1 de l'annexe.

[48] Section 6 of the *Mint Act* provides for the issuance of non-circulation coins and section 6.31 states the following:

**6.31** Non-circulation coins of the currency of Canada in the denomination of \$350 that are dated 1999, 2000, 2001, 2002, 2003, 2004, 2005 or 2006 are current and legal tender in

**6.31** Toute pièce de monnaie hors circulation dont la valeur faciale est de trois cent cinquante dollars et sur laquelle figure l'année 1999, 2000, 2001, 2002, 2003, 2004,

Canada as of the year that they are dated. 2005 ou 2006 a cours légal et pouvoir libératoire au Canada depuis l'année qui y figure.

[49] The *Mint Act* describes the coins of Canada, encompassing non-circulation coins addressed at sections 6 – 6.31 and circulation coins addressed at sections 6.4 – 6.6. Section 7 describes non-circulation coins and circulation coins collectively as “coins of the currency of Canada”:

**7 (1)** All coins of the currency of Canada that are produced at or supplied by the Mint shall be delivered to the Minister of Finance or such person as the Minister of Finance may designate.

**(2)** The Mint shall comply with such instructions as the Minister of Finance may give respecting the storage of coins of the currency of Canada or the preparation and movement of shipments of such coins to or from the Mint.

**(3)** Payments for the production, storage, preparation or movement of coins of the currency of Canada shall be made out of the Consolidated Revenue Fund on the authorization of the Minister of Finance.

[Emphasis added]

**7 (1)** Toutes les pièces de monnaie canadienne fabriquées ou fournies par la Monnaie sont remises au ministre des Finances ou à la personne désignée par celui-ci.

**(2)** La Monnaie est tenue de se conformer aux instructions du ministre des Finances concernant l'entreposage des pièces de monnaie canadienne ou la préparation de chargements de ces pièces et leur acheminement au départ ou à destination de l'établissement.

**(3)** Les fonds requis pour la production, l'entreposage, la préparation ou le transport des pièces de monnaie canadienne sont prélevés sur le Trésor avec l'autorisation du ministre des Finances.

[Non souligné dans l'original]

[50] Returning now to the *Currency Act*, section 8 describes when the payment of money is legal tender:

**8 (1) Subject to this section, a tender of payment of money is a legal tender if it is made**

**(a) in coins that are current under section 7; and**

**(b) in notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* intended for circulation in Canada.**

**(2) A payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:**

**(a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;**

**(b) twenty-five dollars if the denomination is one dollar;**

**(c) ten dollars if the denomination is ten cents or greater but less than one dollar;**

**(d) five dollars if the denomination is five cents; and**

**(e) twenty-five cents if the denomination is one cent.**

**(2.1) In the case of coins of a denomination greater than ten dollars, a payment referred to in subsection (1) may consist of not more than one coin, and**

**8 (1) Sous réserve des autres dispositions du présent article, ont pouvoir libératoire :**

**a) les pièces qui ont cours légal en vertu de l'article 7;**

**b) les billets destinés à circuler au Canada et émis par la Banque du Canada aux termes de la *Loi sur la Banque du Canada*.**

**(2) Les offres de paiement effectuées avec des pièces visées au paragraphe (1) ont pouvoir libératoire jusqu'à concurrence des montants suivants :**

**a) les pièces de deux à dix dollars : quarante dollars;**

**b) les pièces de un dollar : vingt-cinq dollars;**

**c) les pièces de dix cents et plus mais de moins d'un dollar : dix dollars;**

**d) les pièces de cinq cents : cinq dollars;**

**e) les pièces de un cent : vingt-cinq cents.**

**(2.1) Dans le cas des pièces de plus de dix dollars, toutefois, l'offre ne peut consister en plus d'une pièce; son pouvoir libératoire correspond alors à**

the payment is a legal tender for no more than the value of a single coin of that denomination.

(3) For the purposes of subsections (2) and (2.1), where more than one amount is payable by one person to another on the same day under one or more obligations, the total of those amounts is deemed to be one amount due and payable on that day.

[Emphasis added]

la valeur faciale de la pièce.

(3) Pour l'application des paragraphes (2) et (2.1), plusieurs paiements à faire le même jour par la même personne au même créancier, qu'il s'agisse ou non de la même créance, sont réputés constituer un paiement unique.

[Non souligné dans l'original]

[51] In sum: (1) section 7 of the *Currency Act* provides that a “coin is current for the amount of its denomination in the currency of Canada” if issued under the authority of the *Mint Act*; (2) non-circulation coins are issued under the *Mint Act* and are therefore current under section 7 of the *Currency Act*; (3) section 8 of the *Currency Act* provides that payment in coins that are current is a legal tender; and (4) section 6.31 of the *Mint Act* explicitly acknowledges the existence of “[n]on-circulation coins of the currency of Canada.”

[52] While it may be irrational to use non-circulation collector coins to purchase goods and services, section 7 of the *Currency Act* does not prevent one from doing so. The defendant has, in my view, conflated the concept of “the money of a country in actual use” with the concept of “money of a country in frequent or regular use”. While non-circulation collector coins are not frequently or regularly used as currency, they are legal tender and as such are, in my opinion, in actual use in Canada.

[53] In the context of Canadian-issued coins, considering the relevant provisions of the *Mint Act* and the *Currency Act*, I am satisfied that non-circulation coins that are legal tender are “currency” as that term is used in the *Proceeds Act*. The reporting obligations provided for at section 12(1) of the *Customs Act* are therefore triggered where, on import or export, the denominational or face value of the non-circulation coins together with any other currency or monetary instruments being imported or exported is of a value that is equal to or greater than the prescribed amount at section 2 of the *Reporting Regulations*.

[54] So what then, of the plaintiff’s coins? The defendant acknowledges in its submissions that the principles in respect of non-circulation coins as set out in the *Mint Act* are the principles that apply in respect of US Treasury Buffalo Gold Bullion Coins and silver coins. They too, the defendant acknowledges, are legal tender.

[55] I therefore conclude that the plaintiff’s US Treasury-issued, legal tender coins are currency that is subject to the reporting requirements set out in the *Proceeds Act*. However as the face or denominational value of the coins was \$220 USD, the plaintiff was under no obligation to report the importation of this currency under the *Proceeds Act*. The currency in his possession was well below the amount at section 2 of the *Reporting Regulations*.

(2) Are the coins at issue “goods” that must be reported under section 12 of the *Customs Act*?

[56] The plaintiff also submits that he had no obligation to report the collector coins having a face value of \$220 USD as goods despite having paid \$5,700 USD to a coin broker to acquire the

coins. He submits that they are currency, not “goods” as that term is defined in the *Customs Act*. I disagree. As stated above, I am of the opinion that the legal tender non-circulation collector coins are both “currency” and “goods”.

[57] The plaintiff further submits that even if the coins are “goods” they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act*, RSC, 1985 c. E-15, [*Excise Tax Act*] due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. As discussed below, there is a difference between goods being “exempt from taxes” under the *Excise Tax Act* and “exempt from reporting” under the *Customs Act*.

(a) *Goods under the Customs Act*

[58] Goods are very broadly defined at subsection 2(1) of the *Customs Act*:

<b>goods</b> , for greater certainty, includes conveyances, animals and any document in any form; ( <i>marchandises</i> )	<b>marchandises</b> Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support. ( <i>goods</i> )
---	--

[59] This broad declaratory definition does not seek to exclude items from its scope but rather ensures items that might not normally be viewed as goods, including conveyances, animals and documents are captured within the scope of the definition.

[60] The *Customs Act* definition of goods is adopted at Part IX, subsection 123(1) of the *Excise Tax Act* where “money” is also defined as follows:

**money** includes any currency,    **argent** Y sont assimilés la

cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value; (*argent*)

[Emphasis added]

monnaie, les chèques, les billets à ordre, les lettres de crédit, les traites, les chèques de voyage, les lettres de change, les bons de poste, les mandats-poste, les versements postaux et tout autre effet, canadien ou étranger, de même nature. La présente définition exclut la monnaie dont la juste valeur marchande dépasse la valeur nominale dans le pays d'origine et celle fournie ou détenue pour sa valeur numismatique. (*money*)

[Non souligné dans l'original]

[61] For the purpose of Part IX of the *Excise Tax Act*, currency with a fair market value higher than its face value is no longer money. Its status as currency does not change, but its treatment under the law does.

[62] Although I have found collector coins may be proffered as legal tender in exchange for goods or services on the basis of their denominational or face value, it is accepted by the parties that the plaintiff's non-circulation legal tender collector coins have a market value far in excess of their face value. It is this unique characteristic, coupled with the *Customs Act*'s broad definition of "goods" that leads me to conclude the plaintiff's coins are goods that must be reported under that Act. I also note that treating currency whose fair market value exceeds its face value as "goods" under the *Customs Act* is consistent with the definition of "money" at Part IX of the *Excise Tax Act*: fair market value establishes the line at which those instruments we normally think of as "money" may become "goods."

(b) *Exemption from tax*

[63] The plaintiff argues that even if the coins in issue are found to be goods, they are exempt from taxes that would be imposed pursuant to section 50 of the *Excise Tax Act* due to the operation of section 51 and Schedule III Part XI of the *Excise Tax Act*. This seems to be true. The Minister's delegate acknowledged in a postscript to the decision in issue that the coins were "duty free and tax exempt."

[64] However, the issue raised in this action is not whether taxes or duties are payable but whether the plaintiff had contravened the *Customs Act*. In that respect section 12(1) imposes a duty to report goods that are imported:

**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.

**12 (1)** Sous réserve des autres dispositions du présent article, ainsi que des circonstances et des conditions réglementaires, toutes les marchandises importées doivent être déclarées au bureau de douane le plus proche, doté des attributions prévues à cet effet, qui soit ouvert.

[65] The plaintiff has not argued that the coins, if found to be goods, are exempt from the reporting requirement set out at subsection 12(1). In addition, he does not dispute that he purchased the coins in the United States, was importing them into Canada, and failed to report them to customs officials.

[66] My conclusion that non-circulation legal tender collector coins are “goods” recognizes the unique characteristics of this form of “currency” and reflects the broader purpose and scheme of the *Customs Act* and subsection 12(1) in particular. All “goods” subject to prescribed circumstances and conditions are to be reported on importation. There are no reasons to exclude highly valuable collector coins from this reporting obligation.

[67] Tax-exempt or not, the plaintiff was required to report the importation of these coins. I conclude that the plaintiff’s failure to do so did, as found by the Minister’s delegate, contravene the *Customs Act*.

### VIII. Overlapping Legislative Provisions

[68] Having concluded both the *Customs Act* and the *Proceeds Act* apply concurrently to non-circulation legal tender coins I will address the issue of overlapping legislative provisions.

[69] Where two or more legislative schemes apply to the same set of facts, the common law presumes legislative coherence. There is a presumption that “the legislature knows its own statute book and intends all additions to that statute book to produce consistent rules and coherent schemes” (Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law, 2016) at 317 [Sullivan]).

[70] The courts have recognized that the scope and application of different legislative provisions may conflict and overlap. This circumstance was addressed by Justice Cromwell,

writing for the majority of the Supreme Court of Canada in *Thibodeau v Air Canada*, 2014 SCC 67, where he states at paras 89 and 92:

[89] Courts presume that legislation passed by Parliament does not contain contradictions or inconsistencies and only find that they exist when provisions are so inconsistent that they are incapable of standing together. Even where provisions overlap in the sense that they address aspects of the same subject, they are interpreted so as to avoid conflict wherever this is possible.

[...]

[92] The legal framework that governs this question is not complicated. First, courts take a restrictive approach to what constitutes a conflict in this context. Second, courts find that there is a conflict only when the existence of the conflict, in the restrictive sense of the word, cannot be avoided by interpretation. Overlap, on its own, does not constitute conflict in this context, so that even where the ambit of two provisions overlaps, there is a presumption that they both are meant to apply, provided that they can do so without producing absurd results. This presumption may be rebutted if one of the provisions was intended to cover the subject matter exhaustively. Third, only where a conflict is unavoidable should the court resort to statutory provisions and principles of interpretation concerned with which law takes precedence over the other. This case turns on the first two of these principles and I will explore them in somewhat more detail.

[71] In effect it is presumed that Parliament does not intend contradictions or inconsistencies between legislative provisions and that a restrictive approach is to be taken to what constitutes a conflict. A true conflict between legislative provisions arises “only if it would be impossible or contradictory or would defeat the legislature’s purpose if both provisions were applied” (Sullivan at 319). Overlap on its own does not constitute a conflict.

[72] In this case no true conflict arises. Treating non-circulation legal tender collector coins as “goods” for the purposes of the *Customs Act* is not inconsistent with treating them as “currency”

under the *Proceeds Act*. It is neither impossible nor contradictory to impose a dual reporting requirement in those circumstances where both the *Customs Act* and the *Proceeds Act* reporting obligations are triggered. In my opinion this result ensures both the *Customs Act* and the *Proceeds Act* are interpreted and applied in a manner that best ensures the attainment of their objects and the intent of legislature.

#### IX. Conclusion

[73] Having concluded that the coins in issue are “goods” and subject to the duty to report at subsection 12(1) of the *Customs Act*, the plaintiff’s appeal of the section 131 determination that there was a *Customs Act* contravention is dismissed. However, in dismissing the appeal, I have also found the plaintiff’s position to have merit.

[74] In light of the mixed result the parties shall each bear their own cost.

[75] In addressing the plaintiff’s motion seeking leave to amend the Statement of Claim, I ordered that costs were to be determined in the cause. My conclusion that costs are to be borne by each party applies equally to the motion seeking leave to amend the Statement of Claim.

**JUDGMENT IN T-1450-15**

**THIS COURT'S JUDGMENT is that:**

1. The motion for summary judgment is granted and the action is dismissed.
2. The parties are to bear their individual costs including their costs relating to the plaintiff's motion for leave to amend the statement of claim.

"Patrick Gleeson"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1450-15

**STYLE OF CAUSE:** RADU HOCIUNG v MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT  
TO RULE 369 OF THE *FEDERAL COURTS RULES***

**REASONS AND JUDGMENT:** GLEESON J.

**DATED:** MARCH 15, 2018

**WRITTEN REPRESENTATIONS BY:**

Radu Hociung FOR THE PLAINTIFF  
(SELF-REPRESENTED)

Eric O. Peterson FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE DEFENDANT  
Ottawa, Ontario



# **TAB 3**

**Statement of Claim T-1450-15**



ACTION

(Court File No.)

FEDERAL COURT

BETWEEN:

**Radu Hociung**

Plaintiff

and

**Minister of Public Safety and Emergency Preparedness**

Defendant

**STATEMENT OF CLAIM**

STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your

statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court 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 DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: \_\_\_\_\_

TO: (Name and address of each defendant)

## CLAIM

This is an Action pursuant section 135 of the Customs Act. Re Ministerial Decision CS-74472/4273-14-0724

1. The plaintiff, Radu Hociung, claims against the Defendant, Minister of Public Safety and Emergency Preparedness:
  - a) On October 21, 2014, the Plaintiff entered Canada at the Queenston Bridge point of entry. Upon entry, he declared all goods brought into Canada, namely a pair of auto tires, several tablets of Advil medication and a bottle of water. These goods were declared pursuant section 12 of the Customs Act, and are not in dispute in this Action.
  - b) The Plaintiff also had United States Currency, in form of four \$50 Gold Buffalo coins, and twenty \$1 Silver Eagles coins, issued by the United States Mint pursuant United Stated Code Title 31, sections 5112(a)(11) and 5112(e) respectively. USC Title 31 also declares these coins Legal Tender in sections 5103 and 5112(h).
  - c) Being under the prescribed amount of C\$10,000, the plaintiff did not declare the currency pursuant to Section 12 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).
  - d) Upon a random secondary inspection, the CBSA officer Christopher DEBSKI (CBSA badge #11276) discovered the currency, and claimed it was unreported goods and thus would be seized and destroyed. This is unlawful, as currency cannot be used as anything other than currency, pursuant USC Title 31 Section 5111(d), as well as the Currency Act section 11. Both laws provide severe fine and imprisonment for any person melting or using otherwise than as currency any coin that is current and legal tender in Canada and the United States respectively.

- e) The Plaintiff informed officer Debski that the coins are United States legal tender currency issued by the United States government, and thus cannot be considered goods, but are financial instruments as defined by the Excise Tax Act. As such, they are not subject to declaration under the Customs Act, but under the PCMLTFA, subject to the prescribed amount requirement.
- f) Officer Debski's narrative report filed October 21, 2014 contains several material errors:
  - i. The officer requested the Plaintiff's WALLET, keys and passport, and coins not the "keys, passport, license, ownership and gold coins".
  - ii. As the Plaintiff turned the gold and silver currency to officer Debski, the officer asked "Where do you have so much money from?", to which the Plaintiff responded "It is my family's savings". This question and answer are not mentioned in the officer's narrative report.
  - iii. The officer threatened the Plaintiff with violence, raising his voice and saying three distinct times that "this is an arrestable offence", while assuming an aggressive posture with his gun prominently displayed. These threats were not mentioned in the narrative report.
  - iv. One of the questions the Plaintiff asked the officer was "How many such \$50 coins can I enter the country without declaring them under the PCMLTFA". The officer's answer was that there is no limit, and they need not be declared in accordance with PCMLTFA as long as they are declared under the Customs Act and the tax is paid. The officer omitted this question and his answer from his narrative report. His answer is incorrect, as bringing more than \$10,000 of currency into Canada would be required to be reported pursuant section 12 of the PCMLTFA.
- g) The GST/HST Memorandum 17.1 explicitly defines "financial instruments" to

include precious metal coins that have been issued by a government authority, and clarifies that they are thus exempt from tax.

- h) Officer Debski was informed by the CBSA superintendent of the contents of GST/HST Memorandum 17.1 and the officer even quoted the Memorandum verbatim in his narrative report, while claiming the opposite of the Memorandum's intent, that currency is "goods".
- i) Officer Debski furnished an "Online rating Report" showing that coins that are not legal tender are subject to 13% GST/HST. This report is unlawful, as it misrepresents legal tender currency as "not legal tender coins" in order to justify a tax claim. The report was generated by CBSA officer #17097.
- j) Officer Debski decided that the sum of \$1606.97 must be paid as terms of release of the Plaintiff's currency.
- k) While he was aware of the GST/HST memorandum 17.1, which clearly states foreign precious metal currency is not subject to tax, officer Debski conspired with agent #17097 to commit fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- l) Based on the interaction by officer Debski with the Plaintiff, it is clear that the officer:
  - i. Knew the coins are currency as he was requesting them to be turned over (question about the provenance of the money)
  - ii. Intended to confiscate the money under non-declaration section 12 of the PCMLTFA. For this he needed to establish either a reasonable suspicion of criminal provenance, as well as a sum exceeding \$10,000 (which is why he requested the wallet, in order to search for additional currency), without which arrest and confiscation could not be reasonably justified.
  - iii. Knew that the PCMLTFA applies to the coins, and not the Customs Act, when he threatened arrest. Arrest is not a possible outcome of violations of the

Customs Act, but it is an automatic outcome of violations of the PCMLTFA.

iv. Willfully committed fraud by seizing and demanding payment for the return of currency, when he clearly understood that no violation of the Customs Act or the PCMLTFA had occurred.

- m) On October 23, the Plaintiff started the process of a request for Minister's decision pursuant Customs Act section 129, seeking to overturn officer Debski's seizure on the grounds that currency is not subject to declaration under section 12 of the Customs Act, and thus the Plaintiff had not contravened the Act.
- n) During the ensuing requests for additional documentation, the CBSA has made several false claims, misrepresenting the PCMLTFA
- o) On November 3, 2014, A Kendall, the Adjudicator assigned to the request, attempted the explanation that the seized coins are "collectable" [sic], and thus goods. She also misrepresented the PCMLTFA by stating it defines currency to exclude un-circulated coins. In fact, the PCMLTFA does not define currency. However, the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation (PCMLTFR) defines "cash" to include "coins or bank notes of countries other than Canada", though it states no circulation qualifiers. As this misrepresentation was committed in support of the demand for payment of \$1606.97. Adjudicator Kendall's misrepresentation constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.

- i. The full definition of "cash" given by the PCMLTFR is:

"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. (*espèces*)

ii. To be clear, the definition of “cash” does include the word “circulation”, used to qualify only “notes issued by the Bank of Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada”. The “circulation” qualifier originates from the Bank of Canada Act section 25(5), and it is used to make the distinction between bank notes used as currency and bank notes not used as currency, ie, promissory notes and bills of exchange, neither of which are currency, though they are bank notes issued by the Bank of Canada.

iii. It is clear from the definition's wording that “cash” includes foreign legal tender coins and bank notes, without limitation to their circulation status, as well as Canadian coin currency without limitation to its circulation status.

- p) On November 6, 2014 the Plaintiff responded and further clarified that neither is the circulation requirement stated in the PCMLTFA, nor does the PCMLTFA, include a definition of “currency”. Further, the US Code Title 31 explicitly states that uncirculated coins issued under its authority are current, legal-tender, and thus the adjudicator's view is an untruthful fabrication.
- q) On December 11, A Kendall responded, this time attempting a new explanation. She claimed that the coins are “commodities” and thus “goods” She also admitted that the PCMLTFA does not contain a definition for currency. The misrepresentation that currency is “commodities” once again is made in support of the demand for payment of \$1606.97, and thus constitutes fraud.
- r) On January 20, 2015, the Plaintiff wrote to the President of the CBSA, Mr. Luc Portelance, informing him of the fraud perpetrated by CBSA employee A Kendall, and requesting reassignment of the case to a law-abiding officer instead.

- s) On or about February 9, 2015, the President's secretary phoned the Plaintiff to acknowledge receipt of the request to reassign, that there appears something improper had taken place, and that the legal team had been informed and was investigating. She promised that an outcome of the lawyers investigation will be communicated to the Plaintiff in writing.
- t) Following two more phone calls from the Plaintiff to the President's office, requesting the written response or acknowledgment of the January 20<sup>th</sup> letter, the secretary promised a response will be given. However, as of August 27, no such letter was received by the plaintiff. It appears that the president of the CBSA is refusing to investigate the charge of fraud against A Kendall.
- u) On March 9, 2015, a new CBSA employee, M Gagnon wrote to the plaintiff and attempted the explanation that foreign coins are not "cash" as they are not "intended for circulation". This is a misrepresentation of the PCMLTFA in support of the demand for payment of \$1606.97 and thus also constitutes fraud as defined by section 380 of the Criminal Code, R.S. C. 1985, c. C-46.
- v) As it follows the request of reassignment to the president of the CBSA, it is clear that this instance of fraud comes as a result of instructions given by the president to M Gagnon.
- w) On March 13, the Plaintiff responded to M Gagnon, clarifying that the wording of the "cash" definition applies the "intended for circulation in Canada" qualifier only to Canadian bank notes, and not to foreign currency, notes nor coins, nor Canadian coins.
- x) On May 26, M Gagnon responded with an attempt to once more change the explanation why the coins are "goods". She claimed that they are collector coins as their true value is not the same as their face value.
- y) On June 1, 2015, the Minister rendered his decision to the Plaintiff signed by Jeffrey Strickland for the Minister of Public Safety. In his decision, the

Minister also claims that there is a requirement for foreign currency to be intended for circulation in order to be considered “cash”, as provided by the PCMLTFA. In fact, as explained above, there is no circulation requirement for foreign coins, and the “intended for circulation in Canada” from the definition of “cash” applies exclusively to “bank notes issued by the Bank of Canada”, and not to Canadian coins, nor any coins or bank notes of countries other than Canada.

- z) Further, in his decision, the Minister lowered the demand for payment from \$1606.97 to \$321.39 as terms for release, without reference to any legal basis to support such a change. As such, the \$321.39 sum represents nothing but ransom.

2. The Plaintiff also claims:

- a) Since the PCMLTFA came into effect in 2000, the CBSA has routinely classified gold and silver legal-tender currency, both Canadian and foreign as “goods” in order to collect tax, duty and/or non-declaration fines.
- b) This policy of the CBSA subverts the intent of the PCMLTFA, which is to report large currency amounts transiting Canada's borders to the FINTRAC for analysis. The CBSA's actions thus impairs the ability of FINTRAC to detect criminal and terrorist activity, and therefore puts the safety of Canada.
- c) It is a well publicized fact that gold currency is treated as goods at Canada's borders, and it is reasonable to conclude that criminals and terrorists use this method of money transfer in order to make payments across Canada's border without scrutiny by authorities. While not all transfers of gold across the border are connected to criminal activities, it would be unreasonable to assume that all such transfer are innocent. Currently about \$133,000,000 in gold and silver currency are imported into Canada annually, and about \$1,800,000,000 are exported annually (2013 statistics from Industry Canada).

- d) Therefore the Minister of Public Safety, and the CBSA are, as a matter of policy, supporting and facilitating crime and terrorism.
3. The plaintiff requests the following from the Honourable Court:
- a) Damages of \$15000 from the CBSA for the threats of violence by officer Debski and the fraud attempted by the same, as well as CBSA employee 17097, A Kendall, M Gagnon, and for the instructions leading to fraud given by the president of the CBSA, Luc Portelance.
  - b) Damages of \$2000 for accusing the Plaintiff of smuggling and violating the Customs Act, which resulted in non-eligibility to US Nexus Trusted Traveller program.
  - c) Costs incurred by the Plaintiff in relation to this incident, including travel to court and travel to the Queenston Bridge CBSA location to recover the currency.
  - d) Punitive and exemplary damages of \$5,000,000 from the Ministry of Public Safety for the sustained policy of aiding crime and terrorism in Canada, while deriving profits from it since 2000.
  - e) Clearing the Plaintiff's legal record that would result in heightened scrutiny and baggage searches, at border crossing beyond normal border procedures that would apply to a citizen in good standing.
4. The plaintiff further requests from the Honourable Court:
- a) A declaration that all US coinage listed within 31 USC as currency of the United States is considered as foreign currency and financial instruments in Canada, as provided by the Excise Tax Act, and not "goods", and thus not subject to any provision of the Customs Act, which deals exclusively with "goods", explicitly naming currencies such as commemorative issues and precious metal issues that the CBSA may be

unfamiliar with and thus declare to be “goods”.

- b) A declaration that all Canadian Coins issued by the Royal Canadian Mint pursuant to section 7 of the *Currency Act*, specifically including all the commemorative issues, gold, silver and platinum denominations specified in the *Royal Canadian Mint Act* are currency of Canada for the purposes of the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act [PCMLTFA], to reinforce the Minister's of Finance sworn and signed affidavit to the same effect.
- c) A declaration that all currency is not subject to declaration under the Customs Act, regardless of its circulation, commemorative, base metal, age, or collectible factor.
- d) A declaration that although all currency domestic and foreign may be collectible, this does not mean it is “goods”. Ie, currency cannot arbitrarily be declared “goods”. This is also provided in the Currency Act and USC Title 31, which states currency may not be used for any other purpose than as currency.
- e) A declaration that even though some currency, including older notes and coins, and gold, silver and platinum coins, is worth more than its face value as collectible items, it does not mean it is “goods”, and remains “currency” as provided by the Currency Act sec. 11, and also 31 USC Sec. 5111. Even the Royal Canadian Mint directly sells many such coins for more than their face value, without charging GST/PST, implying they are exempt from tax under ETA. Even these collector coins are currency and may be used for circulation and thus are not “goods”. Other examples of contemporary, current Canadian coins worth more than their face value:
  - f) 2012 25-cent coin uncirculated “war of 1812” Brock Colour, with a collector fair market value [FMV] of \$17,
  - g) 2012 circulated version of the 25-cent colour Brock quarter FMV \$1.24,
  - h) 1957 circulated 25-cent quarters FMV \$4.38,

- i) 1957 \$20 circulated note FMV \$60,
  - j) 2006 \$5 uncirculated note, FMV \$72
- k) A declaration of the value of collectable currency (which really is any currency someone might want to keep rather than spend) for the purposes of the PCMLTFA even if this value is different than face value. The Currency Act provides that the gold \$50 coins are worth their face value as legal tender. The Bank of Canada redeems them for face value. The Currency Act prohibits melting all coins, including precious metal coins, and using them for purposes other than currency. Thus a \$50 coin cannot be legally melted and manufactured into jewelry or for industrial use. Thus whatever value the underlying metal may be, that value is unavailable for use.
- l) A declaration of the value of gold, silver and platinum currency domestic and foreign for the purposes of PCMLTFA, whether this value is the face value or another value. Due to melt restrictions on US currency, it appears the only possible value a US\$50 coin is US\$50.
- m) An order to the Minister's Public to immediately release the Plaintiff's currency without encumbrance.
- n) An order to the Minister of Public Safety to implement a phased plan of changing the CBSA policy to follow the intent of the PCMLTFA by considering all currencies domestic and foreign as "cash". As it is current practice to ship gold and silver currency across the border without PCMLTFA declaration, this needs to be a phased plan in which the travelling public as well as precious metals dealers be informed of the change, and a transitional period be allowed for.
- o) An order to the Prime Minister to create an oversight body to ensure lawful implementation of the PCMLTFA by the Minister of Public Safety.
- p) An order to the Minister of Public Safety to refund all taxes, duties, and any fines obtained by the CBSA in relation to shipments of gold and silver coins, foreign and

domestic, since the PCMLTFA was enacted.

The plaintiff proposes that this action be tried at Kitchener, or if not possible, Toronto.

August 27, 2015

Sincerely,

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

---

(Signature of solicitor or plaintiff)

Radu Hociung

226 Willowdale Ave

Waterloo, ON N2J 3M1

Tel: (519) 883-8454

Fax: (519) 574-4009

SOR/2004-283, s. 35



# **TAB 4**

**Statement of Defense**



Court file number: T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**RADU HOCIUNG**

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Defendant

**STATEMENT OF DEFENCE**

1. The defendant does not admit any of the allegations contained in the statement of claim.
2. The defendant denies the allegations contained in paragraphs 1 and 2 of the statement of claim.
3. The defendant has no knowledge of the allegations contained in paragraphs \_\_\_\_ of the statement of claim: n/a.
4. The defendant states that the plaintiff presented himself to the Canadian Border Services Agency (CBSA) at the Queenston Bridge in Niagara-on-the-Lake, Ontario on Oct. 21, 2014.

5. The defendant further states that the plaintiff failed to declare the importation of United States gold and silver coins which he had purchased earlier that day in the United States at a value of \$5,700.00 USD.

6. The defendant further states that the gold coins in question are Buffalo Gold Bullion Coins and are collector items not intended for circulation as currency. The silver coins in question are also collector items not intended for circulation as currency.

7. The defendant further states that these collector coins are not "cash" or "currency" but rather goods for the purpose of the *Customs Act*. The exemption from declaring cash or currency in an amount below \$10,000.00 CAD has no application to these types of collector coins.

8. The defendant further states that the plaintiff's failure to declare the collector coins constitutes a violation of section 12 of the *Customs Act*.

9. The defendant further states that the onus to declare goods entering Canada, including collector coins, falls on the individual bringing the goods into the country, whether or not prompted by a CBSA officer.

10. The defendant further states that as a result of the violation, CBSA officers lawfully seized the collector coins and advised the plaintiff that the collector coins would be released to him on payment of \$1,606.97 CAD.

11. The defendant denies the plaintiff's allegations in the statement of claim that CBSA officers threatened the plaintiff with violence or told him that the collector coins would be destroyed, and puts him to the strict proof thereof.

12. The defendant further states that the plaintiff appealed CBSA's enforcement action to the Minister of Public Safety and Emergency Preparedness.

13. The Minister denied the appeal on the basis that the collector coins are not cash or currency but rather goods for the purpose of the *Customs Act*. The Minister decided that the collector coins may be released to the plaintiff upon payment of the reduced amount of \$321.39 to better reflect the circumstances of this enforcement action.

14. With respect to the plaintiff's claim for damages, which damages are not admitted but expressly denied, the defendant states that pursuant to section 106 of the *Customs Act*, the plaintiff may not seek damages herein but must bring a separate action for damages.

15. The defendant states that as a result of the foregoing, the plaintiff is not entitled to any of the relief sought in the statement of claim.

16. The defendant asks that the plaintiff's claim be dismissed with costs payable to the defendant.

17. The defendant asks that this action be tried at Toronto.

DATE: September 29, 2015

William F. Pentney, Q.C.  
Deputy Attorney General of Canada

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Fax: 519-574-4009

asst *Donna Robinson*  
*416 - 952 - 6886*

# **TAB 5**

**Defendant's Motion for Summary Judgment**



Court file: T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**RADU HOCIUNG**

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Defendant

**MOTION RECORD  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**ATTORNEY GENERAL OF CANADA**

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Litigation Extradition Advisory Division  
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Per: Eric O. Peterson  
Tel: (416) 952-6334  
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LSUC: # 34833B  
Solicitor/counsel for the Respondent

TO: Radu Hociung  
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Waterloo, Ontario  
N2J 3M1  
Email: radu.cbsa@ohmi.org

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

Court file: T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**RADU HOCIUNG**

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Defendant

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**TAB 1**

Court file: T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**RADU HOCIUNG**

Plaintiff

And

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Defendant

**NOTICE OF MOTION  
(Defendant's Motion for Summary Judgment)**

**TAKE NOTICE THAT** the defendant (the "Minister") will make a motion to the Court in writing pursuant to Rules 221 and 369 of the *Federal Courts Rules*. The Minister proposes that this motion and the plaintiff's motion in writing to amend the statement of claim be dealt with together.

**THE MOTION IS FOR:**

1. Summary Judgment dismissing this action in its entirety, on the basis of the statement of claim as it presently stands and as it may be amended on the disposition of the plaintiff's motion to amend;

2. His costs of this motion and the action; and
3. Such other relief as counsel may advise and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

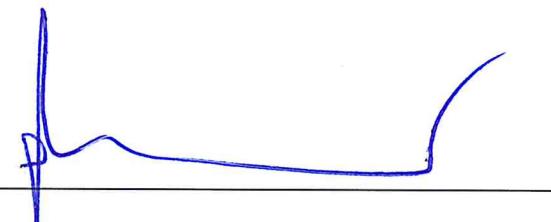
1. The only genuine issue are two questions of law, namely:
  - (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
  - (2) whether the collector coins at issue herein are currency or goods for the purposes of the *Customs Act*.
2. The Court may determine the foregoing questions of law and grant summary judgment accordingly.
3. The plaintiff claims damages and orders of mandamus in the statement of claim as it now stands and in his proposed amendments. He seeks damages for actions taken by Canada Border Services Agency officers and officials. He seeks mandamus in the form of an order compelling the Minister to dismantle the Canada Border Services Agency for being a criminal organization engaged in money laundering, and orders that the CBSA officers and officials involved be charged with fraud under the Criminal Code.

4. This Court's jurisdiction on an action brought pursuant to section 135 of the *Customs Act* is limited to non-monetary relief. It is not a regular civil action but rather a statutory appeal of a Ministerial Decision by way of action. This type of action is intended to provide the person affected by the Ministerial Decision with an opportunity for a trial de novo with the sole purpose of determining whether there has been a contravention of the *Customs Act*. These actions do not allow for claims for damages or requests for mandamus.
5. The plaintiff appeals the Ministerial Decision, which confirmed that the seizure by the Canada Border Services Agency of several collector coins was proper given the plaintiff's failure to declare the coins as goods. The plaintiff mistakenly argues that collector coins are goods and believes they are currency.
6. The Court should grant summary judgment by dismissing the action in its entirety, with costs. The Court should do so on the basis of the statement of claim as it now stands and as it may be amended following the disposition of the plaintiff's pending motion to amend.
7. Sections 129 to 135 of the *Customs Act*, R.S.C., 1985, c. 1 (2<sup>nd</sup> Supp.)
8. Rules 221 and 369 of the *Federal Court Rules*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing  
of the motion:

1. The pleadings herein, including the statement of claim as it now stands and as it may be amended on the disposition of the motion to amend.
2. The transcript of the examination for discovery of the plaintiff held on January 5, 2017, filed.

**DATE:** February 28, 2017



**ATTORNEY GENERAL OF CANADA**

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**TAB 2**

Court File No. T1450-15

FEDERAL COURT

BETWEEN:

RADU HOCIUNG

Appellant

- and -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

---

This is the examination of RADU HOCIUNG, for discovery held  
on consent of the parties at The Department of Justice,  
130 King Street West, 34<sup>th</sup> Floor, Toronto, Ontario, on the  
5<sup>th</sup> day of January, 2017.

---

APPEARANCES:

Radu Hociung	Self-represented
Mr. Eric Peterson	For the Respondent
Ms. Jeanette Duda	Court Reporter

International Reporting Inc.  
41-5450 Canotek Road  
Gloucester, Ontario  
K1J 9G2  
[www.irri.net](http://www.irri.net)  
1-800-899-0006

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Examination by Mr. Peterson	1

1 Toronto, Canada

2

3 --- Upon commencing on Thursday, January 5, 2017  
4 at 9:57 a.m.

5 RADU HOIUNG, AFFIRMED:

6    --- EXAMINATION BY MR. PETERSON:

7 1 Q. So, Mr. Hociung, can you state your  
8 full legal name for the record, for the transcript?

9 A. It's Radu Hociung.

10 2 Q. Okay.

11 A. R-A-D-U, H-O-C-I-U-N-G.

12 3 Q. And, can you give me your date of  
13 birth, please, for the record?

14 A. It's December 6<sup>th</sup>, 1973.

15 4 Q. All right. And, your current address  
16 in Canada?

17 A. It's 246 Southwood Drive in  
18 Kitchener.

19 5 Q. All right. And, you are the  
20 plaintiff in this Federal Court action?

21 A. I am.

22 6 Q. All right. So, I'm here to ask you  
23 questions, primarily, today about the events at the  
24 Canadian border that gave rise to your claim. I  
25 understand there are some legal arguments in your  
26 Statement of Claim as well, but I will not be asking  
27 you about your legal argument. So, I am only going  
28 to focus on what happened to you on the day in

1 question at the border.

2 So, first of all, can you tell me a bit of  
3 your background, your educational background?

4 A. I attended University of Waterloo for  
5 Engineering from 1994 until 2000. Before that, of  
6 course, high school. I never finished the  
7 university. I didn't actually graduate and earn a  
8 Bachelor. And, that is my education, I think.

9 7 Q. Okay. And, I think you mentioned in  
10 one of the conferences you're an engineer?

11 A. Yes.

12 8 Q. All right. But, so are you a  
13 professional engineer?

14 A. I am not a professional engineer, no.

15 9 Q. Okay. Okay. So, what type of work  
16 do you do? What type of engineering work do you do?

17 A. How is this relevant?

18 10 Q. It's simply -- sometimes the court  
19 would like to see what professional background you  
20 have when you -- what you bring to the table if you  
21 don't have a lawyer with you.

22 A. But, you are here for evidence;  
23 right?

24 11 Q. Right. If you don't want to answer,  
25 that's fine.

26 A. I do not want to answer.

27 12 Q. All right. Let's get to the day in  
28 question then. On -- first of all, this is on

1       October 21, 2014, you were coming back from the  
2       United States crossing into Canada. What was the  
3       purpose of your trip to the United States?

4           A. I went to the United States to  
5       purchase tires for my car.

6 13           Q. All right.

7           A. That was the main purpose of my trip.

8 14           Q. All right. And, you also purchased  
9       some collectible coins I understand?

10          A. I purchased some coins while on the  
11       trip, yes.

12 15          Q. All right. And, were those coins  
13       purchased on that same trip in the United States?

14          A. Yes.

15 16          Q. All right. How much did you pay for  
16       those coins?

17          A. I paid 50 -- if my memory serves  
18       correctly, \$5,700.00 U.S. dollars.

19 17          Q. All right. And, did you have a  
20       receipt for that?

21          A. I do, yes.

22 18          Q. Okay. Had you gone to the United  
23       States previously to buy collectible coins or was  
24       that the first time you had done so?

25          A. I have been to the United States  
26       before, but never bought collectible coins in the  
27       United States before.

28 19          Q. Okay. Have you ever purchased

1       collectible coins from the United States elsewhere  
2       and brought them into Canada, other than United  
3       States?

4                     A. Sorry, repeat?

5 20                 Q. So, have you ever bought collectible  
6       coins from the U.S. or any other country abroad, and  
7       then brought it into Canada?

8                     A. I don't understand the relevance.

9 21                 Q. All right. Have you ever bought  
10      collectible coins ---

11                     A. I don't understand the relevance.

12 22                 Q. My ---

13                     A. I understand your question.

14 23                 Q. Right. The relevance is if you have  
15      declared those coins at Canada customs before or if  
16      you have also maintained the position that they are  
17      not -- they don't have to be declared. Was this the  
18      first time when you ---

19                     A. No, I understand the question.

20 24                 Q. Right.

21                     A. I'm thinking about whether -- how I  
22      should answer it.

23 25                 Q. Okay.

24                     A. The answer is no.

25 26                 Q. You had never previously ---

26                     A. I have never purchased coins outside  
27      of the United States and brought -- outside of  
28      Canada and brought them into Canada without

11

1 reporting them.

2 27 Q. Okay. Had you ever declared  
3 collectible coins in the past at the Canadian  
4 border?

5 A. Had I or have I, or had I ---

6 28 Q. Had I.

7 A. --- after that time?

8 29 Q. Had you at that time previously ever  
9 declared to Canadian customs that you had purchased  
10 collectible coins?

11 A. No, I have not.

12 30 Q. Okay. Are you in the business of  
13 collecting coins? Are you ---

14 A. I am not, no.

15 31 Q. No. Is it ---

16 A. However, I'm a collector of coins  
17 like everybody else.

18 32 Q. Okay. So, had you previously  
19 purchased U.S. collectible coins in Canada or is the  
20 first time ---

21 A. That is not relevant, I believe.

22 33 Q. Was this the first time you had ever  
23 purchased U.S. collectible coins?

24 A. U.S. minted?

25 34 Q. Yes.

26 A. I am not sure.

27 35 Q. Okay. All right. So, then, tell me  
28 -- well, let's move on to October 21, 2014. Tell me

1       in your own words what took place when you  
2       approached the Canadian border. You approached in  
3       your car, and you were in a line-up, and then what  
4       happened?

5           A. So, at first, of course, there's a --  
6       the primary check window where I stopped. The  
7       officer there asked me -- I believe he asked me what  
8       -- I don't remember the words exactly. I believe  
9       the extent of his answer -- of his questions was  
10      whether I was bringing goods into Canada, whether I  
11      had purchased goods to bring into Canada.

12 36       Q. Right.

13       A. I told him about the tires that I had  
14      bought. On the day it happened, I had a little bit  
15      of a migraine, and I had bought some Advil and some  
16      water, and that is all. That is all the goods that  
17      I told him about.

18 37       Q. All right.

19       A. He never asked me about whether I  
20      brought currency, about how much currency or  
21      financial instruments I have.

22 38       Q. He never asked you if you were in  
23      possession of currency over \$10,000.00?

24       A. He did not.

25 39       Q. He did not?

26       A. I believe he did not.

27 40       Q. Okay. All right. And, was it your  
28      understand at that time that the collectible coins

1       in your possession did not have to be declared?

2                  A.     Absolutely.

3    41                  Q.     And, what was the basis of your  
4                              understanding? Was it anything that you read at the  
5                              customs border crossing or ---

6                  A.     No, I had researched the topic well  
7                              ahead of time, and these coins are minted by the  
8                              United States Mint according to the United States  
9                              code, and I forget the number. I believe it's 31.  
10                         It deals with the money and the currency of the  
11                         United States. So, they are minted at the United  
12                         States Mint by the United States Treasury according  
13                         to this law. And, in the law, they are clearly  
14                         stated to be a legal tender.

15                         The mint itself on the site, the mint that  
16                         produces them, U.S. Mint, states clearly that they  
17                         are legal tender and, to me, that was enough to know  
18                         that this is currency that apply -- and, therefore,  
19                         currency regulations apply to it.

20    42                  Q.     So, they would be legal tender at  
21                         their face value or at their ---

22                  A.     Correct.

23    43                  Q.     --- commercial value?

24                  A.     Legal tender by definition is based  
25                         on the denomination.

26    44                  Q.     All right.

27                  A.     Not on any other value, but their  
28                         denomination, which is \$50.00 for the gold coins in

1       this case, and I believe \$1.00 for the silver coins.

2   45           Q.    But, you paid \$5,700.00 for ---

3           A.    That is correct.

4   46           Q.    So, the commercial value far exceeded  
5       the face value?

6           A.    There is no such thing as a  
7       commercial value. This is currency just like --  
8       it's just currency. You can obtain currency at any  
9       other value. The value that you obtain currency at  
10      does not have to relate to the value of the  
11      currency. The value of the currency is the  
12      denomination ---

13   47           Q.    Right.

14           A.    --- and that is given by law.

15   48           Q.    But, you did not pay the face value  
16      of those coins.

17           A.    I did not.

18   49           Q.    Okay. So, if it's not the commercial  
19      value, you paid, then, the retail value or...?

20           A.    There's no such thing as retail.

21           Again, these are -- I believe it's not called the  
22      retail value.

23   50           Q.    What would it be called then? The  
24      purchase price?

25           A.    I'm not sure ---

26   51           Q.    Okay. Fair enough.

27           A.    --- what that -- what the number is  
28      called.

1 52 Q. All right. So, at the primary line  
2 of inspection, did you -- do you have any complaint  
3 with what happened between you and the officer? Are  
4 you taking issue with that particular officer in  
5 this action?

6 A. I will not answer that at this time.  
7 I may -- when I amend the Statement of Claim, there  
8 may be additional claims.

9 53 Q. Okay. And then what happened next?  
10 You weren't free to leave. That wasn't the end of  
11 that.

12 A. Well, next, I had to go and pay the  
13 taxes, import taxes for my tires ---

14 54 Q. Right.

15 A. --- and the other two items that I  
16 brought. So, I went inside the customs office,  
17 declared it to the officer what I had brought, which  
18 was the tires and the other two items, and he  
19 directed me to the cashier window, I paid the taxes  
20 for the goods ---

21 55 Q. Right.

22 A. --- for the three items, and then he  
23 said I was free to go, so I left ---

24 56 Q. Okay.

25 A. --- the customs office.

26 57 Q. Right, right. And then what happened  
27 after that?

28 A. And then after that, on the way to my

1 car -- at this point, I didn't know that I was to be  
2 secondarily inspected, so on the way to my car,  
3 another officer, which is Officer Debski, came out  
4 of his office with, I would say, a confrontational  
5 greeting. He greeted me with a greeting, "What do  
6 we have here?" Those were his exact words. I  
7 remember them because they struck me as very odd.

8 I was, of course, a little taken aback,  
9 not knowing if I'm in the back alley somewhere or at  
10 the government building. I showed him my paper, my  
11 paperwork, and I believe he asked me whether he can  
12 look at my car. He asked me if the car -- if the  
13 tires are mounted. I, of course, answered, "Yes,  
14 they're mounted on." I think he had a very cursory  
15 look at the tires, and I don't recall if he asked  
16 for permission to search the car or not, but I  
17 didn't oppose it anyway. So, he went on to search  
18 my car.

19 58 Q. All right. And, that's when he found  
20 the collectible coins; correct?

21 A. No.

22 59 Q. No. Okay.

23 A. That's when he found the receipt,  
24 which I believe was on the front -- either on the  
25 front seat of the car or -- on the passenger front  
26 seat or in the glove compartment.

27 60 Q. Okay. And then ---

28 A. And then ---

1 61 Q. Yes, what happened next?

2 A. And then when he came out, he

3 confronted me. He asked me whether I reported

4 everything, whether I want to change my story, and

5 then I said, "No, I have nothing further to report."

6 So, he showed me the receipt and said, "What's

7 this?" And, I told him, "This is currency that I

8 purchased and I do not have to report it."

9 62 Q. Okay.

10 A. And, I'm not reporting it.

11 63 Q. Okay. And then what happened next?

12 They searched the vehicle and found the coins?

13 A. No, the coins were in my pocket.

14 So ---

15 64 Q. Oh.

16 A. --- all he did is he asked me, "Where

17 are the coins," because at this point he only had

18 the receipt from the car. So, I, of course, had the

19 coins in my pocket, as I keep all money. I don't

20 keep money around the car. And, I showed him, I

21 gave him the coins. He took them, fondled them

22 quite a bit I would say -- I might say. I think he

23 was quite inexperienced with coins like this. Maybe

24 he was happy to have them in his hand, I don't know.

25 And then he proceeded to explain a few

26 times that they are goods, goods, goods. And, of

27 course, I told him that they are stated on the Mint

28 website and the U.S. law that they are currency and

1           legal tender.

2   65           Q.     Okay.

3           A.     After which he -- he was very  
4           confrontational. He was -- he took the stance --  
5           his stance was also very confrontational. He made  
6           me aware immediately that he was wearing -- or  
7           carrying a gun. Like, his gun was, of course, in  
8           his holster. He never drew his gun ---

9   66           Q.     Right.

10          A.     --- but he was facing me in such a  
11         way that he was -- it seemed to me, I'm not  
12         experienced with guns, but I was left with a feeling  
13         that he's ready to pull it.

14   67           Q.     Right.

15          A.     And, he also said that this is a very  
16         serious offence, and proceeded to explain that it is  
17         an arrestable offence. He mentioned that at least  
18         twice while outside ---

19   68           Q.     Right.

20          A.     --- that this was an arrest -- that  
21         -- I don't believe -- I don't know if he used the  
22         word "smuggling". I don't think he specifically  
23         said what the offence was; however, he did say it's  
24         an arrestable offence. He made it very clear that  
25         he could have arrested me right then and there.

26   69           Q.     Okay. And, but -- so what happened  
27         next? At that point, did the conversation stop and  
28         he let you go or...?

1                   A. No, at that point, he went inside to  
2 check with his supervisor or to do paperwork. He  
3 ordered me to go to the -- inside the customs office  
4 again and wait on the bench.

5 70               Q. Okay.

6                   A. It was an order. He was yelling, at  
7 this point, at me. I went inside, I waited for him,  
8 it might have been maybe 15 minutes that I waited  
9 for him. I think he came back one more time to ask  
10 some questions about the coins. This was, of  
11 course, about -- this was more than two years  
12 ago ---

13 71              Q. Right.

14                  A. --- and keeping in mind that I didn't  
15 come to Canada to meet with you, so I didn't review  
16 any of my papers, I didn't bring any of my notes.  
17 I'm just recollecting memory that's two years old at  
18 this point.

19                  I believe my recollection is that he came  
20 out one more time, at which point I -- that's when,  
21 I believe, he told me that he would have to seize  
22 them, and that's when I asked him what he would do  
23 with them, what would happen with them, and  
24 that's, I believe, at the point, he said that they  
25 would be destroyed -- that I have to pay to get them  
26 back. He wouldn't tell me how much, he hadn't  
27 decided yet, but I asked him, "Who's going to  
28 decide?"

1 72 Q. Right.

2 A. And, he responded that he would be  
3 deciding. And, I asked him, "What happens if I  
4 don't pay?" Of course, I knew that I don't owe a  
5 penny since this do not have to be recorded --  
6 reported, so I did not have -- I did not expect I  
7 would have to pay anything to get my coins.

8 He said that if I do not pay his terms,  
9 that the coins would be destroyed after either 30  
10 days or 90 days. I don't recall the number he said,  
11 but he gave a specific number like that, a multiple  
12 of 30, and he said they would be destroyed if I  
13 don't pay after that time.

14 73 Q. Okay.

15 A. After that, he went back into his  
16 office to do more of paperwork or what he had to do.  
17 Finally, when he came out, he cleared with the -- he  
18 explained that he cleared with his supervisor that  
19 he would not be arresting me, that it is not, in  
20 fact, an arrestable offence as he had claimed  
21 earlier, but he would have to continue with his  
22 seizure paperwork.

23 74 Q. Okay. And then he gave you the  
24 seizure paperwork?

25 A. And then he gave me the seizure  
26 paperwork. I asked him a few questions when he  
27 asked me the seizure paperwork, which he admitted  
28 from his narrative report.

1 75 Q. Okay.

2 A. One specific question that I asked  
3 him, since I knew that these coins would be  
4 currency, I asked him -- and I knew there would be a  
5 limit according to the *Proceeds of Crime and*  
6 *Terrorist Financing Act*, there would be a limit up  
7 to which -- under which they don't have to be --  
8 currency does not have to be recorded, that is the  
9 \$10,000.00 limit.

10 So, then, I asked him, what if somebody  
11 were to come through the border with a suitcase of  
12 gold coins like these that he thinks are goods?  
13 Like, how would they have to be reported? And, he  
14 said, "As long as they pay the tax, as long as they  
15 report and pay the taxes, or the tax, then there's  
16 no problem. They're free to go. You can bring any  
17 amount," he said.

18 76 Q. Right.

19 A. Part of the paperwork that he gave me  
20 was not just a seizure report and the -- not just  
21 the seizure receipt and the terms, but also he gave  
22 me a printout of a tax demand. I believe he showed  
23 a tax rate of \$13.00 and he had quoted \$5,000.00  
24 worth of gold coins.

25 77 Q. Right.

26 A. And, he decided 13 percent would be  
27 the tax I would be assessed, and had I reported them  
28 according to the currency -- excuse me, to the

1       Customs Act, that is the tax I would have been -- I  
2       would have had to pay in order to sail through  
3       without further questions.

4   78           Q.    Okay. So, then ---

5               A.    And then I left.

6   79           Q.    Then you left? Okay.

7               A.    I believe I returned one more to ask  
8       whether -- this is just recollection. I believe I  
9       returned one more to ask whether he would, or  
10      whether the CBSA would ship me the coins when the  
11      matter is finally sorted out, and I believe he  
12      replied that they don't do -- that they don't ship,  
13      that I would have to return in person to pick them  
14      up.

15   80           Q.    Okay. Do you recall what day of the  
16      week was October 21<sup>st</sup> offhand?

17               A.    I do not.

18   81           Q.    Was it a week day or weekend?

19               A.    I do not.

20   82           Q.    Was the border crossing busy? Do you  
21      remember?

22               A.    No, it was completely not busy at  
23      all.

24   83           Q.    All right. Were you the only person  
25      that you saw being detained in the secondary  
26      inspection area?

27               A.    I have no idea who else was detained.  
28      There were a few people inside.

1 84 Q. All right. How long, approximately,  
2 were you at the border crossing from the time you  
3 pulled up for primary inspections to when you  
4 ultimately pulled away again? Was it half an hour,  
5 two hours, 10 hours...?

6 A. I believe -- no, I believe it was in  
7 the order of two hours.

8 85 Q. Two hours. All right. So, prior to  
9 pulling up and not declaring these coins, you had  
10 did some research, you mentioned. Did you consult  
11 with a lawyer or legal counsel?

12 A. No.

13 86 Q. All right. Did you contact my client  
14 to ask for their preliminary opinion?

15 A. I did not.

16 87 Q. All right. Did you discuss whether  
17 these coins would be declarable or not with anybody  
18 in the coin collecting industry in Canada or the  
19 U.S.?

20 A. I had read forums, internet forums of  
21 other people that have imported coins from the U.S.  
22 and from other countries, and I familiarized --  
23 based on the forum conversations, I familiarized  
24 myself with the import/export rules of currency at  
25 borders ---

26 88 Q. Right.

27 A. --- at various borders. That's how I  
28 learned that these coins are specifically minted by

1       the government as currency, so they can be imported  
2       or exported freely within the confines, of course,  
3       of the -- not the confines, but with the  
4       requirements, with the reporting requirements of the  
5       *Proceeds of Crime and Terrorist Financing Act.*

6 89           Q.     All right.

7           A.     Am I going to fast?

8 90           Q.     No. Was this -- this was not your  
9       first time crossing from Canada -- from the U.S.  
10      into Canada by car; correct? You have crossed the  
11      border previously?

12       A.     I do not remember exactly, but I  
13      believe so.

14 91           Q.     Okay. Have you ever been detained  
15      for a secondary inspection before or was this your  
16      first time?

17       A.     I believe I've been -- not detained,  
18      but had to undergo the secondary inspection one time  
19      on a trip by airplane, and I was arriving at  
20      Pearson.

21 92           Q.     Okay.

22       A.     And, I had to open the luggage,  
23      and...

24 93           Q.     But, not at a land border?

25       A.     I don't believe so.

26 94           Q.     Okay. Was there anyone else that you  
27      dealt with at the border on October 21<sup>st</sup> other than  
28      Officer Debski that you are complaining about in

1       this lawsuit? Is he the only officer?

2           A. Well, I personally only dealt with  
3       the reception officer that I first encountered when  
4       I first went into the office, then with Officer  
5       Debski and the cashier.

6 95       Q. Right.

7           A. I only interacted with three people  
8       -- four people including the first response -- the  
9       first line officer.

10 96       Q. Right. But, the only person that you  
11      have a complaint with Officer Debski?

12       A. I don't know at this point.

13 97       Q. Okay. So, if that changes, you'll  
14      let me know, but at this point in time, you're only  
15      talking about Officer Debski?

16       A. If that changes, it will be in my  
17      amended Statement of Claim.

18 98       Q. All right. All right. I think those  
19      are all my questions. Thank you for coming.

20       A. You're welcome. May I ask what part  
21      of this could not have been done in writing?

22 99       Q. The follow-up is intense. You can't  
23       -- the rule states you have a right to examine  
24       orally, and then if it ---

25       A. Yes ---

26 100       Q. --- doesn't pan out, then, whatever,  
27       but there's no way I can judge what you're going to  
28       say, and then, you know? It has to be done orally.

26

It takes the place of an examination in court, in front of a judge.

3                           A. All right. You have told me a lot of  
4 things I don't believe so -- but, that's fine.

5 101 Q. Okay.

6 A. That's fine. You realize ---

7 102 Q. We're done. We're done.

8

9 --- Upon adjourning at 10:21 a.m.

10

C E R T I F I C A T I O N

12

I, Jeanette Duda, a legal transcriber in the Province  
of Ontario, hereby certify the foregoing pages to be  
an accurate transcription of recordings to the best of  
my skill and ability, and I so swear.

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20 Jeanette Duda, Legal Transcriber

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**TAB 3**

Court file: T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**RADU HOCIUNG**

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Defendant

**WRITTEN REPRESENTATIONS OF THE DEFENDANT  
(Defendant's Motion for Summary Judgment)**

**OVERVIEW**

1. The plaintiff brings this action to challenge the seizure of several United States Treasury gold and silver collector coins by the CBSA upon his return to Canada. The plaintiff intentionally chose not to declare these collector coins to the CBSA upon entry, on the mistaken belief that collector coins are currency. Because the collector coins are not currency but rather goods that must be

declared, the CBSA seized the coins as forfeit for being in contravention of section 12 of the *Customs Act*.

2. The plaintiff appealed the seizure to the Minister, and the Minister's delegate rendered a Ministerial Decision confirming the seizure.
3. The plaintiff now appeals to this Court by way of action pursuant to section 135 of the *Customs Act*. He also seeks claims damages herein with respect to the performance of duties of certain officers of the Canada Border Services Agency.
4. The plaintiff has filed a motion to amend the statement of claim, to expand his claims for damages and to seek mandamus, namely, an order compelling the Minister to dismantle the Canada Border Services Agency for being a criminal organization engaged in money laundering, and orders that the CBSA officers and officials involved be charged with fraud under the Criminal Code.
5. All of the damages and mandamus relief which the plaintiff is seeking arises from CBSA's position that the collector coins are goods that need to be reported as such, which the plaintiff failed to do.
6. The Court's jurisdiction in an action pursuant to section 135 of the *Customs Act* is limited to specific non-monetary relief, namely, whether a contravention of the Act or regulations had occurred. Furthermore, section 106 of the *Customs Act* requires the plaintiff to bring a claim for damages by way of action within 3 months of the

alleged cause of action. The plaintiff failed to do so within the required timeframe and is now statute barred.

The only genuine issues in this action are two questions of law, namely:

- (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
- (2) whether the collector coins are currency or goods for the purposes of the *Customs Act*.

The Court may determine these questions and grant summary judgment accordingly pursuant to Rule 215(2)(b) of the *Federal Court Rules*.

## **STATEMENT OF FACTS**

7. The plaintiff presented himself to the CBSA at the Queenston Bridge in Niagara-on-the-Lake, Ontario on October 21, 2014
8. At the primary inspection booth, the plaintiff declared to having purchased two tires valued at approximately \$500 and a bottle of Advil. He was subsequently referred to secondary to verify his declaration.

9. During secondary examination, a receipt from Jack Hunt Coin Broker Inc. dated October 21, 2014 was discovered in the glove compartment of the plaintiff's BMW.
10. The receipt confirmed the purchase of United States gold and silver coins earlier that day in the U.S. in the amount of \$5,700.00 USD (\$6,427.89 CAD).
11. The gold coins in question are four \$50 USD Buffalo Gold Bullion coins and are collector items not intended for circulation as currency. The silver coins in question are twenty \$1 USD Silver Eagles coins also collector items not intended for circulation as currency.
12. On secondary inspection, Border Services Officer (BSO) Debski, seized the collector coins as forfeit for failure to report in accordance with section 12 of the *Customs Act*. BSO Debski then offered the plaintiff terms of release in the amount of \$1,606.97 for the return of the coins, which the plaintiff refused. The plaintiff was advised of his appeal rights.
13. The plaintiff appealed the seizure to the Minister of Public Safety and Emergency Preparedness. The Minister's delegate rendered a decision on June 1, 2015 which maintained the seizure of the coins, and reduced the terms of release owing for their return to \$321.39. In his decision, the Minister's delegate advised that the collector

coins are not cash or currency but rather goods for the purposes of reporting under the *Customs Act*.

14. The plaintiff appealed the Ministerial Decision that a contravention had occurred, by way of this action brought pursuant to section 135 of the *Customs Act*.
15. From the outset of the seizure, the plaintiff has argued that the collector coins are not goods but rather currency, and as such, he was not obligated to report them under the *Customs Act* but rather the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMTLFA)*. However, because the value of the collector coins did not equal or exceed the threshold prescribed under the *PCMTLFA* or the *Cross-border Currency and Monetary Instruments Reporting Regulations (CCMIRRs)* (being \$10,000 CDN), the plaintiff argues that he was not obligated to report the collector coins at all.
16. The plaintiff testified at his examination for discovery that he had formed an intention in advance of crossing the border not to declare the collector coins to CBSA. He did not seek an advance ruling from CBSA, nor did he consult with a lawyer, prior to his trip to purchase the coins the United States. See Plaintiff's Discovery Transcript, questions 40-41, 85-88.

## POINTS IN ISSUE

The only issues in this action are two issues of law, namely:

- (1) whether the plaintiff may claim damages and seek mandamus in an appeal of a Ministerial Decision by way of action pursuant to section 135 of the *Customs Act*; and
- (2) whether the collector coins are currency or goods for the purposes of the *Customs Act*.

In the context of summary judgment, the Court must decide whether these issues present any genuine issue for trial.

## SUBMISSIONS

### Summary Judgment

17. On a motion for summary judgment, if the Court is satisfied that there is no genuine issue for trial, the Court shall grant summary judgment accordingly: Rule 215(1).
18. If the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant summary judgment accordingly: Rule 215(2)(b).

**The plaintiff cannot seek damages or mandamus herein**

19. The plaintiff cannot seek damages in an action instituted under section 135 of the *Customs Act*.
20. The only issue for the Court to determine in such proceedings is whether there was a contravention of the Act or its regulations.
21. An action pursuant to section 135 is not a regular civil action but rather a statutory appeal of a Ministerial Decision, by way of action. Parliament has provided persons affected by a Ministerial Decision with an opportunity for a trial de novo with the sole purpose of determining whether a contravention of the *Customs Act* had occurred. Actions pursuant to section 135 do not permit claims for damages or requests for mandamus.<sup>1</sup>
22. A claim for damages or mandamus with respect to the performance of CBSA officers' duties can be brought by way of a separate action or judicial proceeding, as provided by section 106 of the *Customs Act*. A section 106 proceeding cannot be combined with a section 135 action. The limitation period for bringing a section 106 proceeding is three months.<sup>2</sup>
23. Parliament has chosen to separate actions under section 135 from proceedings under section 106 dealing with the performance of

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<sup>1</sup> *Starway v. Canada*, 2010 FC 1208, at paragraphs 24 and 27; *Nguyen v. Canada*, 2009 FC 724, at paragraphs 19-22

<sup>2</sup> *Customs Act*, subsection 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." (In the present case, the limitation period has expired.) See also *George Oriental Carpet Warehouse v. Canada*, 2011 FC 1291, at paragraph 12, per Mr. Justice Noël.

duties by CBSA officers. The fact that Parliament has done so demonstrates that a section 135 action has a restricted scope and is not to be combined with claims for damages or mandamus or any other causes of action or requests for relief.

24. The plaintiff's request for mandamus in the form of an order requiring the Minister to dismantle CBSA can be brought in a separate, regular civil action or application.<sup>3</sup> Such a proceeding cannot be combined with a section 135 action, for the reasons discussed above.
25. The objectives of proceedings under section 135 and section 106 are different. With respect to section 106 and the performance of duties by CBSA officers, the *Customs Act* oversees the movement of people and goods, and the collection of duties and taxes where applicable. This protects the Canadian economy and industries. In terms of section 135, the *Proceeds of Crime and Terrorist Financing Act* requires CBSA to enforce a reporting regime so as to allow FINTRAC the ability to monitor the cross-border movement of large quantities of funds and suspicious transactions.

**Collector coins are goods, not currency**

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<sup>3</sup> If the plaintiff were to bring such an action or application, it is more than likely that the Minister would move for an order striking the claim or application as being frivolous and vexatious. A claim or application will be struck as being frivolous and vexatious where it does not have the slightest chance of success.

26. All persons entering Canada are required to declare the goods purchased, or otherwise acquired abroad which they are importing into Canada in accordance with the section 12 of *Customs Act*.<sup>4</sup>
27. Also, at the time of entry into Canada, travellers must submit a report of currency or monetary instruments in their possession that are equal to or greater than the prescribed threshold of \$10,000.00 CAD in accordance with the *PCMLTFA* and the *CCMIRRs* respectively.
28. The plaintiff claims that the U.S. Treasury gold and silver coins are currency and as their total value was under \$10,000.00 CAD, he claims he was not obligated to report them.
29. Although the term "currency" is not defined in the *PCMLTFA*, the term "cash" is defined in the *PCMLTFR* as follows: "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."<sup>5</sup>  
[underlining added for emphasis]
30. The *PCMLTFR* specifically defines precious metals as "gold, silver, palladium or platinum in the form of coins, bars, ingots or granules

---

<sup>4</sup> *Customs Act*, R.S.C., 1985, c.1 (2nd Supp.), section 12.

<sup>5</sup> *PCMLTFR*, subsection 1(2), definition of "cash"

or in any other similar form".<sup>6</sup> To be sure, there is an actual market for commodities such as precious metals and collector coins.

31. The *Oxford English Dictionary* defines "currency" as "[t]hat which is current as a medium of exchange; the circulating medium (whether coins or notes); the money of a country in actual use."<sup>7</sup>
32. It is beyond doubt that the term "currency" does not apply to collector gold and silver coins. These coins typically have a face value of one or two dollars, as is the case here. However, the real value is much higher and is a product of two factors: (1) the current market value of the precious metal (based on composition and level of purity), measured by weight, and (2) the degree to which the coin is prized among the collector community as rare and sought after. Collector coins are part of a limited issue produced by a government mint or treasury. A one-ounce gold collector coin is not worth its nominal face value of one or two dollars, but rather the market value of an ounce of gold, plus whatever rarity value applies to the limited issue. In comparison, in-circulation coins used as regular legal tender such as quarters, nickels and dimes, are mainly made from steel, nickel, copper and aluminum. Collector coins are meant to be acquired for coin collections. They are not part of the money of a country in actual

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<sup>6</sup> PCMLTFR, subsection 1(2), definition of "precious metal"

<sup>7</sup> *Oxford English Dictionary*, "currency", 4.a.

use, and are not intended for circulation. No one in his or her right mind would use a gold coin with a two dollar face value to purchase a cup of coffee at the local coffee shop.

33. The *Royal Canadian Mint Act*<sup>8</sup> deals with non-circulation coins produced by the Mint. Section 6 of the Act provides that “[t]he Governor in Council may authorize the issue of non-circulation coins of a denomination listed in Part 1 of the schedule.” Section 2 of the Act defines a “non-circulation coin as “a coin composed of base metal, precious metal or any combination of those metals that is not intended for circulation and that is listed in Part 1 of the schedule”.
34. The same principle applies to the U.S. Treasury Buffalo Gold Bullion Coins and silver coins at issue herein: They are not intended for circulation. The U.S. Treasury stipulates that its collector coins are legal tender. However, legal tender does not mean that these coins are currency.
35. In Canada, the *Currency Act* provides a good example of how collector coins cannot be considered as currency. Section 8 of the Act deals with legal tender. Subsection 8(2) provides for limitations on the use of coins as legal tender, to place a maximum amount on

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<sup>8</sup> *Royal Canadian Mint Act*, R.S.C., 1985, c. R-9.

the number of coins a person can tender at one time (instead of using notes):

**8(2)** A payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:

- (a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;
- (b) twenty-five dollars if the denomination is one dollar;
- (c) ten dollars if the denomination is ten cents or greater but less than one dollar;
- (d) five dollars if the denomination is five cents; and
- (e) twenty-five cents if the denomination is one cent.

**(2.1)** In the case of coins of a denomination greater than ten dollars, a payment referred to in subsection (1) may consist of not more than one coin, and the payment is a legal tender for no more than the value of a single coin of that denomination.<sup>9</sup>

36. These provisions of the *Currency Act* demonstrate that precious metal collector coins are not currency. No one would think to spend a gold coin with a two dollar face value, and worth several hundreds of dollars, as legal tender in the marketplace where the maximum amount available for tender would be forty dollars, as per section 8(2)(a) of the Act.

---

<sup>9</sup> *Currency Act*, R.S.C., 1985, c. C-52, section 8

37. In this regard, it is worth bearing in mind that the plaintiff paid \$6,427.89 CAD (\$5,700.00 USD) for four \$50 USD Buffalo Gold Bullion coins and twenty \$1 USD Silver Eagles coins. The total face value of these coins is \$220 USD, a small fraction of the actual retail value which the plaintiff paid for them.
38. The plaintiff purchased the collector coins at a coin dealer, namely, Jack Hunt Coin Broker Inc., in Buffalo, and not at a financial institution such as a bank or money services business (such as a foreign currency retailer). This is a further indication that the collector coins are goods and not currency. If the coins were currency, the plaintiff could have gone to any bank branch in Buffalo to acquire them.
39. As well, if the collector coins were meant to be used as currency, the plaintiff would not have bought United States coins and then brought them into Canada to use here. On that mistaken logic, he would have bought Canadian coins to use in Canada.

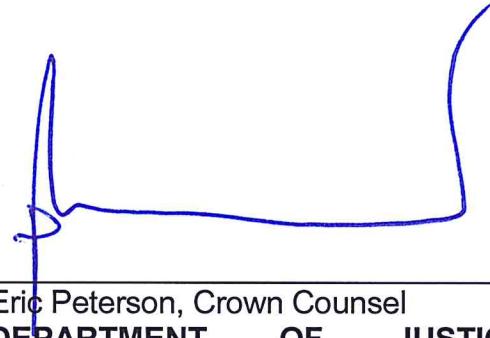
#### **ORDER SOUGHT**

39. The Minister requests Summary Judgment:

- (a) dismissing the action in its entirety, on the basis of the statement of claim as it now stands and as it may be amended on the disposition of the motion to amend, with prejudice;
- (b) his costs of this motion and the action; and
- (c) such other relief as to this Honourable Court may seem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**DATE:** February 28, 2017



---

Eric Peterson, Crown Counsel  
**DEPARTMENT OF JUSTICE**  
**CANADA**

**TO:** The Registrar  
Federal Court of Canada  
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M5V 3L6

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## PART I – LIST OF AUTHORITIES

*Starway v. Canada*, 2010 FC 1208, at paragraphs 24 and 27;  
*Nguyen v. Canada*, 2009 FC 724, at paragraphs 19-22

## APPENDIX A - STATUTES AND REGULATIONS

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

*Oxford English Dictionary, "currency"*

*Royal Canadian Mint Act, R.S.C., 1985, c. R-9.*

*Currency Act, R.S.C., 1985, c. C-52; section 8*

# **TAB 6**

**Plaintiff's Response on the Motion**



**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

**RESPONDING MOTION RECORD  
DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**

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**AND TO:**

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Ontario Regional Office  
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AND TO:

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**TAB 1**

**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

**WRITTEN REPRESENTATIONS OF THE PLAINTIFF  
(Defendant's Motion for Summary Judgement)**

SUBMISSIONS

1. The Defendant's Motion for Summary Judgement, seeking to dismiss the action, is a materially identical motion to his August 30<sup>th</sup> 2016 Motion to Strike the Statement of Claim, which was unsuccessful.
2. The present motion is unnecessary and vexatious. As a result, the plaintiff seeks that the action be determined on its merits, based on the evidence adduced herein pursuant Federal Court Rule 214, and that costs on the motion be awarded to the plaintiff on a substantial indemnity basis.
3. In his Motion to Strike the Statement of Claim, the defendant, proposed, as he does in this motion, that the *Currency Act* section 8 shows that the coins in question are not currency. As he did on that motion, the plaintiff states that section 8 does not define currency, but rather states how currency, defined in section 7, may be used for payments, and that it explicitly states that coins of denominations \$1 and \$50 may be used for payments. The Defendant claims that s.8 states the opposite of what it does.
4. In her decision on the Motion to Strike, Madam Prothonotary Martha Milczynski, referring to the defendant's claim with respect to *Currency Act* section 8 noted that the defendant's argument in fact goes to the merits of

the case.

5. The defendant still makes that claim, and provides no additional evidence in support of his case, and therefore has no reasonable expectation of success on this motion. This motion is therefore unnecessary.
6. The motion also comes at a time when discovery of the defendant is still in progress. Discovery started on July 19, 2016, and the defendant had used several delay tactics to avoid discovery: the motion to strike, a 6 month delay, and various improper statements of objection to the questions asked. His delays have forced the plaintiff to request Case Management, which was granted. This motion comes one day prior to a Case Management conference scheduled for March 2<sup>nd</sup> (TAB 70). The agenda for the March 2<sup>nd</sup> conference were largely requests by the plaintiff that the defendant be ordered to fully answer the questions asked on July 19, 2016, and to answer the questions arising from the partial answers provided on January 31<sup>st</sup>, 2017. After filing the motion, the defendant requested from Case Management that discovery be suspended until this motion, and a motion brought by the plaintiff to amend the statement of claim, are determined.
7. From the timing of the motion, it is clear that the defendant's purpose is not to have case determined, but to stall discovery and prevent discovery of further evidence. Therefore, his motion is vexatious.

## **Coins not subject to *Customs Act* provisions**

8. The only statute that gives the *Customs Act* authority to impose, levy and collect taxes and duties on imported goods is the *Excise Tax Act* ("ETA") s.50(1) and s50(1)(b) (TAB 5). This section applies only to "goods", while the coins that make the object of this action and the Minister's Decision are "currency". Therefore, as the *Customs Act* does not apply to currency, the Minister's Decision is incorrect and should be set aside.
9. Even if the coins were "goods", ETA s.51 (TAB 5) states that tax imposed by section 50 of that Act does not apply to the importation of goods mentioned in Schedule III, also meaning that section 50(1)(b), which states that the *Customs Act* governs the paying of import duties, also does not apply to Schedule III goods. (for greater clarity, the *Customs Act* does not apply to Schedule III goods)
10. Schedule III, Part XI of the *ETA* (TAB 6) lists the following:
  3. British and Canadian coins; foreign gold coins
  4. Coin of any metal, of authorized weight and design, issued for use as currency under the

authority of the government of any country.

11. While para 3 of Schedule III Part XI applies to the gold coins in question, para 4 applies equally to the gold and silver coins, having been issued for use as currency under the authority of the United States government (per U.S. Title 31, see TAB 12).

12. Schedule III, Part XI makes no reference to the fair market value of any items, thus the “true” or denominated value of coins is of no consequence in the exemption determination.

13. Also, *ETA* section 212 (Importation Tax, TAB 5) does not apply to imported coins because section 212 applies only to persons “liable under the *Customs Act*”, and the plaintiff is not liable under the *Customs Act* thanks to section 51 of the *ETA*. Furthermore, there is an overlapping exemption for the importation of precious metals, in the form of section 213, which states that the tax on importation of goods does not apply to goods listed in Schedule VII of the *ETA*. Precious metals as defined in s.123 for the *ETA* are prescribed goods pursuant Schedule VII sec. 8, as prescribed by *Non-Taxable Imported Goods (GST/HST) Regulations* para 3(a) (TAB 9). The effect is that the importation of coins (precious metal or otherwise) is not subject to the *Customs Act* at all.

14. Thus, the plaintiff was not required to report the coins seized by the CBSA (see Seizure Report, TAB 2) pursuant section 12 of the *Customs Act*, and the seizure is improper.

15. The Minister's Decision supporting the seizure, dated June 1, 2015 (TAB 4) should therefore be set aside.

16. In fact, not only is the Minister's Decision wrong, it is so wrong that using it as an excuse to avoid reporting requirements pursuant the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“*PCMLTFA*”) s. 12 is a crime, and an offence contrary to section 74 of the *PCMLTFA*, as found in Canada v. Nawaya, BC Provincial Court case 179965 (TAB 25), which finds gold coins to be currency or monetary instruments, and subject to the *PCMLTFA*.

## Fraud And Threats Committed by BSO Debski

17. In his narrative report, written at the time of seizure (see TAB 16), officer Debski indicated his understanding that the coins in question were “technically currency”, but went on to explain he would not be treating them as such.

18. While he understood that the coins were currency, during the conversation with the plaintiff, he insisted that they were “goods” subject to reporting under the *Customs Act*.

19. As he understood the coins were currency, the officer conducted a search of the plaintiff's wallet, looking for more currency, in the hope that he would find a total of over \$10,000, which would have allowed him to confiscate it all pursuant the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”) - see copy of the plaintiff's Citizenship card (TAB 17), which the plaintiff keeps in his wallet. The officer stated in his narrative report that he only requested the plaintiff's keys, passport, driver's licence, ownership and the gold coins (TAB 16, page 2, para 3), but the fact that he also made a copy of the Citizenship Card proves he requested and searched the wallet.

20. The officer asked a further question, betraying that he was of the mind that he was dealing with currency rather than goods. He asked “Where do you have so much money from”, (TAB 18, question 20). This is clearly a question of provenance of funds, showing the officer wanted to find out if there are grounds to suspect it being proceeds of crime. This question is not relevant for *Customs Act* purposes, ie, the *Customs Act* is not concerned with how goods were purchased, but it is relevant to for PCMLTFA purposes to assess whether there is reason to suspect the money may be the proceeds of crime (see TAB 20, CBSA *PCMLTFA* enforcement manual, para 85), instructing that the officer must gather reasonable grounds to suspect, in support of a seizure with no terms of release. The officer admitted in response 20 of the Discovery of the Defendant (see TAB 18, answer 20) that the question was not pertinent to the seizure action, which was a *Customs Act* seizure, leaving the *PCMLTFA* as the only other Act to which the question was pertinent.

21. As the officer was unable to establish grounds to suspect the gold and silver coins proceeds of crime, nor that the prescribed \$10000 amount had been exceeded, he proceeded to seize them as “goods” explaining that they had not been reported as the *Customs Act* section 12 requires.

22. He threatened the plaintiff with arrest (an act of violence), stating that smuggling was an arrestable offence (answer 7 of Discovery of the Defendant Answers, TAB 18), in supporting his request that the plaintiff give him the gold and silver coins.

23. The officer's behaviour was offensive and threatening, starting with his initial greeting “What do we have here?”, in a schoolyard bully tone, to his posturing, showing readiness to use his weapon, to yelling orders at the plaintiff (see Discovery of the Plaintiff, at answers 57, 65-72), in supporting his request that the plaintiff give him

the gold and silver coins.

24. The plaintiff feared for his safety and did not wish to be shot at or arrested, so he handed the coins to officer Debski.

25. In his narrative report officer Debski listed the criteria used by Canada Revenue Agency to identify financial instruments (see CRA policy P-192 in TAB 8, paras 3, 27-28) writing “Only those coins minted with metals at the required purity levels and issued by a government authority qualify” (TAB 16, page 2, para 4).

26. While the document that officer Debski quoted in his narrative report reads “... issued by a government authority and that may be used as currency will qualify”, the officer purposely left out the words “that may be used as currency” from his narrative, in order to support his assertion that these coins are “goods”.

27. He did not tell the plaintiff about the definition of financial instruments he was using, but proceeded to prepare the Seizure Receipt (TAB 2), in which he used the words “United States of America \$50; 1oz of .9999 Fine Gold Coin” and “United States of America Silver Dollar, 1oz. Fine Silver”, showing both that they were above issued by the United States Government, and that the purity of the metal was at the required purity levels, as listed by the Excise Tax Act s.123(1) definition of financial instruments (precious metals) (TAB 7).

28. While the purity of the silver coins is not shown on the coins due to space constraints, a look-up on the United States Mint would reveal the specifications of the coins, and its silver content of 99.9% (ie meeting the purity requirement).

29. The officer's false representation that the coins were subject to reporting under the Customs Act also helped induce the plaintiff into handing over the coins. The plaintiff was not entirely convinced that he should have reported them, however, the officer explanation that they had been “purchased” outside of Canada, therefore were “goods” did make some sense (officer's narrative report, TAB 16)

30. The seizure of the coins resulted in a loss of \$6427.89 by the plaintiff to the CBSA (see seizure report, TAB 2)

31. Even if the coins would be ultimately returned, the officer would still gain the amount of the terms of release on behalf of the CBSA (in this case the officer had set a 25% amount, or \$1606.97). This represents the benefit that the CBSA would have obtained as a result of the fraud, but the amount of \$6427.89 was the amount the plaintiff was deprived of.

32. Thus, officer Debski has committed fraud over \$5000 as described by the Criminal Code section 380.

## CBSA's Bulletin is a recipe for money laundering

33. In his decision to seize the coins, officer Debski admitted in his narrative report (TAB 16, page 2, para 4) that he was aided by a secret internal bulletin circulated within the CBSA, the “Information Bulletin – Precious Metals – Bullion and Coin” (“the bulletin”, attachment in TAB 18).

34. The bulletin acknowledges in the first paragraph/abstract that it gold and silver are “investment metals”.

35. While the bulletin is titled “Information Bulletin”, it contains no references to specific Acts of Parliament and sections to which it refers, so the information contained within it cannot be verified, as the context of the statements it makes cannot be ascertained.

36. Further, in the abstract (page 1, para 2), the bulletin states that a Cross-Border Currency or Monetary Instrument report is not required to be filed for precious metal importation.

37. The bulletin, at para 4 quotes the definition of “financial instruments (precious metals)” from the ETA s.123(1) (TAB 7), and for further clarity, at para 5 it quotes the Canada Revenue Agency policy P-192 (TAB 8, paras 28-30), which is part of CRA's Memo 17.1, titled “Definition of 'Financial Instrument'”. The sole goal of the CRA memo is to clarify the *ETA*'s provisions with respect to Financial Instruments.

38. Further in paras 7-10, the bulletin shows examples of Financial Instruments (precious metals), and lists various identifying criteria. It even depicts a Canadian \$50 gold coin (ie, Canadian currency per the *Currency Act*), a silver bullion bar, a Royal Canadian Mint gold ingot and a Credit Suisse platinum wafer.

39. On page 2, para 4, the bulletin states “Coins are also to be treated as goods and not as currency”. (The word “not” is underlined in the bulletin).

40. Then it proceeds to explain that the coins have legal tender status, but the face value is “purely symbolic”, which is the opposite of what the *Currency Act*, s.7 (TAB 10) which states “A coin is current for the amount of its denomination in the currency of Canada”, ie, that the denomination is the value of the coin. (In Canada, the value of currency is set by decree, which is s.7 of the *Currency Act*).

41. In fact, the defendant understands that the “symbolic value” argument is not true, and he gives an example that is addressed at para Error: Reference source not found Error: Reference source not found.

42. Further on page 2, para 4, advises that financial instruments in gold or silver bar, ingot or wafer forms are also to be treated as goods, and not reported pursuant the *Cross-Border Currency or Monetary Instruments Regulation*. Once again, the bulletin emphasized the word “not”.

43. Further, on page 3, the bulletin outlines a method for generating “terms of release” revenue for the CBSA, by using the Travelers Entry Processing System (TEPS) software. The “penalty” is to be assessed of persons who refuse to declare financial instruments (precious metals) and currency as “goods”.

44. Together, the advice of treating financial instruments and gold/silver currency as “goods” and not reporting them pursuant the PCMLTFA constitute a money laundering facilitation method.

45. While the bulletin advises border officers that they override the TEPS software's determination of 13% GST/HST with a 0% value, it is clear that officers have the ability discretion to not do so. In the seizure that is the object of this action, officer Debski clearly did not override the TEPS software.

46. In many cases travellers are aware of the CBSA's treatment of financial instruments or are informed by the CBSA officers, resulting in a GST/HST payment of 13% to the CBSA. In the present action, if the plaintiff had declared the gold currency as “goods”, he would have been charged 13% (as evidenced by both the seizure report, TAB 2 and the separate online rating generated by the CBSA at the time of enforcement, TAB 3).

47. The tax payment can be made in cash at the CBSA's cashier counter. Given that this payment takes place before a traveller is required to report currency imported into Canada, and also since the tax payment is not in fact imported into Canada, the cash used for the tax payment can be “dirty”, ie proceeds of crime, that goes undetected, unreported to FINTRAC.

48. The CBSA operates a program for refunding duties and taxes on “non-commercial importations” (TAB 23), by which duties paid in error due to determination are refunded to travellers upon submission of documentation that the gold/silver imported should have been treated as tax free, as the bulletin shows. As a result, the CBSA refunds the tax paid in error by mailing to the traveller a Government of Canada cheque for the tax paid.

49. By using the tax refund mechanism, the CBSA offers a service by which it takes “dirty” cash as a tax payment, and later refunds it as a “clean” government cheque. This process of inserting the proceeds of crime into the banking system, is by definition, money laundering.

50. Therefore , not only does the CBSA facilitate money laundering by treating financial instruments (precious metals) as “not subject to the PCMLTFA”, but also launders money by taking dirty cash as “taxes”, and refunding it as “clean” government cheque.

51.

52. The bulletin contains a footer on every page stating: “ **PROTECTED - This document is the**

**property of the CANADA BORDER SERVICES AGENCY. It is provided on the understanding that it will be used solely for official purposes by your agency and that it will not be further disseminated without the written permission of the CANADA BORDER SERVICES AGENCY”**

53. In light of the illegal instructions contained in the bulletin, the secrecy of the document is intended to shield the CBSA from becoming the target of legal action, and also from becoming the target of the “War on Terror”, “War on Drugs” and various similar “wars”.

54. Based on the annual reports of the Royal Canadian Mint, and by statistics from Industry Canada regarding the importation of gold coins under the tariff, it appears that the majority of 1oz gold coins produced by the Royal Canadian Mint are exported and accounted by the CBSA as goods, under the tariff 7118.90.00.10, as recommended by the bulletin. Presently this amounts to approx \$1.8 billion annually. The CBSA has refused to provide evidence to establish the amount of financial instruments treated as gold (discovery questions 1-4, TAB 18), and thus the statistics from the government sources are the best evidence.

### **Fraudulent use of “TEPS” software**

55. The bulletin also instructs officers to use the TEPS software to obtain “terms of release” payments for currency and financial instruments which are exempt from provisions of the *Customs Act*.

56. The software, used by the CBSA at ports of entry is used to determine the duties and taxes owing on imported goods (Discovery of the Defendant, TAB 18, question 23).

57. On CBSA's own website (TAB 27, page 45), the software's purpose is stated to be: “*TEPS Assists the Border Service Officers in the assessment and collection of duties, taxes and other relevant data on travellers' importations.*”

58. In the defendant's answer to discovery, question 23, the defendant admits that the coins were determined to be “tax exempt”, but rather than also conclude that the TEPS software should have not been used at all, it concludes that the terms of release were incorrectly calculated.

59. As shown before, as the coins in question are not “goods”, but currency, they are not subject to taxation under *Excise Tax Act* s.50(1) (TAB 5), and therefore also not subject to the provisions of the *Customs Act* stipulated by s.50(1)(b). Even if they were somehow considered “goods”, they would be exempt from s.50 by virtue of the exemption given in s.51 and Schedule III, Part XI, items (3) and (4). As such, there is no collection of

duties or taxes that the Border Service Officers would need assistance with.

60. The TEPS software is little more than a glorified calculator, in that it looks up tax rates in tables, stores statistics of all goods imported nation wide. It is not however intended to determine exemptions, which are the responsibility of the officers. Ie, the officers should first determine if an item is a “good”, if it is “imported”, and if it is not exempted by *ETA* s.51, and only if these criteria are met, then the TEPS software should be used to assist with the calculation of duties and tax. For example, one would not enter “banknotes” into the software, under the tariff 4907.00.00.12 (Banknotes being legal tender, issued, see *Customs Tariff*, TAB 28), unless the traveller reporting them were someone like the Canadian Bank Note Company, as none of the HS4907 items are “goods” as per the intent of the Excise Tax Act (they are all things like money or financial instruments).

61. In fact, statistics from Industry Canada (TAB 29) show that the CBSA also classifies importation of banknotes and other money-like things under the tariff heading HS4907, however not enough detail is available to ascertain if the statistics refer to “issued” or “non-issued” such items. “Issued” banknotes would of course be financial instruments, while “non-issued”, such as banknotes printed by the Canadian Bank Note Company, and shipped to a foreign central bank for issuance would be “goods”.

62. The defendant's position is however that all coins or banknotes can be classified under some heading of the *Customs Tariff*, they can be treated as “goods”, and the TEPS can be used to extract “terms of release” payments, and even more seriously, such banknotes and coins would not be subject to the PCMLTFA.

63. Certainly the defendant makes the case that “collectible” or “non-circulation” money is “goods”, which is wrong.

## **Gold is Money**

64. Excepting products made from gold, like jewellery, whenever Canada's legislation mentions “gold”, it is in a “money” context. In fact, there is no support to the CBSA's claim that precious metal in bar, ingot, wafer or coin form is “goods”.

65. While coins made of gold under the Royal Canadian Mint Act, are “currency”, respecting *Currency Act* s.7-8, they are not are not “gold” as they cannot be melted or used in any other way than currency (such as to manufacture gold jewellery), as this is prohibited by s.11 of the *Currency Act*. In any case, they are not referred to as “gold”, but as “currency” in legislation.

66. The *Currency Act*, s.15 (TAB 10) provides that gold is a type of currency, similar to “a currency of a country other than Canada” or “a unit of account that is defined in terms of two or more countries” (making reference to the SDR, which is issued by the IMF as a “basket of currencies”), but as it is an universal currency, and not any one country's currency, it is listed separately.

67.s.15 of the *Currency Act* provides that the Governor in Council may make regulations that specifies the equivalent dollar value of those currencies or gold. This acknowledges the equivalency of currency with gold.

68.In fact, the purpose of s.15 is to enable Canada to unilaterally default on any treaty, convention, contract or agreement, by permitting the Governor in Council to declare a means of calculating the equivalent value in ways different than the universally accepted fair-market exchange rates. The Governor in Council has indeed used this facility to default on previous agreement, with the Canada Shipping Act Gold Franc Conversion Regulations, and the Carriage by Air Act Gold Franc Conversion Regulations, which set the conversion value of gold to approx \$12.81 per troy ounce of gold, while the fair-market value is presently about \$1640

69.s.15 does not say that the Governor in Council is to make such regulations for all of Canada's contracts, nor does it say anything about provincial or private contracts, which remain payable in gold if they were so entered into, in other words, gold remains a recognized international currency.

70.The Excise Tax Act s.123(1) (TAB 7) defines Financial instruments to be among other things, “precious metals”, defined as bars, ingots, coins or wafers of gold, silver or platinum, refined to minimum purity levels of at least 99.5% for gold and platinum, and 99.9% for silver. In other words, gold is money (a financial instrument).

71.Further, the Currency Act, in reference to the Exchange Fund Account, in the version pre-dating 2012-12-29, (TAB 11), section 17 specifically named gold as an asset that the Finance Minister may transact in for the purposes of the Exchange Fund Account, in addition to other currencies designated by the Minister. After 2012-12-29, the Currency Act was amended to replace section 17 with a section that does not explicitly state what assets the Exchange Fund Account may hold, nor how the Minister may transact, but instead leaving those decisions up to the Minister. (see the current section 17 in TAB 10). Thus, with respect to the Exchange Fund Account, gold is a currency.

72.In section 21 of the Currency Act, the Finance Minister is directed to table a report on the operation of the Exchange Fund Account on a yearly basis. That report shows gold as an International Reserve held in the Exchange Fund Account, along side US dollars, Euro, British pound sterling, Japanese yen, Special Drawing

rights in cash, cash equivalent and securities forms (see TAB 30). Therefore, gold is a currency.

73. Pursuant sections 600 and 628 of the *Bank Act* (TAB 31), all deposit taking institutions operating in Canada must provide the Superintendent of the Financial Institution with a monthly consolidated balance sheet report, which is to comply with instructions given by the Superintendent (TAB 34). This required balance sheet, is to contain, in the Assets section, subsection “A1 Cash and Cash equivalents”, a report of gold coin, gold and silver bullion, gold and silver certificates, precious metals, Bank of Canada notes on hand, etc. It is significant to notice that the first four items required to be included as Cash and Cash Equivalent Assets are gold and silver in several forms, ahead of bank notes, or other coins and completed deposits. This shows that not only that gold is a currency (cash and cash equivalent), but it is more important than other forms of assets (the list is shown not in alphabetical order, but in the order of importance).

74. In *Canada v. Nawaya*, BC Provincial Court case 179965 (TAB 26), the Crown (information by RCMP) argued that Canadian \$50 gold coins were currency. In this case, it is not in fact the metal, but the token aspect of the coin that makes them currency. This argument was successful.

75. In *Bombay Jewellers Ltd. v. The Queen*, 1998 CanLII 320 (TCC) (TAB 35, para 24), Margeson, J.T.C.C., the Crown argued that gold and silver bars, bearing a weight, purity and manufacturer mark are financial instruments. This argument was successful, though many arguments by both parties in this case were flawed, which lead to a decision in favour of the respondent. Nonetheless, the judge accepted the argument about markings defining a gold bar as financial instrument.

76. Banks deal exclusively in money-like products (cash, loans, savings, investments, insurance, etc). One of their investment offerings is gold, in various forms (though not jewellery, which is “goods”). They buy and sell gold in financial instrument form, as admitted in *Bombay Jewellers Ltd. v. The Queen*, and evidenced by the online websites of TD Canada Trust and Bank of Nova Scotia (TAB 36).

77. A person can purchase gold from one bank, then sell it to another, in effect moving money from one account to another. Banknotes can achieve the same feat, but in a more limited way. Eg, an account liquidated in Canada in the form of Canadian banknotes cannot be easily deposited with a bank in another country, like Egypt, and vice versa. Not only is gold a cash-equivalent, it is a much better form of cash than banknotes.

78. In fact, in *Central 1 Credit Union v. UM Financial Inc.*, 2012 ONSC 889 (TAB 37), the defendant purchased \$1.867 million worth of gold bars from Bank of Nova Scotia with funds from the debtor's bank account. Then he

hired a Joseph Adam to physically transport the gold to Egypt to pay “shariah consulting services” who had provided advice from 2004 to 2011. An invoice was even created by UM Financial in the amount of \$2,790,000 for the services. In this case, the defendant was clearly paying an invoice in gold, further evidencing gold's use as money. In relation to this case, the defendant's principals, were sought by the RCMP for arrest on fraud and money laundering charges (TAB 38). The case against one of the principals (*R. v. Kalair, 2015 ONSC 6784*, at TAB 39) is presently temporarily stayed pending arrangements for funding for council to represent Mr. Kalair.

## **Other CBSA practices that facilitate money laundering**

79. According to the written discovery of the CBSA, the CBSA has always treated precious metal currency and financial instruments as goods, since it was created (TAB 18, answers 5, 6, 10, 12, 13).

80. In CBSA's Enforcement Manual, Chapter 2, part 2, dealing with Cross-Border Currency and Monetary Instruments Reporting, para 121 (TAB 20, re Disclosure by the CBSA), the following advice is given: “Officers may disclose information to FINTRAC if they have reasonable grounds to suspect that the information would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing”.

81. This advice gives the officers the discretion to not make disclosure of currency and monetary instruments to FINTRAC, thus pre-empting FINTRAC.

82. The advice is not even reasonable, as FINTRAC's job is to analyze all financial information, even that which is legitimate, for example to detect changes in patterns.

83. In its capacity, the CBSA would not be able to tell which financial information is related to money laundering, as they are not tasked with keeping records on persons, or with understanding a person's social networks and affiliations.

84. The advice is tantamount to a patient only telling his doctor about the symptoms he thinks are relevant.

85. Pursuant the *Canada Border Service Agency Act*, s15.1 (TAB 32) and the *Financial Administration Act*, s150 (TAB 33), the CBSA submits an annual report to the Minister of Public Safety and Emergency Preparedness, and the Minister lays it before each House of Parliament.

86. The CBSA annual report is in a form that clearly sets out information according to the major activities of the CBSA (per Financial Administration Act, s150(3)).

87. A sample report is included at TAB 21. In it, there is no mention of any activities relating to the *PCMLTFA*,

even though the *PCMLTFA* is a core responsibility of the CBSA and a priority. The conclusion is that PCMLTFA enforcement is not a major activity of the CBSA.

88. In the annual reports, there is a table showing which Acts and Regulations the CBSA is responsible for enforcing and administering (TAB 21, page 4, “Organizational Context”, “Responsibilities”). The *PCMLTFA*, *PCMLTFR*, and *Cross-Border Currency and Monetary Instruments Reporting Regulations* are not mentioned.

89. Reporting on the Criminal Investigations Program (TAB 21, page 53, “Program 1.4: Criminal Investigations”), the CBSA states that the violations investigated “include criminal offences under the *Customs Act*, *Immigration and Refugee Protection Act*, various food/plant and animal legislation, and other border-related legislation”. Once again, there is no mention of money-laundering-related offences. Technically the statement may be construed to include money-laundering under “other border-related legislation”, which reveals that money-laundering crimes are at best an after-thought to the CBSA, and at worst, as the evidence shows, that the CBSA is in fact actively undermining the PCMLTFA, and they are facilitating money laundering themselves.

90. It can be said that therefore that the CBSA minimizes their responsibilities with respect to money laundering legislation, but based on the annual report, a more accurate conclusion would be that the CBSA entirely ignores money-laundering legislation.

## **Effects of CBSA's money laundering initiatives**

91. The effect of CBSA's policy is made evident in FINTRAC's 2012 report “Money Laundering and Terrorist Financing Trends in FINTRAC Cases Disclosed Between 2007 and 2011” (TAB 26).

92. On page 26, the FINTRAC shows the movement of funds across Canada's border, and the central role of gold bullion in terrorist financing operation, but are not able to illustrate how this gold ends in the hands of terrorist organizations outside of Canada.

93. If the FINTRAC were informed of Financial instruments precious metals transiting Canada's borders, there would be a directed arrow from the bullion symbol to the “Country 2” box, just like there are arrows from Canadian entities to “Country 2” depicting exportations of currency and Electronic Fund Transfers.

94. The CBSA's precious metals bulletin, and CBSA's policies surrounding precious metals are the cause of this blind spot, and of the inevitable inability of FINTRAC to understand money laundering better.

## Nawaya Case

95. On October 6, 2009, a Mr. Khaled Nawaya, a Syrian citizen born in Saudi Arabia was seeking permanent residence in Canada, and entry at the Surrey, BC border crossing. He is a supporter of Hezbollah, an organization officially listed as a terrorist organization in Canada (see TAB 40, TAB 43).

96. He failed to declare approximately \$100,000 in Canadian and US banknotes pursuant PCMLTFA, and 812 Canada \$50 gold coins, and was charged by the RCMP in relation to this offence, successfully. (*R. v. Nawaya BCSC-179965*, TAB 25)

97. The RCMP considered his gold coins to be currency, as the Court agreed.

98. The CBSA originally suspected Mr. Nawaya of being a risk to national security, and detained him for more than 1 month for this reason, then attempted to clear him of the suspicion. However, logically, a negative could not be proven in this case, as the Hezbollah would naturally deny knowledge of an operative, and membership in Hezbollah cannot be reliably determined any other way than by asking Hezbollah itself. Indeed, the CBSA was not able to prove Mr. Nawaya's innocence, but assumed it, in spite of the evidence before them.

99. With regards to his gold, the CBSA treated it as "goods", consistent with CBSA policy evidenced herein, and returned it to him on terms of release (TAB 41, TAB 42), claiming, as they did in the plaintiff's case, that he had failed to report "goods" pursuant the Customs Act s12, in spite of the RCMP recommending charges for the failed declaration under PCMLTFA, in consultation with the CBSA.

100. The RCMP proceeded with the charge themselves (TAB 25), but were not informed by the CBSA of the gold coins, but only of the banknotes Mr. Nawaya had. The RCMP found out about the coins at a later time, and amended their information (see the coins being added to the information in handwriting, and the amendment stamps of the court). Not only did CBSA try to pass the gold currency as "goods", they withheld information from the RCMP.

101. Nawaya's own story about the gold coins changed during the investigation. At first he justified carrying his money in gold coins as he wanted to avoid the US banking system because he did not trust them. Later he claimed he bought gold in a bid to avoid income tax in Canada, which he thought he would have to pay when immigrating to Canada. He also explained he didn't buy the gold himself, but wired money to his brother, who bought the coins.

102. In a curriculum vitae posted online, Nawaya claimed he manages his family's finances, and that he

worked as an HR manager for a one-man California corporation named Bunko Enterprises. It's a company with no website, no online presence, and its address of record and principal are those of a Nawaya relative. "Bunko" means "A kind of swindling game or scheme, by means of cards or by a sham lottery. (v. t.) To swindle by a bunko game or scheme; to cheat or victimize in any similar way, as by a confidence game, passing a bad check, etc."

103. Since his 2009 immigration to Canada, Nawaya has moved back to Saudi Arabia.

104. If he did intend to move illicit money from the US to Saudi Arabia, he could not have flown directly from the US to Saudi Arabia, as the US treats gold as financial instruments, and would have investigated it. Nawaya himself admitted he had been the target of investigations by US Immigration authorities. However, driving to Canada (where he needed some type of visa to enter) and flying out to Saudi Arabia, knowing that the CBSA treats gold as "goods" was the obvious solution to taking the gold to Saudi Arabia without scrutiny. This is well educated individual, he holds an aeronautical engineering degree and a management degree, and certainly had the capacity to execute a relatively simple plan to move money from the US to Saudi Arabia.

105. When asked about his decision to mislead border guards he explained, in a false dichotomy, that "there is no reason to be suspicious, not everyone who comes from the Middle East is a bad person", which while partially true (there was plenty of reason for suspicions, but indeed not everyone from the Middle East is a "bad" person), said nothing about his own person.

106. Even though he was found with a Hezbollah ring (which he was not wearing at the time), he did not deny being a member of the Hezbollah, and even the media concluded that he can't be a Hezbollah operative, because the Hezbollah is a sophisticated organization, and surely he would not have a ring with him if he was a member. This in itself is a stunning display of false logic. If a person keeps their wedding band in their car, and admits it is theirs, instead of on their finger when walking into a bar (where he might be scrutinized), it does not mean he/she is single because they appear sophisticated. Men typically don't have or wear rings, unless the rings carry some special significance to themselves.

107. All in all, Nawaya's story is fascinating but full of suspicious claims, in which the FINTRAC would have been uniquely qualified to untangle the source of the money and its purpose. After all, it's cases like Nawaya's that Parliament aimed to monitor when they created the PCMLTFA and FINTRAC. The FINTRAC has the tools and the mandate to "follow the money" in order to understand and help in the prosecution of complex crime.

108. The facts alleged above are not proven in this motion, but are merely highlighted to show that there were plenty of clues for FINTRAC to work with in an investigation. The CBSA kept the FINTRAC in the dark by treating Nawaya's coins as "goods". Certainly the CBSA did not act in the public interest by doing so.

109. It certainly appears that the CBSA has been willingly bungo-ed.

## The UM Financial case

110. Good examples of expert money launderers are Mr Kalair, Mr Panchbaya and Mr Adam, of UM Financial.

111. According to facts in *Central 1 Credit Union v UM Financial Inc*, 2012 ONSC 889 , they worked together to commit fraud over \$5000 (\$1.867 million). They bought 32 gold bars from the Bank of Nova Scotia using funds from their UM financial account, and flew with them to Egypt to pay unnamed "sharia scholars", while their company, UM financial was in receivership proceedings, without notifying their creditors (see *Central 1 Credit Union v UM Financial Inc*, 2012 ONSC 889 at TAB 37). The RCMP laid fraud and money-laundering charges in this case (see TAB 38, TAB 39). At the time, the CBSA, pursuant their information bulletin on precious metals and policy that gold is "not currency" (such as they stated in *Sellathurai*), allowed the transfer of gold bars out of Canada without as much as a question. One of the facts in the case is Joseph Adam (also known as Gamal Hegazy) carrying the 32kg of gold bars in his luggage to Egypt on November 7, 2011 (TAB 37, para [6](i)). Carrying a carry-on suitcase full of gold bars no doubt triggered the airport security, who would no doubt have notified the CBSA. However, whether the CBSA was in fact notified or not, it is clear that their policy would have caused them to ignore the security report as irrelevant, on the basis that "gold bars are not currency", as in *Sellathurai* and the precious metals bulletin..

112. The level of expertise displayed by UM Financial is remarkable. First, they converted money into gold bars, knowing the CBSA does not require their declaration on export (this policy is widely known on internet forums, even though the CBSA themselves keep it a secret). The UM principal, Mr. Kalair has set up a complex corporate structure with several interrelated entities (UM Financial Inc, UM Capital Inc, UM Financial Group Inc, UM Immigration Inc, UM Realty Services Inc, UM Real Estate Investment Inc, in Canada, UM Capital Markets Ltd in UK, etc). In preparation for moving gold out of Canada, he and Panchbaya created a separated corporate

entity, MCC, to act as a creditor to UM Financial, generated an invoice for consulting services provided by MCC as justification for the gold move. MCC then hired a “financial manager” to handle the finances, and thus shield the MCC principal from exposure to financial matters, Panchbaya. The financial manager was Joseph Adam (this is Canadian name; his Egyptian name is Gamal Hegazy). Adam flew to Egypt via Paris on November 7, 2011 with the 32 gold bars in his luggage. This individual would be less likely to be suspected and searched on entry to Egypt or at the Paris airport, where he would get a connecting flight, owing to his Canadian passport and Canadian sounding name (at least to French and Egyptian ears), while both Kalair and Panchbaya as middle eastern names, would have been more likely to trigger suspicions.

113. In the case of Kalair and Panchbaya, CBSA's policy that gold is not money means that FINTRAC never found out about the transfer. At the time, FINTRAC would have known of UM Financial's purchase of almost \$2 million in gold from Bank of Nova Scotia, and of UM Financial's receivership with respect to Central 1 Credit Union, as the bank would have made reports of the high value cash transactions pursuant the PCMLTFA. Also, had the FINTRAC had the opportunity of knowing about the 32 kg of gold leaving Canada, it is likely they would have asked the CBSA to investigate this money, which would have led to the discovery of the invoice prepared by UM Financial, and that some of the individuals that were beneficiaries were people like Zakir Naik, who is banned from entering Canada due to his support for Al Qaeda and terrorism (TAB 50), and others linked to terrorism.

114. It is clear that in the case of Mr. Kalair's money-laundering scheme, the CBSA played the role of a facilitator.

## **\$2 Coffee Argument**

115. On August 30, 2016, the defendant filed a motion to strike the Statement of Claim in its entirety, without leave to amend. He was unsuccessful.

116. One of the arguments the defendant proposed supporting his motion was the same as he makes in this motion at para 35 of his Written Representations, namely that section 8 of the *Currency Act* provides a good example that collector coins cannot be considered as currency. The defendant made this argument previously at para 29 of the Written Representations in his motion to strike the Statement of Claim.

117. In her decision on that motion, Madam Prothonotary Martha Milczynski with reference to this argument,

noted that the defendant's written representations on that motion go to the merits of the appeal.

118. However, having been told that the argument does not support his case, the defendant insists on making it again, but this time he additionally provides an example on how section 8 of the *Currency Act* would operate in a typical coffee-shop transaction (paras 32 and 36 of his Written Representations on this motion).

119. Section 8(2.1) of the *Currency Act*, which the defendant quoted in his Written Representations, states that "In the case of coins of a denomination greater than ten dollars, a payment referred to in section (1) may consist of no more than one coin, and the payment is a legal tender for no more than the value of a single coin of that denomination". In other words, not only is a payment permitted using a \$50 coin for example, but the payment is a legal tender for "no more than the value of a single coin of that denomination", ie, no more than \$50.

120. At para 36, in his coffee shop example, the defendant demonstrates (a) he understands that gold coins would be accepted as legal tender in every day transactions, (b) that the value of gold coins when used as legal tender is the denominated value and (c) that he understands the reasons why such coins may circulate, but do not.

121. The defendant contemplates a transaction in a "local coffee shop" using a two dollar coin, so I will assume he talks about Canadian currency spent in a Canadian establishment, and that the coffee shop is a diner setting, where customers sit down at a table, order their coffee, and get a bill at the end of their consumption.

122. The two dollar coin the defendant mentions was first issued by the Royal Canadian Mint in 1993, pursuing Proclamation Authorizing the Issue and Prescribing the Composition, Dimensions and Designs of Certain Precious Metal Coins SOR/93-106 published in Canada Gazette on 25<sup>th</sup> of February 1993 (see TAB 44).

123. If purchased from a coin dealer, one would expect to pay at least \$117 for such a \$2 coin, owing in part to the fact that the Mint no longer mints this denomination.

124. This \$2 coin is issued according to the *Currency Act*, and is currency of Canada.

125. A core proficiency of a cashier working in commerce would be to understand currency, and specifically sections 7 and 8 of the *Currency Act*, which explain what a proper payment (legal tender) is.

126. When presented with a payment of a two-dollar gold coin, the cashier would take notice that the coin is legal tender according to *Currency Act* section 8, that the coin are listed in the *Royal Canadian Mint Act*, as required in section 7 of the *Currency Act*, and therefore the only remaining concern is if it is genuine.

Genuineness of coins is not typically questioned in Canada, given the small risk of a large loss, given the relatively small denominations of coins. If these 3 criteria are met, the payment can be accepted, and there is no doubt it would be accepted.

127. The diner transaction is an implicit agreement, where the service is provided first, and it is billed later, such that the bill constitutes a debt in consideration for services rendered. In this case, the coffee shop may accept any form of payment they wish (credit, debit, cheque), but must also accept legal tender.

128. Legal tender by definition cannot be refused where it settles a debt; the debt is literally a legal form of payment. Should the matter of the payment come before a Court, it would be undoubtedly found that a legal tender settles the implicit agreement and the arising debt. This differs from the case where a coffee vendor declines to supply coffee in exchange for currency he doesn't like (such as \$100 or \$1000 bills, for instance). In the coffee vendor case, there is no agreement that needs to be settled, and certainly a Court would not force the vendor to enter such an agreement, being how there is no statute enabling such a judgement.

129. As the payment for the billed consumption is made with one two-dollar coin, it is a legal tender for two dollars.

130. Assuming the cup of coffee carries a \$2 price, the cashier would take the two-dollar coin, provide a receipt, and the transaction would be complete, the debt having been settled, and the agreement fulfilled.

131. The defendant says that "No one in his or her right mind would use a gold coin with a two dollar face value to purchase a cup of coffee at the local coffee shop".

132. This position recognizes that purchasing a gold coin from a coin dealer for \$117 only to use it to buy coffee for its face value is certainly possible. The implied craziness comes from the fact that the \$2 gold coin would only purchase \$2 worth of coffee. Indeed, if the cashier were to treat the \$2 coin as a \$117 coin, and give the customer \$115 in change, there would be nothing crazy about the transaction at all. In this case, gold currency would circulate freely. The fact it gold currency does not circulate in practice owes to the fact that it is only recognized for its face value. Per *Currency Act* section 8, merchants are not required to recognize any value other than the denominated value of coins and banknotes as legal tender, regardless of collector value.

133. As shown, the defendant understands that gold coins are currency, they may be circulated freely, and are worth exactly as much as their face value shows, at least when used as legal tender.

134. The "non-circulation" distinction in the Royal Canadian Mint Act has two purposes: (a) to allow the mint to

specify the composition and characteristics (dimensions, weight, metal), while for “circulation” coins, the Governor in Council decides the characteristics other than those specified in the Act, and (b) to provide the manufacturers of coin-operated machines with composition and weight specifications to allow them to design denomination-discriminating machines. As the “non-circulation” coins are not “intended to circulate”, but are permitted to do so, the act implies that coin-operated machines need not be designed to be compatible with “non-circulation” coins.

## **Circulation, collector status not affecting currency status**

135. Currency is generally one of most collected articles world wide. People have an innate fascination with coins.

136. In Canada, the Royal Canadian Mint, and the Minister of Finance, regularly issue collectible coins into circulation, one example being the recent 2012 colour issue of the “war of 1812” quarters, which was ordered by the Governor in Council and registered in Canada Gazette SOR/2012-126 on June 15, 2012 (see TAB 45, section (c)(iv))

137. The rationale of the order is stated at section 6 of the Order, as such: “Because these coins are available at face value and circulate widely, public demand is high with many coins being collected and taken out of circulation. Commemorative circulation coin programs create important benefits by contributing to the overall success of the event being celebrated as well as generating additional revenue for the Government.”

138. It is clear from the rationale, that even though the “war of 1812” coins are issued as circulation coins (ie, per Part 2 of the Schedule in the Royal Canadian Mint Act), they are expected to be “collected” and “taken out of circulation”. Furthermore, the purpose of this program is to “generate additional revenue for the Government”. As collectible coins are purchased and never used as currency, this is an easy way for the Government to literally “print” money. Obviously, the intent of the Minister of Finance is that these “circulation” coins are both “collector coins” and “not circulating”.

139. An example of an eBay auction of eight “war of 1812” circulated quarters is at TAB 46. These are coins found in someone's every-day change, and sold as a set for \$5.50 plus shipping when their total face value is \$2. They clearly are collectible, with a collector value higher than the face value, and removed from circulation. However, they are still currency, and can be circulated again if the buyer so desires.

140. In every handful of Canadian change there are lots of coins that are collectible, and could be sold to a coin shop for much more than their face value, yet most people just use them as legal tender for face value. The defendant would argue that these people are not in their “right mind”, but it is how coin currency works.

## **Value of gold and silver currency**

141. Neither the *Currency Act*, nor the *Royal Canadian Mint Act* specify another way of valuing coins issued under their authority than the face value.

142. Indeed in Canada and other countries (like the U.S., where the coins in this action were issued), the value of currency is set by decree (*Currency Act* section 8 in Canada, U.S. Code Title 31 section 5112(a)(11), 5112(e), 5112(h), and 5112(q) see TAB 12).

143. Furthermore, both in Canada and the US, pursuant *Currency Act* s. 11 and USC Title 31 s5111(d), melting of coins is prohibited, and the penalty is a fine of up to \$250 and/or twelve months imprisonment (in Canada). In the US the penalty for melting coins is up to \$10000 and/or up to 5 years imprisonment.

144. Due to the prohibition on melting coins, including gold coins, one cannot legally “unlock” the metal in a gold coin and use it as the commodity. Once this metal is tokenized into a coin, it is the only way it may be used, according to the *Currency Act* and USC Title 31.

## **US Code does not say non-circulation**

145. While the defendant claims the US coins he seized are not intended for circulation, he provides no evidence to support his claim.

146. The statute enabling the issuance of these coins mentions they are current, and legal tender, and makes no mention of circulation. Furthermore, they are listed in the same list as all the other US coins such as quarters, dimes, etc, implying they share the same circulation status (US Code Title 31 s.5112,TAB 12)

147. In any case, as shown numerous times, there is no statutory support to the theory that some coins issued by the US or Canadian governments may not circulate, or that even though they are issued respecting currency statutes, they are not currency.

## CBSA facilitating currency counterfeiting

148. CBSA's policy of treating currency as goods enables and facilitates currency counterfeiting by removing the deterrent of the Criminal Code s.450 and s.451 against persons who import or purchase counterfeit gold coins.

149. The CBSA Enforcement Manual Part 2 Chapter 2 (Cross-Border Currency and Monetary Instruments reporting), para 128 (TAB 20), advises that "Counterfeit currency and monetary instruments are not considered legal tender and are therefore outside of the realm of the PCMLTFA. They should be processed as described in the Customs R-Memorandum 17-1-5".

150. Memo 17-1-5 is titled "Registration, Accounting and Payment for Commercial Goods" (TAB 22)

151. The Enforcement manual therefore instructs officers to allow importation of counterfeit currency and treat it as "commercial goods", rather than Criminal Code s 450-451 offences.

152. There is a thriving industry in counterfeiting gold coins, thanks to the relative ease in manufacturing them. A set of fifty, \$50 Gold Maple Leafs fakes can be bought on aliexpress.com for only \$185 (ie, \$3.71 each), with free 7-day shipping from China (see TAB 24). While these coins are typically advertised as "replicas"; they are outstanding copies of current issue Royal Canadian Mint coins. They lack any marking identifying them as "replicas", and duplicate even the mint mark, which is a security feature of genuine coins. There is no doubt that the only purpose to purchasing a set of fifty such coins is to use them as if they were genuine Mint coins.

153. The ad listed shown in TAB 24 is one of dozens on aliexpress.com and it represents one of the cheaper coins, made of brass with gold plating. These coins can be detected as fake by a knowledgeable potential purchaser, however there are also ads for much more accurate counterfeits, with tungsten core and gold plating, which require specialized equipment to detect as counterfeits, owing to perfect reproduction of all physical specifications of a genuine gold coin. These kinds of coin sell for about \$155, but can easily pass scrutiny of even knowledgeable collectors. There is no doubt that the only use of such a coin is to be used as a genuine coin.

154. Also available from China are counterfeits of most if not all gold coins of all countries that issue gold currency.

155. The ad at TAB 24, even shows a Canadian purchaser in the transaction history. Without CBSA's treatment of gold coins as currency, the buyer, identified as "P\*\*\*e C." from Canada was able to purchase 50

coins from the particular seller, and have them shipped to Canada, which in itself would be a counterfeit possession offence according to the Criminal Code s.450. However, thanks to the CBSA, Mr. C. Will be able to pass them on to unsuspecting victims, which would be a violation of the Criminal Code s. 451 (Uttering coin).

156. The correct behaviour of the CBSA would be to treat gold coins as currency, and report importations of fakes to the RCMP. The RCMP has a longstanding tradition of fighting currency counterfeiting (see TAB 14, TAB 15), while the CBSA has never since it was created, prosecuted or provided information regarding importation or exportation of counterfeit gold currency.

157. In fact, if the enforcement manual instructions about counterfeit currency is applied, the CBSA also treats importation of counterfeit banknotes as an importation of “commercial goods”.

## **Amateur, Expert and Professional levels of money-laundering**

158. In the money-laundering trade, there are amateurs, experts and professionals.

159. An amateur is someone of little or no sophistication, such as Mr Amasu, who on April 2, 2009 tried to smuggle approx \$14000 as a stack of banknotes while boarding a flight to Ethiopia (see *Admasu v. Canada* 2012 FC 451, TAB 47). His attempt was not even concealed, and relied on the hope that he would not be found. The CBSA seized his money, without any evidence of money-laundering, merely on the technicality that he did not report it pursuant PCMLTFA section 12. An outsider looking at this case would conclude that someone who is not even able to pay his credit cards, is taking money to support family back to his native country; there is no reason to suspect money-laundering here.

160. Ironically, in the Admasu case, the Minister of Public Safety relied on *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255, which is an appeal on *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 208 (see both at TAB 48). In this Federal Court of Appeal case, based on the facts at para 3, Mr. Sellathurai was carrying two gold bars worth \$20000 according to him in his carry-on, and he provided receipts for the bars. The CBSA left the gold bars with the appellant “as they are not considered to be currency for the purposes of the [Proceeds of Crime (Money Laundering) and Terrorist Financing] Act”. This explanation is a false dichotomy. While gold bars are not strictly currency as defined by the *Currency Act*, they are cash-equivalents, and financial instruments as shown above at para 64., and certainly subject to reporting requirements of the PCMLTFA. Even though the CBSA treated and prosecuted Mr.

Sellathurai as a money-launderer, they allowed a money-launderer to keep some of his money, the gold bars. Mr. Sellathurai is an amateur; he relied on the hope he would not be found. With their enforcement action the CBSA effectively told Mr. Sellathurai "Next time, change all your money into gold bars, and you're free to go as you please".

161. In any case, in the Sellathurai case, just as in the Amasu case, the CBSA has not shown any evidence of the money in question being proceeds of crime, but only that the reporting requirement was contravened.

162. The conclusion is that the CBSA does catch some amateurs, but its doubtful that they are money-launderers.

163. Mr Nawaya, whose case was briefly described above at para 95. is also an amateur. His plan was more refined than Mr. Amasu, but, he also heavily relied on luck, hoping his \$100,000 in banknotes would not be discovered at the border crossing. Had he converted all his money to gold, he would have avoided all the trouble, there would not have been a criminal charge, no criminal lawyer defending costs, and would have avoided all the media attention.

164. There is a slightly more sophisticated class of criminal, the expert. Such an example was described above at para 110., in the case of UM Financial. In this case, the CBSA's policy stated in the Precious Metals Bulletin clearly facilitated the UM Financial money laundering.

165. The people connected with UM Financial are experts at money laundering, evidenced by their preparation, complex corporate structures, but ultimately also rely on luck. They transferred \$1.867 million in one trip, on the hope that the French and Egyptian authorities would not catch them, though they prepared as well as they could. If the CBSA had not held the position they do with respect to gold, this transfer could have been prevented, and the government's case in the criminal trial against Kalair and Panchbaya would have benefited from the evidence of catching the money-laundering in the act.

166. Moving up on the scale of sophistication are professional money launders, who plan their activities much more diligently than experts, and are unlikely to be caught, even if the CBSA were not helping them. One example is that of the unnamed entity who on August 26, 2010 requested a ruling from Joanne Lepage, a CBSA senior program adviser (TAB 51). In their request, the unnamed entity employed two intermediaries, Livingston Consulting, a Canadian customs broker, and Treasure Island Coins, a US gold dealer. The entity wanted to arrange for capital to be moved from US to Canada in the form of gold coins and bars. Their only concern was

with respect to Cross Border Currency and Monetary Instruments Reporting Regulation. They wanted a written assurance that the financial instruments they sought to import would not be subject to the Regulations, which Ms. Lepage provided on August 31<sup>st</sup>, 2010. The level of sophistication greatly exceeds that of the experts. These professionals were seeking to obtain a limitation of criminal liability from the CBSA. If they are ever caught (by the RCMP, for instance), they can use the CBSA letter in case of Criminal money laundering charges. In case they could not obtain the assurances, they would of course find another way, but in no way relied on luck. The CBSA cannot prevent this level of money-laundering, but this does not mean it should assist it. This is where the FINTRAC would be able to get a better insight into such operations, by “following the money”.

## **Security Context**

167. From a security perspective, the CBSA's role is to lessen security risks to Canada. To that end, it is not enough to apply the laws of Canada, even if they did. They would need a security mindset, ie, recognize the purpose of actions taken by travellers, in order to asses risks.

168. For instance, if a foreign terrorist organization accepted gold as funding, the CBSA should recognize this and inform FINTRAC or other intelligence organizations when they see gold passing by.

169. For example, suppose that a terrorist organization accepted Maple Syrup as consideration. Even though they think of Maple Syrup as an asset, Canada does not.

170. The plaintiff does not know of any maple syrup terrorists, but the point is that it's how an asset is used that makes it a resource of terrorism, and not how it is classified in Canadian statute.

171. To recognize traffic patterns that betray criminal or terrorist activities, the CBSA would need to have a security mindset. Even if they treated gold correctly (as financial instruments), the CBSA's culture and mindset is not compatible with that of a security organization.

172. While the defendant is hoping for a mandamus order as remedy, no mandamus order can instill the security discipline that Parliament envisioned when they created the *Canada Border Services Agency Act*.

## **Cui Bono?**

173. In trying to work out what occurred, or better, why what occurred did occur, one should determine who benefits. The suggestion is that the persons who benefited set up events to secure those benefits. *Cui bono* – who benefits? (*Second Philippic*, XIV)

174. In the CBSA Precious Metals bulletin (TAB 18), the “terms of release” imposed by the CBSA benefit the CBSA, as they are additional revenue.

175. The bulletin is a secret document, as shown in its header, meaning only those privy to it would be able to avoid the “terms of release”. Specifically a well informed person would be assured by provisions of the Currency Act, Excise Act and the PCMLTFA that the correct way to import or export gold and silver in bar, ingot, wafer or coin form is to report it pursuant PCMLTFA if the value exceeds the prescribed amount of \$10,000, and that such precious metals are exempt from all requirements of the Customs Act. Persons privy to the bulletin are those who would benefit by avoiding the penalty and other incidentals such as being flagged as a smuggler, or having to fight the CBSA in Federal Court, with an action such as this. Those persons are employees of the CBSA, their families and associates.

176. The exemption from reporting pursuant PCMLTFA benefits those who need to move more than \$10,000 across the border, and keep the transfer secret, ie, criminals of various denominations.

177. The public does not benefit from the increased criminal activity associated with money-laundering.

178. The government does benefit from increased criminal activity, as it is a justification for increased budgets for law enforcement.

179. The Minister of Public Safety and Emergency Preparedness benefits politically as he can use the increased occurrence of crime as a justification for how important his own job is.

## **Why?**

180. In deciding what the appropriate remedy is, it is useful to consider why does the CBSA make their case the way they do (treating “collectibles” as goods).

181. The simplest and most probable reasons are: to avoid being held accountable for their past activities, and to continue this activity in an expanded manner.

182. Currency becomes collectible all the time. For instance, the \$1000 Bank of Canada banknote was retired from circulation on May 12, 2000, at the advice of the Solicitor General and the RCMP, as it was often used for money laundering and organized crime (see CBC article on the retirement, TAB 14). Even though it is retired, the banknotes that are still in public hands remain legal tender, and almost \$1Billion worth of these banknotes remain in circulation. A National Post article from 2012 (see TAB 15) refers to the Charbonneau Commission Quebec corruption probe where a witness spoke of a safe over-stuffed with cash, including \$1000 notes, inside a political office, and generally why the \$1000 is desirable for organized crime, and how it is used.

183. The \$1000 appears in eBay auctions all the time, at prices around \$1300 each (so more valuable than their face value), and they are without a doubt, truly collectible.

184. In advancing the argument that currency that is “collectible” is goods, and that once the true value of a currency exceeds its intrinsic value, and therefore does not need to be reported pursuant the PCMLTFA, the CBSA is looking to expand its money laundering activities from gold currency also to banknotes that they deem “collectible”, such as the \$1000 banknote.

185. Also in recent years, Bank of Canada has switched from cotton-paper banknotes to polymer notes, while removing the cotton-paper notes as quickly as they can. This makes the old, paper notes collectible and more rare each day, but in law they are still currency, and will be as long as the Canadian Dollar is Canada's national currency. The Currency Act has no provisions for actively obsoleting old banknote designs; it is up to the Bank of Canada and the chartered banks to swap new notes for the old as best they can. The main reason for cotton-paper being actively removed from circulation and replaced with the polymer notes is that the cotton version is counterfeited in Canada at rates around 500PPM (500 fakes in 1 million circulation notes), while in the G20 nation, 50PPM is the maximum counterfeit rate considered acceptable. Why would the CBSA want to treat the old cotton-paper banknotes as “goods”?

186. Another ramification of treating gold currency as “goods” is that counterfeit currency can freely enter Canada without a chance of Criminal Code penalties. Counterfeiting currency is a serious crime, but counterfeiting “goods” is not. Why would the CBSA take steps to make counterfeit currency easier to obtain and use in Canada?

187. Is there another, more likely benefit to Canada to the CBSA treating “collectible” currency as “goods”, and exempting it from the PCMLTFA reporting regime? The plaintiff argues that there is not.

## **CBSA is a criminal organization facilitating money laundering.**

188. According to the Criminal Code code s.467.1 (TAB 13), the CBSA is a criminal organization as it fulfils the following criteria in the definition:
189. It is a group composed of three or more persons in Canada (Christopher Debski, Ann Kendall, Martine Gagnon, Jeffrey Strickland, Joanne Lepage, and the rest of the employees of the CBSA working in any law-enforcement or program administration function) (criteria 467.1(1)(a))
190. Has as one of its main purposes and activities to enforce and administer the *Customs Act* and *Excise Act*, pursuant *Canada Border Services Agency Act* s2(a) and s5(1) (TAB 32), and enforces these acts in a way that enables money laundering by treating gold and silver in bar, ingot, wafer and coin as “goods”, and not reporting or allowing them to be reported as financial or monetary instruments under *Cross-Border Currency and Monetary Instruments Reporting Regulations* or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and is thus facilitating money laundering.
191. Money Laundering is a “serious offence” as defined by CC 467.1, being an indictable offence punishable by imprisonment for a term not exceeding ten years, according to CC 462.31.
192. Facilitation of an offence does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed (criterion 467.1(2))

## **Money Laundering claims against Christopher Debski**

193. As shown above at para 17., Mr. Debski knew the coins he treated as “goods” were in fact currency, and therefore knew he was enhancing the ability of the CBSA to facilitate an the indictable offence of money laundering under the Criminal Code (criterion 467.11).
194. Mr Debski participated in the activities of the CBSA by wearing a uniform, insignia and ID badge, which are associated with the CBSA. (criterion 467.11(3)(a))
195. Mr. Debski associates daily with other officers of the CBSA who also constitute the criminal organization, as part of his employment in the CBSA. (criterion 467.11(3)(b))
196. Mr. Debski receives a salary from the CBSA organization, and other employment benefits, training and career advancement opportunities.

197. Mr. Debski repeatedly uses the Precious Metal Bulletin as written instructions in his daily duties.

## Claims against Ann Kendall

198. On October 23, 2014, the plaintiff submitted to the CBSA an Electronic Enforcement Appeal Form (Appeal Form, TAB 53) in relation to the October 21, 2014 seizure of four US \$50 gold coins and twenty US \$1 silver coins (seizure synopsis, TAB 52).

199. In the appeal, the plaintiff provided as basis the facts that the coins are US legal tender, and that they are classified as Financial Instruments by the Canada Revenue Agency, per CRA's GST/HST Memorandum 17.1(CRA memo, TAB 54), and that the coins are currency and exempted from tax when imported.

200. The CBSA Recourse Directorate, whose responsibility is to handle such appeals, assigned Ms. Ann Kendall as adjudicator to the case acting for the President of the CBSA, who sent the plaintiff an acknowledgement letter on November 3, 2014 (letter, TAB 55)

201. In her letter, Ms. Kendall pledged an impartial review of the seizure decision, and a transparent and timely redress.

202. In the letter, Ms. Kendall stated her finding that the coins are classified as "goods", on the basis of being mentioned in the Customs Tariff, and used the term "collectable coins", which does not appear in the Customs Tariff. This is incorrect, as the Customs Tariff is not a taxing statute, it does not enable the *Customs Act*. The *Excise Tax Act*, s50(1)(b) enables the *Customs Act*.

203. Further, she claimed that she confirmed that under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, "currency includes all foreign and domestic bank notes and "circulation coins" (emphasis is Ms. Kendall's, see letter TAB 55, page 2, para 6). This is a misrepresentation of the PCMLTFA, as it does not contain a definition of currency, nor the phrase "circulation coins".

204. Further, she attempted the explanation that the silver and gold coins are considered as "uncirculated", and therefore not currency. This is also false, and illogical. Uncirculated means "minted", but not yet "issued" in a technical sense. In a collector's view, there are no non-issued coins, as mints do not sell to the public coins that have been minted, but not "issued" by the appropriate government entity. Collectors use the term "uncirculated" to mean "pristine", unscratched.

205. In her letter, Ms. Kendall provided no statutory reference for her conclusion that "uncirculated coins" are

not currency, or that they are a good, and taxable, or subject to the *Customs Act*.

206. On November 10, 2014, the plaintiff sent a letter to the Recourse Directorate (letter , in response to Ms. Kendall's November 3 letter.

207. In his letter, the plaintiff offered further documentation showing the coins are not subject to the Customs Act, and requested statutory references on which Ms. Kendall relied on in reaching her conclusion. The documentation provided included a sworn affidavit by the Assistant Deputy Minister of Finance, stating the status of Canadian gold coins as circulation currency (Minister of Finance affidavit, TAB 57), and a copy of US Public Law 109-145 ("Presidential \$1 Coin Act of 2005", TAB 58, section 201), which adds the American Gold Buffalo coins (the gold coins seized) to the list of current legal tender coins. Also provided was an excerpt of US Code Title 31, section 5112(e), that says that US Silver Eagles (the silver coins seized), are current, legal tender, and also numismatic simultaneously (US Code Title 31, section 5112, TAB 12).

208. Further, the plaintiff explained that the collectibility of currency does not affect its currency status, even for "non-circulation" currency.

209. The plaintiff also informed Ms. Kendall that misclassification of currency as goods is effectively exempting currency traffic from the PCMLTFA, and that it is an arbitrary exemption, which creates a hazard to the national security of Canada. (TAB 56, page 3, para 1). At para 2, the plaintiff pointed out that the "gold is goods" narrative encourages terrorists and other criminals to convert their currency to gold before coming to Canada. This warned Ms. Kendall that her position facilitates money laundering and terrorist financing.

210. On November 19, 2014, Ms. Kendall was requested advice and was advised by her colleagues that gold is goods. In her request, Ms. Kendall wanted confirmation that the CRA Memo 17.1 regarding the definition of financial instruments is obsoleted by the "new PCMLTFA legislation", thus seeking a way to justify her position. (TAB 59). Part of the advice provided to her was Joanne Lepage's assurances to Treasure Island Coins that their importation of capital in the form of gold is not subject to PCMLTFA, dated August 31, 2010. Part of the advice was also Jeffrey Strickland's endorsement of the assurance letter, and he even stated "although I don't know where the reference is from, it appears the Agency's position with respect to the definition of currency is that it includes "includes all foreign and domestic bank notes and circulation coins""

211. In a follow-up letter dated December 11, 2014 (see TAB 60), Ms Kendall admitted that her November 3 statement that "currency" is defined in the PCMLTFA was a fabrication (TAB 60, para 5). Ms. Kendall

misrepresented the PCMLTFA, in support of the seizure and demand for "terms of release". Additionally, she attempted a new explanation for the seizure, stating "gold coins are considered commodities". She also stated that the documentation provided to her, GST/HST Memo 17.1, sworn affidavit by the Minister of Finance, and the US Law regarding the gold and silver coins "were given consideration, but do not provide relief". However, the fact that Ms. Kendall offered no rebuttal of any of the four documents shows that no consideration was given to them, ie, they were promptly ignored.

212. Up to this point, Ms. Kendall as an adjudicator, failed in her mandate to impartially adjudicate. She took the opinions of her coworkers, and her own, even though she was able to offer no statutory evidence, over the statutory evidence provided by the plaintiff.

213. In a telephone conversation dated December 17, 2014, the plaintiff warned Ms. Kendall that her conclusions thus far constitute aiding and abetting terrorism, and if she were to continue, she would be subject of legal action. (see Ms Kendall's notes, TAB 61)

214. On January 21, 2015, the plaintiff sent a letter to the President of the CBSA, Mr. Luc Portelance, informing him of Ms. Kendall's misrepresentation of the PCMLTFA, and that she was committing fraud under the Criminal Code s380 (letter to President, TAB 63). Evidence was provided in the letter, and the remedy the plaintiff sought was that the President reassign the case to a law-abiding adjudicator.

215. While the President of the CBSA never acknowledged the charges to the plaintiff, he did reassign the case to Martine Gagnon effective February 9, 2015.

216. In a letter dated January 21, 2015, to the Recourse Directorate, the plaintiff offered further arguments based on the *Currency Act* and *US Title 31* in support of his position (TAB 63), showing how coins issued under those act may not be melted or used any way other than as currency, and also explaining, and emphasizing, how the *Excise Tax Act* defines the coins in question as financial instruments. Additionally, the plaintiff pointed out that the Customs Tariff is not a taxing statute, evidenced by a warning stated in the Customs Tariff itself, and instead, the authority of the Customs Act is given by the Excise Tax Act. The plaintiff reiterated the request for statutory references backing up the position of the CBSA.

217. On January 29, 2015, John Dancause, a senior recourse program advisor with the CBSA discussed the issue of the seizure with Jeffrey Strickland, who was the Minister's Delegate in this case. He summarized the discussion in a letter to Ann Kendall, informing her of the clear statutory evidence that the coins are currency,

and advising the seizure be reversed (TAB 64).

218. Ms. Kendall omitted to note John Dancause's letter in the case synopsis (TAB 52), and took no further action in response to this letter, though she acknowledged the plaintiff's January 21 letter on February 3<sup>rd</sup>, 2015, in writing.

219. Ms. Kendall therefore knew that the coins are not goods, and misrepresented the PCMLFA in order to support the seizure of \$6427.89 worth of property from the plaintiff. The \$6427.89 represents the cost the plaintiff paid, and therefore the replacement value of the coin. For every purpose, the plaintiff was deprived of this amount of savings. While the face value of the coins is only \$220 USD when used as legal tender, the plaintiff did not intend to use it as such.

220. Ms. Kendall also acted maliciously, in a high handed fashion, ignoring all the evidence the plaintiff submitted in support of his appeal, and relied instead on her own opinions of and those of colleagues, while ignoring also Mr. Dancause's statutory evidence, and his advice, which did not accord with her goals.

221. Therefore, Ms. Kendall committed fraud over \$5000 consistent with the Criminal Act s.380, and did so in order to facilitate money laundering.

## Claims against Martine Gagnon

222. On March 9, 2015, Ms. Martine Gagnon, a Senior Appeals Officer with the CBSA Recourse directorate, wrote a letter to the plaintiff (in an adjudicator capacity, picking up the case where Ms. Kendall left off).

223. In her letter, Ms. Gagnon provided a ruling that the CBSA Legal Services Unit furnished.

224. The ruling quoted the definition of "cash" from the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*:

225. "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. (especes)

226. Further, the ruling concluded that "foreign coins intended for circulation would be considered as currency", and "foreign coins that are not intended for circulation are to be considered goods".

227. On the basis of the ruling of the Legal Services Unit, Ms Gagnon concluded that the seizure stands.

228. The definition of "cash", while quoted correctly, was read incorrectly. The phrase "intended for circulation

in Canada" applies exclusively to "notes issued by the Bank of Canada", and not to coins or bank notes of other countries. The origin of this phrase is the Bank of Canada Act s.2 definition of "notes", and its purpose is explained in section 25(6), where Notes of the Bank are neither promissory notes nor bills of exchange, ie, to make the distinction between bank notes that are intended for circulation, and other notes of the bank such as promissory notes or bills of exchange, which are not intended for circulation, and therefore not "cash".

229. In her conclusion, Ms. Gagnon misrepresented the PMLFTR and PCMLTFA. The regulation and the Act do not say that any coins are excluded from the definition of "cash", as Ms. Gagnon claimed.

230. On March 17, 2015, the plaintiff responded to Ms Gagnon (TAB 66) explaining as above that the phrase "intended for circulation in Canada" does not apply to foreign coins, and therefore her conclusion was in error, and provided proof in the form of the Minister of Finance affidavit (TAB 57) that gold coins are indeed currency, and may circulate.

231. On May 26, 2015 Ms Gagnon responded (TAB 67), and made a new claim, that the *Customs Act* applies to the coins because they are "collector coins and their true value relates to the collector aspect". It is not true that the *Customs Act*, or the *Excise Tax Act* discriminates between goods and currency based on value or collector aspect. The only determining factor for currency are Act such as the *Currency Act* and the *US Code Title 31* (Money of the United States)

232. Ms. Gagnon drafted the Minister's Decision on May 28, 2015 and forwarded to Mr. Jeffrey Strickland for signing (TAB 68).

233. Also in her conclusions, Ms. Gagnon ignored not only all the evidence the plaintiff provided, but also Mr. Dancause's determination in his January 29 letter. In fact, she did not even note Mr. Dancause's letter in the case synopsis

234. Ms. Gagnon therefore knew that the coins are not goods, and misrepresented the PCMLFA in order to support the seizure of \$6427.89 worth of property from the plaintiff. The \$6427.89 represents the cost the plaintiff paid, and therefore the replacement value of the coin. For every purpose, the plaintiff was deprived of this amount of savings. While the face value of the coins is only \$220 USD when used as legal tender, the plaintiff did not intend to use it as such.

235. Ms. Gagnon also acted maliciously, in a high handed fashion, ignoring all the evidence the plaintiff submitted in support of his appeal, and relied instead on he own opinions of and those of colleagues, while

ignoring also Mr. Dancause's statutory evidence, and his advice, which did not accord with her goals.

236. Therefore, Ms. Gagnon committed fraud over \$5000 consistent with the Criminal Act s.380, and did so in order to facilitate money laundering.

## **Claims against Jeffrey Strickland**

237. In his June 1<sup>st</sup> 2015 decision on behalf of the Minister (TAB 4), Jeffrey Strickland acted maliciously to support depriving the plaintiff of \$6427.89, by knowing of and ignoring the evidence before him, and by misrepresenting the PCMLTFA, and by reiterating the same arguments that Ms Kendall and Ms Gagnon had made.

238. Ms. Gagnon therefore knew that the coins are not goods, and misrepresented the PCMLFA in order to support the seizure of \$6427.89 worth of property from the plaintiff. The \$6427.89 represents the cost the plaintiff paid, and therefore the replacement value of the coin. For every purpose, the plaintiff was deprived of this amount of savings. While the face value of the coins is only \$220 USD when used as legal tender, the plaintiff did not intend to use it as such.

239. Ms. Gagnon also acted maliciously, in a high handed fashion, ignoring all the evidence the plaintiff submitted in support of his appeal, and relied instead on he own opinions of and those of colleagues, while ignoring also Mr. Dancause's statutory evidence, and his advice, which did not accord with her goals.

240. Therefore, Ms. Gagnon committed fraud over \$5000 consistent with the Criminal Act s.380, and did so in order to facilitate money laundering.

## **Claims against Joanne Lepage**

241. On August 31, 2011, Ms Joanne Lepage, a veteran of the CBSA (employed with the CCRA and then CBSA since May 1990, per Discovery of the Defendant, question 11 at TAB 18), in her function of Senior Program Adviser with the CBSA, provided assurances (letter, TAB 51) to Livingston Consulting, a customs broker, that an unnamed entity may import capital (funds) in the form of gold coins and bars into Canada, without any reporting requirements pursuant PCMLTFA.

242. In her letter, Ms. Lepage used the following definition of currency:

243. "Currency includes all foreign and domestic bank notes and circulation coins"

244. This definition does not appear anywhere in Canada's statute, and it is intended to replace the definition of "cash" from the PCMLTFR, shown above above at para 225. As such, Ms. Lepage misrepresented the PCMLTFR, and in issuing assurances, has in effect made regulations, in contravention of the Canada Border Services Agency Act section 12(3)(b) (the Agency has no power to make regulations, Error: Reference source not found).

245. Ms. Lepage's should have known from the context of the Livingston Consulting letter that what is being requested is clearance to move money (word "capital" was used in the request) to Canada without submitting to Cross-Border Monetary Reporting Regulations, and that the items referred to are currency and financial instruments.

246. As a result Ms. Lepage facilitated money-laundering.

#### **Responses to remaining representations in the defendant's motion**

247. [ re. Defendant's written para 4 ] The motion to amend the statement of claim does not seek mandamus. Mandamus would be an inappropriate remedy to criminal actions (facilitating money laundering).

248. [ re. Defendant's para 6 ] Section 135 of the *Customs Act* allows for a full action in Federal Court, including discovery, joinder of claims, and all the other legal tools available in Federal Court. It is not expressly limited in scope, like for instance the *Excise Tax Act* s.81.28(3)(a), which explicitly says that "the rules concerning joinder of parties and causes of action do not apply except to permit the joinder of appeals under this Part". Section 106 of the *Customs Act* does not apply, as the officers in question were committing fraud, and not performing their duties under the *Customs Act*, or any other Act of Parliament. Furthermore, there is no limitation of time of criminal charges such as fraud and facilitating money-laundering. With respect to the Minister's decision that is sought to be set aside, the claim was brought in an action commenced within the 3 month limitation, and is therefore proper.

249. [ re. Defendant's para 6 ] The genuine issues are not limited to the two stated by the defendant, but they are listed in the statement of claim.

250. [ re. Defendant's para 11 ] whether the coins are collector items, or not intended for circulation are not facts, but issues to be determined by the court.

251. [ re. Defendant's para 19 ] As section 135 of the *Customs Act* allows for a full action in Federal Court, it follows that all remedies available from the Federal Court are available in this action.
252. [ re Defendant's para 20 ] all the issues in this action are to be determined by the court, including criminal behaviour by CBSA employees, whether the CBSA facilitated money laundering, and whether it is a criminal organization within the meaning of the Criminal Code.
253. [ re Defendant's para 21 ] The *Customs Act* places no limitation on the scope of an action brought pursuant section 135. In *Steinway v Canada*, 2010 FC 1208, the point of para 24 is that under s.135 it is not the amount of penalty, but rather whether an offence was committed or not. It does not imply that it is the exclusive issue to be determined, nor does the *Customs Act* say such a thing. Para 27 shows that with respect to the Minister's Decision, which makes is how an action starts, the only thing to be determined is how the decision is to be disposed of. It does not limit joinder of causes of action, which naturally should be decided on their merits, with the appropriate remedies being available. If Parliament intended to limit the scope of an action under section 135, they would have stated it, as they did in the Excise Tax Act s81.28(3)(a)
254. [ re Defendant's para 22 ] Section 106 does not apply, it deals with officers performing their duties under the *Customs Act* or any other Act of Parliament, and not merely being at their place of employment, pretending to be customs officers.
255. [ re Defendant's para 24 ] Indeed a request for mandamus can be brought separately, but does not need to be. There is no statute evidence that it must be brought separately. In any case, mandamus is not sought here.
256. [ re. Defendant's para 29 ] Clearly from the definition of "cash", the qualifier "intended for circulation in Canada" applies only to notes issued by the Bank of Canada pursuant to the Bank of Canada Act, and not to domestic or foreign coins, nor to foreign bank notes. The origin of the "intended for circulation in Canada" is explained above at para 228. Defendant also omitted to emphasize the words "in Canada" which make integral part of the circulation qualifier.
257. [ re. Defendant's para 30 ] As it deals with money and things that are money-like, the PCMLTFR mentions gold and silver coins. This goes to the merits of the plaintiff's claims.
258. [ re. Defendant's para 31 ] Using a dictionary definition is not appropriate when more precise legal definitions exist in the *Currency Act* and *US Code Title 31*.

259. [ re. Defendant's para 32 ] There is no statutory mention of the "collector" status affecting the "currency" status. If there were, all currency would be collector goods, as currency is one of the most collected things world wide. The rest of the argument regarding the envisioned \$2 coffee is addressed above at para 115.

260. [ re. Defendant's para 33 ] Circulation does not affect currency. Once it is issued, it's currency until it is called in. The *Currency Act* s.7 makes no distinction between the different kinds of coins.

261. [ re. Defendant's para 34 ] The US Code Title 31 does not mention circulation at all, implying all coins are equal with respect to their status as currency and legal tender. It also does not say that quarters or dimes are currency. However, it does list all coins under the title "CHAPTER 51 – COINS AND CURRENCY", under the subtitle "SUBTITLE IV - MONEY". The defendant is obviously grasping at straws as he does in the entirety of his defence. As shown in the representations above his position shows his true intent is to facilitate money laundering.

262. [ re. Defendant's para 35 ] The *Currency Act* section 8(2.1) shows that coins with a denomination greater than ten dollars may be used as legal tender. This includes most, but not all precious metal coins. Some precious metal coins are denominated as one cent, three cents, five cents, etc, as shown in the *Royal Canadian Mint Act* Part 1 of the Schedule. These lower denominations may be used just as described by the *Currency Act* s.8(2)(a-e).

263. [ re. Defendant's para 36 ] is addressed above at para 115.

264. [ re. Defendant's para 38 ] as per US Mint Procedures to Qualify for Bulk Purchase of Gold and Platinum bullion Coins (TAB 69), section II, para 3, the coins are distributed through "hundreds of coin and precious metal dealers, participating banks, brokerage companies and other financial intermediaries" (underlined for emphasis). So yes, banks, financial intermediaries and coin dealers alike are selected by the US Government to distribute coins. Besides, currency is not the monopoly of commerce, you can get currency at any store, and from any person. Anyone who ever needed to break a banknote into coins knows this; you don't need to go to a bank to exchange banknotes for coins. But indeed, as banks deal exclusively in money-related products, it follows that if they distribute gold and silver coins, those must be money. In fact in Canada, banks distribute gold and silver coins and bars as well (TAB 36)

265. [ re. Defendant's para 39 ] Anyone in Canada can hold any foreign currency they wish, even if they can't use it in Canada. Also, someone holding any currency is not obligated to spend it (ie "to use it as currency").

Collecting currency is not a way of “using” it, but a way of “not using it”, which is also allowed by the *Currency Act*.

**Order Sought**

266. The plaintiff requests Summary Judgement:

- (a) Determine any issues that can be confidently be determined based on the evidence.
- (b) Make any orders the Court deems just.

# **TAB 2**

**CBSA Seizure Receipt**



## Seizure Receipt Reçu pour saisie

## Service Mode/Type de service

 In Person/En personne Mail/Poste

Name/Nom <b>HOCIUNG, Radu Sebastian</b> 226 Willowdale Av Waterloo, Ontario, Canada, N2J3M1		Canada Border Services Office/Bureau des services frontaliers du Canada Queenston Bridge - Traffic Niagara District Office 14154 Niagara Parkway R.R. #1 Niagara-On-The-Lake, Ontario Canada, L0S1J0, (905) 2626734	
Seizure Date/Date de la saisie 2014/10/21	Receipt Number/Numéro de reçu	Seizing Officer/Agent de la saisie 11276	Seizure No./No de saisie 4273-14-0724

**Allegation/Alléation**

The said goods are seized because they have been unlawfully imported by reason of Non-Report[Sec. 12, C.A.]

Lesdites marchandises sont saisies parce qu'elles ont été illégalement importées en raison de Défaut de déclaration[art. 12 de la Loi sur les douanes]

**Recap - Terms of Return/Récapitulation - Conditions de restitution**

Goods/Marchandises	\$1,606.97
Conveyance/Moyen de transport	\$0.00
<b>Total Amount Required/Montant total requis</b>	<b>\$1,606.97</b>
<b>Total Amount Received/Montant total reçu</b>	<b>\$0.00</b>

Seizures may affect examination rates, eligibility to Canada Border Services Agency(CBSA) accelerated release programs and subsequent penalty rates.

Les saisies peuvent avoir une incidence sur le nombre de vérification, l'admissibilité aux programmes de passage accéléré de l'Agence des services frontaliers du Canada(ASFC) et aux taux de pénalité ultérieurs.

**Right to Request a Minister's Decision**

If you wish to file an objection to this enforcement action and request a decision of the Minister of Public Safety, you must give notice in writing to the CBSA. Your objection may either be filed online via the CBSA web site at <http://www.cbsa-asfc.gc.ca/recourse-recours/menu-eng.html> under E-Appeals or you may send your written notice by mail to the:

Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Dr.  
Ottawa ON K1A 0L8

This request must be filed within 90 days after the date the enforcement action was taken. If you are past the 90 days for requesting a decision of the Minister of Public Safety, the Minister may, under exceptional circumstances, extend this time limit up to an additional year pursuant to section 129.1 of the Customs Act. In this respect, you must apply in writing to the Minister, outlining the reasons why your request for a decision was not filed within the 90 days set out in subsection 129(1) of the Act. The request for an extension is to be sent to:

Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Dr.  
Ottawa ON K1A 0L8

**Third Party Claims - Attention**

If you are aware of any persons, with the exception of the above named, that may have an interest in the things seized or detained as owner, mortgagee, hypothecary creditor, lien-holder or holder of any like interest, please advise them to contact the CBSA, Recourse Directorate, Ottawa ON K1A 0L8, within 90 days after the date the enforcement action was taken, for further information.

**PROTECTED B**

Note: The information on this form is collected for the purpose of assisting officers of the Recourse Directorate and is protected under the provision of the Privacy Act. The form is stored in personal information bank, Recourse Directorate record no. RCC PPU 035.

**Droit de demander au ministre de rendre une décision**

Si vous désirez contester cette mesure d'exécution et demander au Ministre de la sécurité publique de rendre une décision, vous devez envoyer un avis écrit. Votre demande peut être envoyée soit électroniquement sur le site internet de l'ASFC à l'adresse suivante <http://www.cbsa-asfc.gc.ca/recourse-recours/menu-fra.html> sous la rubrique Appels électroniques ou par la poste à:

L'agence des services frontaliers du Canada  
Direction des recours  
1686 Woodward Dr.  
Ottawa ON K1A 0L8

Cette demande doit être présentée dans les 90 jours suivant la date de la prise de la mesure d'exécution. Si le délai de 90 jours au cours duquel vous pouvez demander au ministre de la sécurité publique de rendre une décision est expiré, le ministre peut, dans des circonstances exceptionnelles, proroger ce délai d'une période maximale d'un an conformément à l'article 129.1 de la Loi sur les douanes. À cet égard, vous devez envoyer un avis écrit au ministre afin de lui expliquer les raisons pour lesquelles votre demande n'a pas été présentée dans le délai de 90 jours prévu au paragraphe 129(1) de la Loi sur les douanes. La demande de prorogation doit être envoyée à:

L'agence des services frontaliers du Canada  
Direction des recours  
1686 Woodward Dr.  
Ottawa ON K1A 0L8

**Revendication des tiers - Attention**

Si vous connaissez toute personne, sauf la personne nommée ci-dessus, qui pourrait avoir un intérêt dans les biens saisis ou d'être tenus, à titre de propriétaire, de créancier-détenteur d'hypothécaire, de titulaire de privilège ou de titulaire d'un droit analogue, veuillez leur indiquer de communiquer avec l'Agence des Services frontaliers du Canada, Direction des recours, Ottawa ON, K1A 0L8, dans les 90 jours suivant la date de la mesure d'exécution, pour plus de renseignements.

**PROTÉGÉ B**

Note: Les renseignements que contiennent ce formulaire sont recueillis dans le but d'assister les agents de la Direction des Recours et sont protégés par les dispositions de la loi sur la protection des renseignements personnels. Le formulaire est conservé dans le fichier de renseignements personnels concernant les dossiers de l'arbitrage no RCD PPU 035.



**Statement of Goods Seized/Relevé de marchandises saisies**

HOCIUNG, Radu Sebastian

4273-14-0724

Item/Art. 1: 4.000, United States of America \$50.00; 1oz of .9999 Fine Gold Coin

CDN Value/Valeur CDN  \$5,976.81	Rate- Goods/Taux des marchandises  25% Cdn Val.	Rate-Conveyance/Taux du moyen de transport  N/A
Terms of Release - Goods / Conditions de mainlevée des marchandises  \$1,494.20	Terms of Release - Conveyance / Conditions de mainlevée du moyen de transport  \$0.00	Disposition/Aliénation  <b>Held for Payment</b>

Item/Art. 2: 20.000, United States of America Silver Dollar; 1oz. Fine Silver

CDN Value/Valeur CDN  \$451.08	Rate- Goods/Taux des marchandises  25% Cdn Val.	Rate-Conveyance/Taux du moyen de transport  N/A
Terms of Release - Goods / Conditions de mainlevée des marchandises  \$112.77	Terms of Release - Conveyance / Conditions de mainlevée du moyen de transport  \$0.00	Disposition/Aliénation  <b>Held for Payment</b>

Terms of Return - Goods Conditions de restitution - Marchandises	\$1,606.97
Terms of Return - Conveyance Conditions de restitution - Moyen de transport	\$0.00

PROTECTED B  
PROTÉGÉ B

# TAB 3

**Online rating for gold coins**

Date : 2014/10/21  
Time/Heure: 19:15

ON-LINE RATING REPORT  
RAPPORT D'ÉVALUATION EN DIRECT

Office Name/Nom du bureau: NIAGARA FALLS, QENSTON BRIDGE, TRAFFIC  
Address/Adresse : NIAGARA FALLS ONT.

Classification Code/Code de classification: 7118.10.00.00  
Description

: coin - not legal tender, taxable  
monnaies - n'ayant pas cours legal, tax

Declared Value/Valeur Déclarée : \$5,000.00  
Currency Code/Code de Devise : US DOLLAR/DOLLAR DES É-U  
Exchange Rate/Taux de Change : 1.127700  
Tariff Treatment/Traitemet Tarif. : U.S. TARIFF (UST)

TARIF DES ÉTATS-UNIS (TÉU)

Province - Entry/Entrée : ONTARIO/ONTARIO  
Province - Destination : ONTARIO/ONTARIO  
Type of Rating - Genre d'évaluation : Traffic/Trafic

	Rate/Taux	UOM/UdM	Qty/Qté	Total
Duty/Droits:	0.00000	0.00000	0.00000	\$0.00
Excise Tax1/ Taxe d'accise1:	0.00000	0.00000	0.00000	\$0.00
Excise Tax 2/ Taxe d'accise2:	0.00000	0.00000	0.00000	\$0.00
GST/HST TPS/TVH	*	13.00000	*	\$733.01
Alcohol/ Alcool	:	0.00000	0.00000	\$0.00
Tobacco/Tabac:		0.00000	0.00000	\$0.00
PST/TVP	:	0.00000	0.00000	\$0.00
		0.00000	0.00000	\$0.00
				TOTAL
				\$733.01

# **TAB 4**

**Minister's Decision**



Canada Border  
Services Agency      Agence des services  
Recourse Directorate      frontaliers du Canada  
1686 Woodward Dr      Ottawa, ON, K1A 0L8

**REGISTERED**

Radu Sebastian Hociung  
226 Willowdale Avenue  
Waterloo, ON  
N2J 3M1

June 1, 2015

**Subject: Request for a Ministerial Decision - CS-74472/4273-14-0724**

I am writing to inform you of the ministerial decision on the above-noted appeal.

I have reviewed the enforcement action, the evidence and the law as it applies to your case. I have fully considered the documentation you provided as well as the reports from the issuing office.

**Decision**

After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, that there has been a contravention of the *Customs Act* or the Regulations in respect of the goods that were seized;

Under the provisions of section 133 of the *Customs Act*, the goods under seizure shall be returned to the appellant upon receipt of an amount of \$321.39 to be held as forfeit. If release of the goods is not taken on the foregoing terms, within 90 days from the date of this notice, they will be forfeited and disposed of.

**Reasons**

On October 21, 2014, you presented yourself to Canada Border Services Agency (CBSA) officials at the Queenston Bridge in Niagara-on-the-Lake, ON where you failed to report the importation of United States (US) gold and silver coins. It was determined that you had purchased these coins in the United States the same day as your return to Canada at a value of \$5,700 USD. As you failed to report the importation of the coins as required by section 12 of the *Customs Act*, they were seized and offered for release upon payment of \$1,606.97 CAD.

.../3

**Canada**

You appealed the enforcement action on the basis that the coins are legal tender qualifying as monetary instruments and the importation did not need to be reported as their value was less than \$10,000 CAD. Additionally, as you were not questioned about the amount of currency or monetary instruments in your possession, you were not obliged to disclose the value of the currency or monetary instruments in your possession.

However, after a thorough review of the information, evidence, legislation and regulations applicable to these circumstances, it has been concluded that the coins in your possession on October 21, 2014 seized by CBSA officials were required to be reported pursuant to the *Customs Act*.

I have reached this conclusion with careful consideration given to the definition of "cash" as it appears in the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR)*, and the relationship between the definition of "cash" in the Regulations and the term "currency" in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. In the French versions of the *Act* and the *Regulations*, the terms "cash" and "currency" are both represented as "espèces". As such, it is accepted that the definition for "cash" in the *Regulations* is the definition for "currency" in the *Act*.

The common denominator for the definition of currency is that the bank notes and coins must be intended for circulation to be considered as such. In the circumstances of this enforcement action, the coins were not intended for circulation. Consequently, they are not considered to be currency subject to the reporting requirements of the *PCMLTFA*, but are considered goods subject to the reporting requirements of the *Customs Act*.

All goods entering Canada, including gold and silver coins, must be reported to the CBSA in accordance with the *Customs Act*. The onus to do so falls upon the individual bringing the goods into the country whether or not prompted by a CBSA officer.

With respect to the supporting documentation you provided during the appeal process, that is the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, the *US Public Law* document on 'Buffalo Gold Bullion Coins' and the *US Code Title 31* all relate to different applications for currency and not to the *Customs Act* or the *PCMLTFA*. Thus, while considered, these documents were given no weight in support of your appeal. As the latter two documents relate to US currency, they have no bearing on the *Customs Act*, the *PCMLTFA* or Canadian currency laws.

The information available to me confirms that the coins in question were acquired outside of Canada and were not properly reported to the CBSA. Consequently, a contravention of the *Customs Act* did occur and the coins in question were lawfully subject to seizure and forfeiture. However, the terms of release have been reduced to \$321.39 to better reflect the circumstances of this enforcement action.

Should you have any questions concerning the release of your goods, please contact the CBSA officials at the Queenston Bridge, Niagara-On-The-Lake, Ontario at (905) 354-9478.

To appeal the decision made pursuant to section 131, you may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*. You must file your action within 90 days of the date of the mailing of this decision.

To appeal the decision made pursuant to section 133, you may appeal this decision by way of an application for judicial review under subsection 18.1(1) of the *Federal Courts Act*. An application to the Court must normally be filed within 30 days of the date of the mailing of this decision.

I trust that this letter satisfactorily explains the ministerial decision in this matter. If you have any questions, please contact the adjudicator, Martine Gagnon, at (343) 291-7223.

Yours truly,



Jeffrey Strickland  
Senior Program Advisor  
Appeals Division  
Recourse Directorate  
*For the Minister of Public Safety and Emergency Preparedness*

JS/bh

Attachment

# TAB 5

**Excise Tax Act sections 50(1)(a), 50(1)(b) and 51(1)**

Restriction on re-application

(3) Where an application is rejected pursuant to subsection 48(3) or approval of an application is revoked pursuant to subsection (1), the applicant may not make an application under subsection 48(1) within two years after the date of the notice of decision or the date on and after which the revocation is effective, as the case may be.

NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts. R.S., 1985, c. E-15, s. 49; R.S., 1985, c. 12 (4th Supp.), s. 15.

Consumption or sales tax

TAX IMPOSED

**50.** (1) There shall be imposed, levied and collected a consumption or sales tax at the rate prescribed in subsection (1.1) on the sale price or on the volume sold of all goods

(a) produced or manufactured in Canada

(i) payable, in any case other than a case mentioned in subparagraph (ii) or (iii), by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier,

(ii) payable, in a case where the contract for the sale of the goods, including a hire-purchase contract and any other contract under which property in the goods passes on satisfaction of a condition, provides that the sale price or other consideration shall be paid to the manufacturer or producer by instalments (whether the contract provides that the goods are to be delivered or property in the goods is to pass before or after payment of any or all instalments), by the producer or manufacturer at the time each of the instalments becomes payable in accordance with the terms of the contract, and

(iii) payable, in a case where the goods are for use by the producer or manufacturer thereof, by the producer or manufacturer at the time the goods are appropriated for use;

(b) imported into Canada, payable in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act;

Restriction visant une nouvelle demande

(3) En cas du rejet d'une demande visée au paragraphe 48(3) ou de l'annulation d'une approbation visée au paragraphe (1), le requérant ne peut présenter une demande conformément au paragraphe 48(1) dans les deux ans qui suivent la date de l'avis du rejet ou la date à compter de laquelle l'annulation a effet, selon le cas.

NOTE: Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois modificatives appropriées. L.R. (1985), ch. E-15, art. 49; L.R. (1985), ch. 12 (4<sup>e</sup> suppl.), art. 15.

TAXE IMPOSÉE

**50.** (1) Est imposée, prélevée et perçue une taxe de consommation ou de vente au taux spécifié au paragraphe (1.1) sur le prix de vente ou sur la quantité vendue de toutes marchandises :

a) produites ou fabriquées au Canada :

(i) payable, dans tout cas autre que ceux mentionnés aux sous-alinéas (ii) ou (iii), par le producteur ou fabricant au moment où les marchandises sont livrées à l'acheteur ou au moment où la propriété des marchandises est transmise, en choisissant celle de ces dates qui est antérieure à l'autre,

(ii) payable, dans un cas où le contrat de vente des marchandises, y compris un contrat de location-vente et tout autre contrat en vertu duquel la propriété des marchandises est transmise dès qu'il est satisfait à une condition, stipule que le prix de vente ou autre contrepartie doit être payé au fabricant ou producteur par versements — que, d'après le contrat, les marchandises doivent être livrées ou que la propriété des marchandises doive être transmise avant ou après le paiement d'une partie ou de la totalité des versements — , par le producteur ou fabricant au moment où chacun des versements devient exigible en conformité avec les conditions du contrat,

(iii) payable, dans un cas où les marchandises sont destinées à l'usage du producteur ou fabricant, par le producteur ou fabricant au moment où il affecte les marchandises à son usage;

b) importées au Canada, exigible conformément à la *Loi sur les douanes* de l'importa-

Taxe de consommation ou de vente

<p>each month in the period, including the relevant data for the period from January 1, 1981 to December 31, 1985, released by Statistics Canada under the authority of the <i>Statistics Act</i> on or before the fifteenth day of the third month following the end of that period and adjusted or altered in the manner prescribed pursuant to subsection (3);</p> <p>(b) by dividing the aggregate obtained under paragraph (a) by twelve; and</p> <p>(c) by rounding the result obtained under paragraph (b) to the nearest one-thousandth or, if the result obtained is equidistant from two one-thousandths, to the greater thereof.</p>	<p>le carburant diesel, selon le cas, publié pour chaque mois de la période, y compris les données pertinentes pour la période allant du 1<sup>er</sup> janvier 1981 au 31 décembre 1985, par Statistique Canada en vertu de la <i>Loi sur la statistique</i> au plus tard le quinzième jour du troisième mois suivant la fin de cette période et rajusté ou modifié selon les modalités réglementaires déterminées en application du paragraphe (3);</p> <p>b) division par douze du total obtenu en application de l'alinéa a);</p> <p>c) arrondissement du chiffre obtenu en application de l'alinéa b) au cent millième le plus proche ou, si le chiffre obtenu est équidistant entre deux cent millièmes de dollar, le plus élevé de ceux-ci.</p>
<p>Adjustment regulations</p> <p>(3) The Governor in Council, on the recommendation of the Minister of Finance, may make regulations</p> <p>(a) prescribing the manner in which the ratio referred to in subparagraph (1)(a)(ii) shall be adjusted or altered; and</p> <p>(b) prescribing, for the purposes of subsection (2), the manner in which the Industrial Product Price Index for Motor Gasoline or the Industrial Product Price Index for Diesel Oil for any month shall be adjusted or altered.</p>	<p>Règlements de rajustement</p> <p>(3) Le gouverneur en conseil, sur recommandation du ministre des Finances, peut, par règlement :</p> <p>a) déterminer les modalités de rajustement ou de modification des ratios visés au sous-alinéa (1)a)(ii);</p> <p>b) déterminer, pour l'application du paragraphe (2), les modalités de rajustement ou de modification, mensuellement, de l'Indice des prix des produits industriels pour l'essence à moteur ou l'Indice des prix des produits industriels pour le carburant diesel.</p>
<p>Definition of terms</p> <p>(4) The Governor in Council may, by regulation, define the terms "regular gasoline", "unleaded gasoline", "premium leaded gasoline" and "premium unleaded gasoline" for the purposes of paragraph 50(1.1)(c) and of Schedule II.1.</p>	<p>Définition des expressions</p> <p>(4) Le gouverneur en conseil peut, par règlement, définir les expressions «essence ordinaire», «essence sans plomb», «essence super avec plomb» et «essence super sans plomb» pour l'application de l'alinéa 50(1.1)c) et de l'annexe II.1.</p>
<p>NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts. R.S., 1985, c. 7 (2nd Supp.), s. 17, c. 42 (2nd Supp.), s. 6, c. 12 (4th Supp.), s. 17.</p>	<p>NOTE: Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois modificatives appropriées. L.R. (1985), ch. 7 (2<sup>e</sup> suppl.), art. 17, ch. 42 (2<sup>e</sup> suppl.), art. 6, ch. 12 (4<sup>e</sup> suppl.), art. 17.</p>
<p>Goods exempted</p> <p><b>51.</b> (1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).</p>	<p>Marchandises non assujetties à la taxe</p> <p><b>51.</b> (1) La taxe imposée par l'article 50 ne s'applique pas à la vente ou à l'importation des marchandises mentionnées à l'annexe III, excepté les marchandises mentionnées à la partie XIII de cette annexe qui sont vendues ou importées par des personnes exemptées du paiement de la taxe de consommation ou de vente en application du paragraphe 54(2).</p>
<p>Articles partially exempted</p> <p>(2) The tax imposed by section 50 shall be imposed only on fifty per cent of the sale price if manufactured in Canada or fifty per cent of</p>	<p>Articles exemptés partiellement</p> <p>(2) La taxe imposée par l'article 50 est imposée seulement sur cinquante pour cent du prix de vente de balances métriques d'une por-</p>

# **TAB 6**

**Excise Tax Act Schedule III Part XI**

PART IX

MARINE AND FISHERIES

1. Boats purchased by fishermen for use in the fisheries, and articles and materials for use exclusively in the manufacture, equipment or repair thereof.
2. Carrageen or Irish moss.
3. Cotton duck and cotton sail twine for use exclusively in the manufacture of equipment for ships or vessels.
4. Lobster pots, lobster traps, crab or shrimp pots, crab or shrimp traps, cod traps, eel traps, articles for binding or wedging lobster claws, and materials for use exclusively in the manufacture thereof.

5. Fishing nets and nettings of all kinds; specially designed needles for use in repairing fishing nets; metal panel devices for use in keeping nets open; metal swivels; fish hooks, lures, jiggers and artificial baits; sinkers and floats including trawl kegs; threads, twine, marlins, fishing lines, rope and cordage; carapace measures; all the foregoing for use in commercial fishing, or in the commercial harvesting of marine plants; none of the foregoing for sports fishing purposes; articles and materials for use in the manufacture, preservation or repair of the tax exempt goods specified in this section.

PART X

MINES AND QUARRIES

1. Crushed stone; crushed gravel.
2. Gold and silver in bars, blocks, drops, ingots, plates or sheets not further manufactured.
3. Ores of all kinds.
4. Sand, gravel, rubble and field stone.
5. Vermiculite; perlite.
6. Blast furnace slag and boiler slag, not further processed than crushed and screened.

PART XI

MISCELLANEOUS

1. Articles and materials purchased or imported by a government of a country designated by the Governor in Council pursuant to heading No. 98.10 of Schedule I to the *Customs Tariff*, or purchased or imported by a Canadian government agency on behalf of such a government, for the construction, maintenance or operation of military or defence establishments in Canada and not intended for resale, gift or other disposition except as may be authorized by the Minister of National Revenue.
2. Baler twine and materials for use exclusively in the manufacture thereof.
3. British and Canadian coins; foreign gold coin.
4. Coin of any metal, of authorized weight and design, issued for use as currency under the authority of the government of any country.
5. Donations of clothing and books for charitable purposes.

PARTIE IX

MARINE ET PÊCHE

1. Embarcations achetées par des pêcheurs pour être employées à la pêche, et articles et matières devant servir exclusivement à la fabrication, au gréement ou à la réparation de ces embarcations.
2. Carragheen ou mousse d'Irlande.
3. Toile de coton et fil de coton à voiles pour servir exclusivement à la fabrication de gréements de navires ou vaisseaux.
4. Casiers à homards, à crabes ou à crevettes, trappes à morues ou à anguilles, articles pour attacher ou coincer les pinces des homards, et matières devant servir exclusivement à leur fabrication.
5. Filets de pêche et filets de toutes sortes; aiguilles d'un modèle spécial destinées à la réparation de filets de pêche; dispositifs métalliques à panneaux pour assurer l'ouverture des filets; émerillons en métal, hameçons, leurres, turluttes et appâts artificiels; plombs et flotteurs comprenant les petits barils de lignes flottantes; fils, ficelles, lusins, lignes de pêche, corde et cordage; appareils à mesurer les carapaces; tout ce qui précède devant servir à la pêche commerciale ou à la prise commerciale de plantes aquatiques; rien de ce qui précède ne devant servir à la pêche sportive; articles et matières devant servir à la fabrication, à la préservation ou à la réparation des marchandises exemptes de taxe visées au présent article.

PARTIE X

MINES ET CARRIÈRES

1. Pierre concassée; gravier concassé.
2. Or et argent en barres, blocs, larmes, lingots, plaques ou feuilles qui ne sont pas plus ouvrés.
3. Minerais de toutes sortes.
4. Sable, gravier, moellons et pierre des champs.
5. Vermiculite; perlite.
6. Les scories de haut fourneau et de chaudière, non plus transformées que broyées et criblées.

PARTIE XI

DIVERS

1. Articles et matières soit achetés ou importés par un gouvernement d'un pays désigné par le gouverneur en conseil aux termes de la position 98.10 de l'annexe I du *Tarif des douanes*, soit achetés ou importés par un organisme du gouvernement canadien pour le compte du gouvernement de ce pays, en vue de la construction, de l'entretien ou du fonctionnement d'établissements militaires ou de défense au Canada et non destinés à être revendus, donnés ou autrement aliénés, sauf ainsi que peut l'autoriser le ministre du Revenu national.
2. Ficelle d'emballage et matières servant exclusivement à sa fabrication.
3. Monnaies britanniques et canadiennes; monnaies d'or étrangères.
4. Pièces de monnaie étrangère de quelque métal que ce soit, dont le poids et le dessin sont autorisés, émises sous l'autorité d'un gouvernement étranger pour circulation dans ce pays.
5. Dons de vêtements et de livres pour fins de charité.

# TAB 7

**Excise Tax Act, section 123(1) definitions**

“financial institution”  
« *institution financière* »

“financial instrument”  
« *effet financier* »

“financial service”  
« *service financier* »

to any tax excluded by section 154 from the consideration for the supply;

“financial institution”, at any time, means a person who is at that time a financial institution under section 149;

“financial instrument” means

- (a) a debt security,
- (b) an equity security,
- (c) an insurance policy,
- (d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest,
- (e) a precious metal,
- (f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange,
- (g) a prescribed instrument,
- (h) a guarantee, an acceptance or an indemnity in respect of anything described in paragraph (a), (b), (d), (e) or (g), or
- (i) an option or a contract for the future supply of money or anything described in any of paragraphs (a) to (h);

“financial service” means

- (a) the exchange, payment, issue, receipt or transfer of money, whether effected by the exchange of currency, by crediting or debiting accounts or otherwise,
- (b) the operation or maintenance of a savings, chequing, deposit, loan, charge or other account,
- (c) the lending or borrowing of a financial instrument,
- (d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument,
- (e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,
- (f) the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits or any similar pay-

a) au Québec, les immeubles et les baux y afférents;

b) ailleurs qu’au Québec, les terres, les fonds et les immeubles, de toute nature et désignation, ainsi que les droits y afférents, qu’ils soient fondés en droit ou en équité;

c) les maisons mobiles, les maisons flottantes ainsi que les tenures à bail ou autres droits de propriété afférents.

« immeuble d’habitation »

« immeuble d’habitation »  
“*residential complex*”

a) La partie constitutive d’un bâtiment qui comporte au moins une habitation, y compris :

- (i) la fraction des parties communes et des dépendances et du fonds contigu au bâtiment qui est raisonnablement nécessaire à l’usage résidentiel du bâtiment,
- (ii) la proportion du fonds sous-jacent au bâtiment correspondant au rapport entre cette partie constitutive et l’ensemble du bâtiment;

b) la partie d’un bâtiment, y compris la proportion des parties communes et des dépendances du bâtiment, et du fonds sous-jacent ou contigu à celui-ci, qui est attribuable à l’habitation et raisonnablement nécessaire à son usage résidentiel, qui constitue :

(i) d’une part, tout ou partie d’une maison jumelée ou en rangée, d’un logement en copropriété ou d’un local semblable qui est, ou est destinée à être, une parcelle séparée ou une autre division d’immeuble sur lequel il y a, ou il est prévu qu’il y ait, un droit de propriété distinct des droits de propriété des autres parties du bâtiment,

(ii) d’autre part, une habitation;

c) la totalité du bâtiment visé à l’alinéa a) ou du local visé au sous-alinéa b)(i), qui est la propriété d’un particulier, ou qui lui a été fourni par vente, et qui sert principalement de résidence au particulier, à son ex-époux ou ancien conjoint de fait ou à un particulier lié à ce particulier, y compris :

(i) dans le cas d’un bâtiment visé à l’alinéa a), les dépendances, le fonds sous-jacent et la partie du fonds contigu qui sont raisonnablement nécessaires à l’usage du bâtiment,

	<ul style="list-style-type: none"> <li>(a) film, slide show, sound and light or similar presentation,</li> <li>(b) artistic, literary, theatrical, musical or other performance, entertainment or exhibition,</li> <li>(c) fair, circus, menagerie, rodeo or similar event, or</li> <li>(d) race, game of chance, athletic contest or other contest or game,</li> </ul>	<ul style="list-style-type: none"> <li>fait qu'elle en est dispensée par la législation d'une province;</li> </ul>
	and includes a museum, historical site, zoo, wildlife or other park, place where bets are placed and any place, structure, apparatus, machine or device the purpose of which is to provide any type of amusement or recreation;	<ul style="list-style-type: none"> <li>j.1) le service consistant à remettre à un assureur ou au fournisseur du service visé à l'alinéa j) une évaluation des dommages causés à un bien ou, en cas de perte d'un bien, de sa valeur, à condition que le fournisseur de l'évaluation examine le bien ou son dernier emplacement connu avant sa perte;</li> </ul>
“precious metal” « métal précieux »	“precious metal” means 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	<ul style="list-style-type: none"> <li>k) une fourniture réputée par le paragraphe 150(1) ou l'article 158 être une fourniture de service financier;</li> </ul>
	<ul style="list-style-type: none"> <li>(a) 99.5% in the case of gold and platinum, and</li> <li>(b) 99.9% in the case of silver;</li> </ul>	<ul style="list-style-type: none"> <li>l) le fait de consentir à effectuer, ou de prendre les mesures en vue d'effectuer, un service qui, à la fois :</li> </ul>
“prescribed” Version anglaise seulement	“prescribed” means	<ul style="list-style-type: none"> <li>(i) est visé à l'un des alinéas a) à i),</li> <li>(ii) n'est pas visé aux alinéas n) à t);</li> </ul>
	<ul style="list-style-type: none"> <li>(a) in the case of a form or the manner of filing a form, authorized by the Minister,</li> <li>(b) in the case of the information to be given on a form, specified by the Minister,</li> <li>(c) in the case of the manner of making or filing an election, authorized by the Minister, and</li> <li>(d) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;</li> </ul>	<ul style="list-style-type: none"> <li>m) un service visé par règlement.</li> </ul>
“property” « bien »	“property” means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share and a chose in action, but does not include money;	<ul style="list-style-type: none"> <li>n) le paiement ou la réception d'argent en contrepartie de la fourniture d'un bien autre qu'un effet financier ou d'un service autre qu'un service financier;</li> </ul>
“province” « province »	“province” includes a participating province;	<ul style="list-style-type: none"> <li>o) le paiement ou la réception d'argent en règlement d'une réclamation (sauf une réclamation en vertu d'une police d'assurance) en vertu d'une garantie ou d'un accord semblable visant un bien autre qu'un effet financier ou un service autre qu'un service financier;</li> </ul>
“public college” « collège public »	“public college” means an organization that operates a post-secondary college or post-secondary technical institute	<ul style="list-style-type: none"> <li>p) les services de conseil, sauf un service visé aux alinéas j) ou j.1);</li> <li>q) l'un des services suivants rendus soit à un régime de placement, au sens du paragraphe 149(5), soit à une personne morale, à une société de personnes ou à une fiducie dont l'activité principale consiste à investir des fonds, si le fournisseur est une personne qui rend des services de gestion ou d'administration au régime, à la personne morale, à la société de personnes ou à la fiducie :</li> </ul>
	<ul style="list-style-type: none"> <li>(a) that receives from a government or a municipality funds that are paid for the purpose of assisting the organization in the on-</li> </ul>	<ul style="list-style-type: none"> <li>(i) un service de gestion ou d'administration,</li> <li>(ii) tout autre service (sauf un service prévu par règlement);</li> </ul>
		<ul style="list-style-type: none"> <li>q.1) un service de gestion des actifs;</li> </ul>

# TAB 8

**Canada Revenue Agency Memo 17.1 (Definition of “Financial Instrument”)**



# GST/HST Memoranda Series

## 17.1 Definition of “Financial Instrument”

April 1999

### Overview

This memorandum explains the components of the definition of “financial instrument” as it relates to the provision of financial services under the Goods and Services Tax (GST)/Harmonized Sales Tax (HST).

### Note

This memorandum replaces GST/HST Memorandum 17.1, *Definition of “Financial Instrument”*, dated January 1995. Significant changes have been side-barred.

### Note - HST

Reference in this memorandum is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

## General

1. The definition of financial instrument is relevant for the definition of financial service. A financial service generally involves a transaction relating to a financial instrument or money.

### Financial services

2. Supplies of financial services are exempt under Part VII of Schedule V unless specifically listed as zero-rated under Part IX of Schedule VI. Services for which fees are charged and which relate to financial instrument transactions are exempt where these transactions fall within the definition of financial service found in subsection 123(1).

### Definition of financial instrument ss 123(1)

3. “Financial instrument” means:

(a) a debt security;

(b) an equity security;

(c) an insurance policy;

(d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest;

(e) a precious metal;

(f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange;

## **17.1 Definition of “Financial Instrument” (continued)**

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- (g) a prescribed instrument;
- (h) a guarantee, an acceptance or an indemnity in respect of anything described in paragraphs (a), (b), (d), (e) or (g); or
- (i) an option or a contract for the future supply of money or anything described in any of paragraphs (a) to (h).

Components of financial instrument      4. The following paragraphs explain the components of the definition of a financial instrument.

### **Debt security**

- Definition of debt security  
ss 123(1)      5. “Debt security” means a right to be paid money and includes a deposit of money, but does not include a lease, licence or similar arrangement for the use of, or the right to use, property other than a financial instrument.
- Right to be paid money      6. Financial obligations representing a right to be paid money are by definition a debt security for GST/HST purposes. A debt security generally includes a deposit of money, debentures, notes, convertible notes, mortgages, treasury bills, bonds, etc. It also includes book debts and accounts receivable.
- Exclusions      7. The payment of money relating to leases, licences or similar arrangements, or the right to use property other than a financial instrument, is specifically excluded from the definition of debt security. Therefore, such a payment is not in respect of a financial instrument. For example, the leasing of commercial property is treated as a supply of that property, and not a debt security, for GST/HST purposes pursuant to subsection 136(1). Similarly, an automobile lease payment although partially consisting of a financing component is not exempt as consideration for a supply of a financial instrument.
- Contingent right  
Policy statement  
P-170, *Whether or Not a Debt Security Includes Contingent Amounts Owing*.      8. “Debt security” does not include a contingent right. A right to be paid money is a possibility but not a certainty where a contingent right is involved. The payment is conditional upon the occurrence or non-occurrence of some future event that may never happen.
- Late payment charges      9. A late payment charge occurs where a supplier of property or services charges the recipient (customer) an additional amount if payment for the supply is not made within the time required on the invoice. The late payment is a financial service as it relates to the operation of an overdue account (which is a debt security, and therefore a financial instrument).

## **17.1 Definition of “Financial Instrument” (continued)**

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### **Equity security**

Definition of equity security  
ss 123(1)

10. “Equity security” means a share of the capital stock of a corporation or any interest in or right to such a share.
11. A share of capital stock in a corporation representing ownership in the corporation or an interest in or right, claim or title to such a share is, for GST/HST purposes, a financial instrument.

### **Insurance policies**

Definition of insurance policy  
ss 123(1)

12. For GST/HST purposes, “insurance policy” means:
  - (a) a policy or contract of insurance, including life, property and casualty policies, but excluding a warranty contract (as explained in paragraph 23), that is issued by an insurer, including
    - (i) a reinsurance policy,
    - (ii) an annuity contract or a contract that would be an annuity contract except that the payments under the contract
      - are payable on a periodic basis at intervals that are longer or shorter than one year, or
      - vary in amount depending on the value of a specified group of assets or changes in interest rates, and
    - (iii) a segregated funds contract;
  - (b) a policy or contract relating to accident and sickness insurance whether issued or entered into by an insurer; and
  - (c) certain types of construction bonds (see paragraph 17 for more information).
13. “Insurer” means a person who is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or under the laws of another jurisdiction to carry on in that other jurisdiction an insurance business.
14. Generally, an insurance policy is a contract whereby one person undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event, and applies only to some contingency or act that may occur in the future. It is an agreement by which one party, for a consideration, promises to pay money or its equivalent, or to perform an act valuable to the other party upon destruction, loss or injury of something in which the other party has an insurable interest.

## 17.1 Definition of “Financial Instrument” (continued)

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Health insurance contracts	15. Health insurance contracts such as accident or sickness insurance pertain to reimbursement for eligible medical, hospital, nursing, dental and certain other health-related expenses. These contracts cover payment for the cost of specified medical or dental services and loss of earnings, and provide an amount in compensation for accidental death or dismemberment. These contracts are included in the definition of an insurance policy whether or not provided by an insurer.
Supplementary health insurance	16. Contracts or policies issued by certain organizations that are not insurers, but provide supplementary health insurance in Canada and are licensed under the <i>Prepaid Hospital and Medical Act</i> (e.g., Blue Cross as well as certain corporations or associations providing accident and sickness policy benefits to their employees under self-insurance plans administered by a third party) are also included in the definition of an insurance policy.
Construction bonds	17. Construction bonds are bid, performance, maintenance or payment bonds issued in respect of a construction contract. These bonds are generally three-party contracts between a surety company, a contractor and an owner or developer of a project. The bonds, as a form of financial guarantee, are used in the construction industry to guarantee performance of a construction contract or the payment of suppliers. <ul style="list-style-type: none"><li>• Bid bond 18. A bid bond guarantees that the contractor, if selected, will enter into the contract for the bid amount and will provide the required contract security.</li><li>• Performance bond 19. A performance bond guarantees completion of the construction contract.</li><li>• Maintenance bond 20. A maintenance bond guarantees against defects in the contractor’s workmanship or materials for a period of time following completion of the construction contract.</li><li>• Payment bond 21. A payment bond guarantees that the contractor will pay its subcontractors, labourers and suppliers on the bonded construction contract.</li></ul> 22. The issuers (usually surety companies) of these construction bonds are normally required to be licensed under the same legislation as insurers. Even though these unique bonds are not normally considered to be contracts of insurance, they do strongly resemble insurance policies. Therefore, for GST/HST purposes, they are treated as insurance and included in the definition of an insurance policy.
Exclusions	23. The definition of insurance policy, however, excludes a warranty in respect of the quality, fitness or performance of tangible property where the warranty is supplied to a person who acquires the property otherwise than for resale (i.e., for personal use) whether or not it is provided by an insurer.  24. Insurance services provided by non-licensed persons are also excluded from the definition of insurance policy except in the case of: <ul style="list-style-type: none"><li>a) accident and sickness insurance as described in paragraphs 15 and 16, and</li><li>b) in some instances, construction bonds as described in paragraph 17.</li></ul>

## 17.1 Definition of “Financial Instrument” (continued)

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### Interest in a partnership, trust or estate of a deceased individual

Terms	<p>25. A partnership is created where two or more persons enter into a relationship to carry on business for profit. A trust is a fiduciary relationship imposed by contract or by law with respect to property or money held by one person for the benefit of one or more persons. A partnership, a trust and the estate of a deceased individual are treated as separate persons under the Act.</p> <p>26. Any interest, or any right in respect of an interest, in a partnership, a trust or the estate of a deceased individual is a financial instrument. This interest or right represents a claim, title or legal share of an <b>investment</b> in a partnership, a trust or the estate of a deceased individual and not in the underlying assets of the partnership, trust or the estate of a deceased individual.</p>
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### Precious metals

Definition of precious metal ss 123(1)	<p>27. A “precious metal” is a bar, ingot, coin or wafer of gold, platinum or silver that is refined to a purity level of at least</p> <ol style="list-style-type: none"><li>99.5% in the case of gold and platinum, and</li><li>99.9% in the case of silver.</li></ol>
Policy statement P-192, <i>Supplies of Precious Metals</i>	<p>28. A precious metal in the form of a bar, ingot or wafer at the required purity levels must generally be recognized and accepted for trading on Canadian financial markets. Ordinarily, these will bear markings indicating their purity level. They 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.</p> <p>29. Any supply of a precious metal (i.e., gold, platinum or silver) meeting the purity requirements, as set out in the definition of precious metal in subsection 123(1), is a supply of a financial service and generally exempt. Metals of this quality are normally investment-related and are usually bought and sold on international exchanges that establish world-wide precious metal prices.</p> <p>30. The sale or purchase of a precious metal, in the course of a commercial activity, that does not comply with the defined requirements is not considered a supply of a financial instrument, but rather a supply of property. Generally, the sale of gold, platinum or silver in bar, ingot, coin or wafer form with a purity level of less than 99.5% for gold and platinum, and less than 99.9% for silver is taxable at 7% or 15%. The sale of gold, platinum or silver at the defined purity levels, but not in the form of a bar, ingot, coin or wafer (e.g., in granular form), is taxable at 7% or 15%.</p>
Refiner	<p>31. A refiner of precious metals is considered to be any person who in the regular course of business converts or refines gold, platinum or silver regardless of the degree of purity.</p>

## **17.1 Definition of “Financial Instrument” (continued)**

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- Zero-rated supply  
Sch. VI, Part IX, s 3
- Refiner's fee
- Non-precious metals
- Supplies to non-residents  
Sch. VI, Part IX, s 1
- Imports  
Sch. VII, s 8
32. A supply of precious metals, as described in paragraphs 27 and 28, made by the refiner thereof or by the person on whose behalf the precious metals were refined is a zero-rated financial service. Accordingly, the first sale of newly refined precious metal by the refiner or its owner is zero-rated. Subsequent supplies of the precious metal are exempt.
33. Where a refining or a manufacturing fee is charged by a refiner of precious metals to the owner of the precious metals, this fee is taxable. However, where it is standard practice for a refiner to charge a separate premium fee when selling its own precious metal that is over and above the intrinsic precious metal value of the product, this fee is considered part of the selling price, and therefore would take on the tax status of the sale of the precious metal.
34. Carat gold, sterling silver or platinum in jewellery or chattel form are examples of metals that do not meet the purity and form requirements established under subsection 123(1), and therefore are not considered to be precious metals. Supplies of these goods are taxable at 7% or 15%, unless otherwise zero-rated in Schedule VI or exempted under Schedule V.
35. Precious metals supplied by a financial institution to a non-resident person are zero-rated.
36. Precious metals imported under any circumstances are prescribed by the *Non-Taxable Imported Goods (GST) Regulations*, and are therefore non-taxable imports by virtue of section 8 of Schedule VII.

## **Options or contracts traded on recognized commodity exchanges**

- Financial instruments
- Options
37. A commodity option or commodity future contract is a financial instrument for GST/HST purposes when traded on a recognized commodity exchange, such as the Winnipeg Commodity Exchange.
38. An option for the future supply of a commodity includes a right, but not an obligation, to buy or sell a commodity at a specified price within a stipulated future time period. The option buyer pays a premium to the dealer for this right, in addition to the usual commission. The supply of a commodity option where sold on a recognized commodity exchange is a financial service provided under paragraph (d) of the definition of financial service in subsection 123(1). However, the taxable status of the underlying commodity, if the option is exercised, is either taxable at 7% or 15% or exempt depending on the nature of the supply.

## **17.1 Definition of “Financial Instrument” (continued)**

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- Futures contract      39. A futures contract is an agreement to buy or sell a specific amount of a commodity at a particular price on a stipulated future date. Contrary to a commodity option, a futures contract obligates the buyer to purchase the underlying commodity and the seller to sell it, unless the contract is sold to another before the exercise date. The supply of a futures contract where sold on a recognized commodity exchange is also a financial service provided under paragraph (d) of the definition of financial service in subsection 123(1). However, the taxable status of the underlying commodity when the exercise date becomes due is either taxable or exempt depending on the nature of the supply.

### **Prescribed instruments**

40. Paragraph (g) of the definition of financial instrument provides for additional categories of financial instruments. To date, no regulations have been promulgated.

### **Guarantees, acceptances or indemnities**

- Guarantee      41. A guarantee includes an undertaking by a person to pay money or perform obligations with respect to a financial instrument provided under paragraphs (a), (b), (d), (e), and (g) of the definition of financial instrument in subsection 123(1), should the person primarily liable for the payment of a debt or obligation fail to execute that person's responsibility. For example, a guarantee bond is considered to be a financial instrument. A guarantee bond is a guarantee wherein the principal and interest may be guaranteed by a party other than the issuer. This situation may arise in parent-subsidiary relationships where bonds issued by a subsidiary are guaranteed by the parent.
- Acceptance      42. An acceptance in respect of paragraphs (a), (b), (d), (e) and (g) of the definition of financial instrument will include a formal indication by a person of its acceptance or guarantee that a financial instrument will be paid (e.g., Banker's Acceptance). An acceptance agreement is created, for example, when the drawee of a financial instrument writes “accepted” and a designated date of payment on the instrument and the drawee is responsible for payment at maturity.
- Indemnity      43. An indemnity in respect of paragraphs (a), (b), (d), (e) and (g) of the definition of financial instrument refers to a collateral contract or agreement by which one person agrees to indemnify another against an anticipated loss. It is an undertaking to be liable to pay money or perform an obligation in respect of the financial instrument (e.g., indemnity bond).
44. Guarantees, acceptances or indemnities pertaining to financial instruments defined in paragraphs (a), (b), (d), (e) or (g) of the definition of financial instrument are also defined (in paragraph (h)) to be themselves financial instruments for GST/HST purposes. Therefore, financial services relating to these guarantees, acceptances or indemnities will generally be exempt.

## **17.1 Definition of “Financial Instrument” (continued)**

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### **Options and contracts**

- Options                    45. An option for the future supply of money or a financial instrument described in paragraphs (a) to (h) of the definition of financial instrument refers to a right, but not an obligation, to buy or sell money or a financial instrument at a specified price within a stipulated future time period.
- Contract                  46. A contract for the future supply of money or a financial instrument described in paragraphs (a) to (h) of the definition of financial instrument refers to an agreement to buy or sell the above at a stipulated future date. For example, a future contract to purchase or sell US dollars at a specified price on a stipulated future date is a financial instrument.

All GST/HST memoranda and other Revenue Canada publications are available on Internet at the Revenue Canada site <http://www.rc.gc.ca/> under the heading “Technical Information” in “General Information”.

# TAB 9

***Non-Taxable Imported Goods (GST/HST) Regulations s3(a)***

**(ii)** tax under section 212 of the Act was payable by a person that was entitled to obtain a rebate, refund or remission of that tax under any Act of Parliament only because the goods were subsequently exported, and

**(iii)** tax under section 212 of the Act was not payable as a consequence of section 213 of the Act only because the goods were subsequently exported. (*fourniture dégrisée*)

2012, c. 19, s. 49; SOR/2014-248, s. 6.

**a)** est visé à la position n° 87.02, à l'une des sous-positions n°s 8703.21 à 8703.90, 8704.21, 8704.31, 8704.90 et 8711.20 à 8711.90 ou aux n°s tarifaires 8716.39.30 ou 8716.39.90 de cette liste;

**b)** est visé aux sous-positions n°s 8704.22 ou 8704.32 de cette liste et a un poids nominal brut du véhicule, au sens du paragraphe 2(1) du *Règlement sur la sécurité des véhicules automobiles*, n'excédant pas dix tonnes;

**c)** est visé au n° tarifaire 8716.10.00 de cette liste et est un véhicule pour le camping. (*qualifying vehicle*)

2012, ch. 19, art. 49; DORS/2014-248, art. 6.

## Prescribed Goods and Circumstances

**3** For the purposes of section 8 of Schedule VII to the Act, the following goods and circumstances are prescribed:

**(a)** precious metals imported under any circumstances;

**(b)** unwrought silver, gold or platinum, waste and scrap of precious metal or of metal clad with precious metal, and concentrates of silver, gold or platinum, where imported for the purpose of being refined into precious metals;

**(c)** goods imported for the sole purpose of public exhibit by a public sector body, where, while the goods are in Canada,

**(i)** title to the goods is not intended to pass and does not pass to a person in Canada, and

**(ii)** beneficial use of the goods is not intended to pass and does not pass to a person in Canada that is not a public sector body;

**(d)** goods imported for the sole purpose of maintenance, overhaul or repair of those goods in Canada, where

**(i)** neither title to nor beneficial use of the goods is intended to pass, or passes, to a person in Canada while the goods are in Canada, and

**(ii)** the goods are exported as soon after the maintenance, overhaul or repair is completed as is reasonable having regard to the circumstances surrounding the importation and, where applicable, to the normal business practice of the importer;

## Produits et circonstances

**3** Pour l'application de l'article 8 de l'annexe VII de la Loi, sont visés les circonstances et les produits suivants :

**a)** les métaux précieux importés dans toutes circonstances;

**b)** l'argent, l'or ou le platine, sous forme brute, les déchets et les débris de métaux précieux ou de plaqué ou de doublés de métaux précieux, et les concentrés d'argent, d'or ou de platine, importés pour être transformés, par affinage, en métaux précieux;

**c)** les produits importés dans l'unique but d'être exposés publiquement par un organisme du secteur public, si les conditions suivantes sont réunies pendant que les produits se trouvent au Canada :

**(i)** la propriété des produits n'est ni censée être transmise ni transmise à une personne au Canada,

**(ii)** l'usage effectif des produits n'est ni censé être transmis ni transmis au Canada à une personne qui n'est pas un organisme du secteur public;

**d)** les produits importés dans l'unique but d'être entretenus, remis en état ou réparés au Canada, si les conditions suivantes sont réunies :

**(i)** ni la propriété ni l'usage effectif des produits n'est censé être transmis ni n'est transmis à une personne au Canada pendant qu'ils s'y trouvent,

**(ii)** les produits sont exportés dans un délai raisonnable une fois l'entretien, la remise en état ou la réparation achevée, compte tenu des circonstances entourant l'importation et, le cas échéant, des pratiques commerciales normales de l'importateur;

# **TAB 10**

***Currency Act, s.7-8, 11, 15, 17, 21***



R.S.C., 1985, c. C-52

L.R.C., 1985, ch. C-52

An Act respecting Currency

SHORT TITLE

Short title      **1.** This Act may be cited as the *Currency Act*.  
 R.S., c. C-39, s. 1; 1984, c. 9, s. 2.

INTERPRETATION

Definitions      **2.** In this Act,  
 “Minister” means the Minister of Finance.  
 “subsidiary coin” [Repealed, R.S., 1985, c. 35 (3rd Supp.), s. 16]  
 R.S., 1985, c. C-52, s. 2; R.S., 1985, c. 35 (3rd Supp.), s. 16; 1996, c. 16, s. 60; 1999, c. 4, s. 9.

PART I  
CURRENCY AND COINAGE

MONETARY UNIT

Monetary unit      **3.** (1) The monetary unit of Canada is the dollar.  
 Denominations      (2) The denominations of money in the currency of Canada are dollars and cents, the cent being one hundredth of a dollar.  
 R.S., 1985, c. C-52, s. 3; 1999, c. 4, s. 10.

**4. to 6.** [Repealed, R.S., 1985, c. 35 (3rd Supp.), s. 17]

CURRENT COINS

Current coins      **7.** (1) A coin is current for the amount of its denomination in the currency of Canada if it was issued under the authority of  
 (a) the *Royal Canadian Mint Act*; or  
 (b) the Crown in any province of Canada before it became part of Canada and if the coin was, immediately before October 15, 1952, current and legal tender in Canada.

Loi concernant la monnaie

TITRE ABRÉGÉ

**1.** *Loi sur la monnaie.*  
 S.R., ch. C-39, art. 1; 1984, ch. 9, art. 2.

Titre abrégé

DÉFINITIONS

**2.** Les définitions qui suivent s’appliquent à la présente loi.  
 «ministre» Le ministre des Finances.  
 «pièce de monnaie divisionnaire» [Abrogée, L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 16]  
 L.R. (1985), ch. C-52, art. 2; L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 16; 1996, ch. 16, art. 60; 1999, ch. 4, art. 9.

Définitions

«ministre»  
“Minister”

PARTIE I

MONNAIE ET PIÈCES

UNITÉ MONÉTAIRE

**3.** (1) L’unité monétaire du Canada est le dollar.  
 (2) Les valeurs nominales de la monnaie canadienne sont le dollar et le cent, celui-ci étant la centième partie d’un dollar.  
 L.R. (1985), ch. C-52, art. 3; 1999, ch. 4, art. 10.

**4. à 6.** [Abrogés, L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 17]

Unité monétaire

Valeurs nominales

PIÈCES AYANT COURS LÉGAL

**7.** (1) Ont cours légal, pour la valeur faciale qui y figure en monnaie canadienne, les pièces émises :  
 a) sous le régime de la *Loi sur la Monnaie royale canadienne*;  
 b) dans le cadre des attributions de la Couronne dans une province avant que celle-ci ne fasse partie du Canada et qui, avant le 15

Pièces de monnaie ayant cours légal

Defaced coins not current	(2) No coin that is bent, mutilated or defaced, or that has been reduced in weight otherwise than by abrasion through ordinary use, shall pass current.  R.S., 1985, c. C-52, s. 7; 1999, c. 4, s. 11.	octobre 1952, avaient cours légal et pouvoir libératoire au Canada.	Pièces défigurées
Legal tender	<b>LEGAL TENDER</b>  <b>8.</b> (1) Subject to this section, a tender of payment of money is a legal tender if it is made  (a) in coins that are current under section 7; and  (b) in notes issued by the Bank of Canada pursuant to the <i>Bank of Canada Act</i> intended for circulation in Canada.	<b>POUVOIR LIBÉRATOIRE</b>  <b>8.</b> (1) Sous réserve des autres dispositions du présent article, ont pouvoir libératoire :  a) les pièces qui ont cours légal en vertu de l'article 7;  b) les billets destinés à circuler au Canada et émis par la Banque du Canada aux termes de la <i>Loi sur la Banque du Canada</i> .	Pouvoir libératoire
Limitation	(2) A payment in coins referred to in subsection (1) is a legal tender for no more than the following amounts for the following denominations of coins:  (a) forty dollars if the denomination is two dollars or greater but does not exceed ten dollars;  (b) twenty-five dollars if the denomination is one dollar;  (c) ten dollars if the denomination is ten cents or greater but less than one dollar;  (d) five dollars if the denomination is five cents; and  (e) twenty-five cents if the denomination is one cent.	(2) Les offres de paiement effectuées avec des pièces visées au paragraphe (1) ont pouvoir libératoire jusqu'à concurrence des montants suivants :  a) les pièces de deux à dix dollars : quarante dollars;  b) les pièces de un dollar : vingt-cinq dollars;  c) les pièces de dix cents et plus mais de moins d'un dollar : dix dollars;  d) les pièces de cinq cents : cinq dollars;  e) les pièces de un cent : vingt-cinq cents.	Limites
Coins of denominations greater than ten dollars	(2.1) In the case of coins of a denomination greater than ten dollars, a payment referred to in subsection (1) may consist of not more than one coin, and the payment is a legal tender for no more than the value of a single coin of that denomination.	(2.1) Dans le cas des pièces de plus de dix dollars, toutefois, l'offre ne peut consister en plus d'une pièce; son pouvoir libératoire correspond alors à la valeur faciale de la pièce.	Pièces de plus de dix dollars
Different amounts payable on the same day	(3) For the purposes of subsections (2) and (2.1), where more than one amount is payable by one person to another on the same day under one or more obligations, the total of those amounts is deemed to be one amount due and payable on that day.  (4) [Repealed, 2012, c. 19, s. 388]  R.S., 1985, c. C-52, s. 8; R.S., 1985, c. 35 (3rd Supp.), s. 18; 1999, c. 4, s. 12; 2012, c. 19, s. 388.	(3) Pour l'application des paragraphes (2) et (2.1), plusieurs paiements à faire le même jour par la même personne au même créancier, qu'il s'agisse ou non de la même créance, sont réputés constituer un paiement unique.  (4) [Abrogé, 2012, ch. 19, art. 388]  L.R. (1985), ch. C-52, art. 8; L.R. (1985), ch. 35 (3 <sup>e</sup> suppl.), art. 18; 1999, ch. 4, art. 12; 2012, ch. 19, art. 388.	Montants exigibles le même jour

Calling in of coins	<p><b>9.</b> (1) The Governor in Council may, by order, call in coins of any date and denomination.</p>	9. (1) Le gouverneur en conseil peut, par décret, retirer des pièces de monnaie, quelles qu'en soient la date et la valeur faciale.	Retrait de pièces
Effect of call in	<p>(2) A coin that has been called in is not current.</p> <p>R.S., 1985, c. C-52, s. 9; R.S., 1985, c. 35 (3rd Supp.), s. 19; 1999, c. 4, s. 13(F); 2012, c. 19, s. 389.</p>	<p>(2) Les pièces qui ont été retirées n'ont pas cours légal.</p> <p>L.R. (1985), ch. C-52, art. 9; L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 19; 1999, ch. 4, art. 13(F); 2012, ch. 19, art. 389.</p>	Effet du retrait
Redemption of coins	<p><b>9.01</b> (1) The Governor in Council may make regulations for the redemption by the Minister of coins of the currency of Canada that are or that have at any time been current in Canada.</p> <p>(2) Payments for the redemption of coins, including related costs, shall be made out of the Consolidated Revenue Fund on the authorization of the Minister.</p> <p>2012, c. 19, s. 389.</p>	<p><b>9.01</b> (1) Le gouverneur en conseil peut prendre des règlements en vue du rachat, par le ministre, de pièces de monnaie canadienne qui ont ou ont déjà eu cours légal au Canada.</p> <p>(2) Les fonds requis pour le rachat de pièces, notamment les frais afférents, sont prélevés sur le Trésor avec l'autorisation du ministre.</p> <p>2012, ch. 19, art. 389.</p>	Rachat de pièces
Payments for redemption of coins	<p><b>9.1</b> All amounts received from the issue of coins of the currency of Canada must be paid into the Consolidated Revenue Fund.</p> <p>R.S., 1985, c. 35 (3rd Supp.), s. 20; 1999, c. 4, s. 14.</p>	<p><b>9.1</b> Le produit de l'émission de pièces de monnaie canadienne est versé au Trésor.</p> <p>L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 20; 1999, ch. 4, art. 14.</p>	Fonds requis pour le rachat
Amounts received from issue of coins	<p><b>COUNTERFEIT COINS</b></p>	<p><b>FAUSSE MONNAIE</b></p>	Produit de l'émission de pièces de monnaie
Defacement of counterfeit coins	<p><b>10.</b> Every officer employed in the collection of the revenue in Canada shall cause to be cut, broken or defaced every counterfeit coin that is paid to the officer in payment of an amount payable to Her Majesty, and shall forthwith forward the counterfeit coin to the Minister.</p> <p>R.S., c. C-39, s. 9.</p>	<p><b>10.</b> Tout fonctionnaire affecté à la perception du revenu au Canada est tenu de faire couper, briser ou défigurer les fausses pièces de monnaie qui lui sont données en acquittement d'un montant payable à Sa Majesté et de remettre celles-ci sans délai au ministre.</p> <p>S.R., ch. C-39, art. 9.</p>	Destruction des pièces fausses
Melting down coins	<p><b>MELTING COINS</b></p>	<p><b>FONTE DES PIÈCES</b></p>	Fonte des pièces
Offence and punishment	<p><b>11.</b> (1) No person shall, except in accordance with a licence granted by the Minister, melt down, break up or use otherwise than as currency any coin that is current and legal tender in Canada.</p> <p>(2) Every person who contravenes subsection (1) or any condition attached to a licence referred to in that subsection is liable on summary conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding twelve months or to both, and, in addition to any fine or imprisonment imposed, the court may order that the articles by means of or in relation to which the offence was committed be forfeited to Her Majesty.</p> <p>R.S., c. C-39, s. 10.</p>	<p><b>11.</b> (1) Il est interdit, sauf en conformité avec un permis ministériel à cet effet, de faire fondre, briser ou utiliser autrement qu'à titre de monnaie une pièce ayant cours légal et pouvoir libératoire au Canada.</p> <p>(2) Quiconque contrevient au paragraphe (1) ou aux conditions du permis visé à ce paragraphe encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de deux cent cinquante dollars et un emprisonnement maximal de douze mois, ou l'une de ces peines, le tribunal pouvant en outre ordonner la confiscation, au profit de Sa Majesté, des objets ayant servi ou donné lieu à l'infraction.</p> <p>S.R., ch. C-39, art. 10.</p>	Peine

	ACCOUNTS, CONTRACTS AND OTHER MATTERS RELATING TO MONEY	COMPTES ET CONTRATS	
Public accounts and statements	<p><b>12.</b> All public accounts established or maintained in Canada shall be in the currency of Canada, and any reference to money or monetary value in any indictment or other legal proceedings shall be stated in the currency of Canada.</p> <p>R.S., c. C-39, s. 11.</p>	<p><b>12.</b> Les comptes publics doivent être tenus dans tout le pays en monnaie canadienne; les sommes d'argent ou les valeurs en argent doivent, dans les procédures, notamment les actes d'accusation, être exprimées en monnaie canadienne.</p> <p>S.R., ch. C-39, art. 11.</p>	Comptes publics et actes de procédures
Contracts, etc.	<p><b>13.</b> (1) Every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the payment of or the liability to pay money shall be made, executed, entered into, done or carried out in the currency of Canada, unless it is made, executed, entered into, done or carried out in</p> <ul style="list-style-type: none"> <li>(a) the currency of a country other than Canada; or</li> <li>(b) a unit of account that is defined in terms of the currencies of two or more countries.</li> </ul> <p>(2) Notwithstanding subsection (1), every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the liability to pay money that was made, executed or entered into, done or carried out before October 15, 1952 shall, in so far as anything remained or remains to be or may be executed, done or carried out thereunder on or after that date, be construed and operate without reference to this Act.</p> <p>R.S., c. C-39, s. 12; 1976-77, c. 38, s. 1.</p>	<p><b>13.</b> (1) Les actes et opérations, notamment contrats, ventes, paiements, effets, billets, titres et valeurs, relatifs à une somme d'argent ou prévoyant soit le paiement d'une somme d'argent, soit l'obligation d'en payer une, se font d'après la monnaie canadienne, s'ils ne se font pas suivant :</p> <ul style="list-style-type: none"> <li>a) soit la monnaie d'un pays étranger;</li> <li>b) soit une unité de compte définie par rapport aux monnaies de plusieurs pays.</li> </ul> <p>(2) Toutefois, les actes et opérations visés au paragraphe (1) et intervenus avant le 15 octobre 1952, dans la mesure où ils produisent encore des effets, continuent de s'exécuter comme si la présente loi n'avait pas été adoptée.</p> <p>S.R., ch. C-39, art. 12; 1976-77, ch. 38, art. 1.</p>	Contrats et opérations
Previous contracts, etc.			Contrats antérieurs
Sums mentioned in Constitution and Acts	<p><b>14.</b> Any sum mentioned in dollars and cents in the <i>Constitution Acts, 1867 to 1982</i> and in any Act of Parliament shall, unless it is otherwise expressed, be construed as being a sum in the currency of Canada.</p> <p>R.S., c. C-39, s. 13.</p>	<p><b>14.</b> Les sommes exprimées en dollars et en cents dans les <i>Lois constitutionnelles de 1867 à 1982</i> et dans toutes les lois fédérales le sont, sauf indication contraire, en monnaie canadienne.</p> <p>S.R., ch. C-39, art. 13.</p>	Mentions de sommes dans les lois
Valuation of gold, etc.	<p><b>15.</b> Notwithstanding any other law, where any law of Canada or any treaty, convention, contract or agreement to which Canada is a party makes reference to</p> <ul style="list-style-type: none"> <li>(a) a currency of a country other than Canada,</li> <li>(b) a unit of account that is defined in terms of currencies of two or more countries,</li> <li>(c) gold, or</li> </ul>	<p><b>15.</b> Malgré toute autre disposition législative, le gouverneur en conseil peut, par règlement, fixer l'équivalent en dollars — ou prévoir son mode de calcul — des instruments de paiement suivants, mentionnés dans les textes législatifs ou dans les traités, conventions, contrats ou accords auxquels le gouvernement du Canada est partie :</p> <ul style="list-style-type: none"> <li>a) devises étrangères;</li> </ul>	Valeur de l'or, etc.

(d) a combination of any of the things mentioned in paragraphs (a) to (c),

the Governor in Council may make regulations specifying, or specifying the means or method of ascertaining, determining or calculating, the equivalent dollar value of that currency, unit of account, gold or combination thereof.

1976-77, c. 38, s. 2.

Conversion of foreign currencies for purposes of customs laws

**16.** For the purposes of the administration, application and operation of the laws relating to the customs, the Governor in Council may make regulations specifying, or specifying the means or method of ascertaining, determining or calculating, the equivalent dollar value of currencies of countries other than Canada for a day or any other period or generally.

1984, c. 25, s. 100.

b) unités de compte définies par rapport aux monnaies de plusieurs pays;

c) l'or;

d) une combinaison de ces éléments.

1976-77, ch. 38, art. 2.

Législation douanière

**16.** Pour l'application de la législation douanière, le gouverneur en conseil peut, par règlement, fixer l'équivalent en dollars de monnaies étrangères, ou en prévoir le mode de calcul, pour une journée ou une période plus longue, ou de façon générale.

1984, ch. 25, art. 100.

## PART II

### EXCHANGE FUND ACCOUNT

Exchange Fund Account continued

**17.** The special account in the name of the Minister known as the Exchange Fund Account, established to aid in the control and protection of the external value of the monetary unit of Canada, is continued and all assets acquired and held by or on behalf of the Minister in the Exchange Fund Account continue to be so held.

R.S., 1985, c. C-52, s. 17; 1993, c. 33, s. 1; 2005, c. 30, s. 113.

Policy

**17.1** (1) The Minister may establish a policy concerning the investment of the assets held in the Exchange Fund Account, including concerning the acquisition of assets to be held in the Exchange Fund Account, based on principles that a person of ordinary prudence would apply in dealing with the property of others.

(2) The Minister may not delegate the power to establish the policy.

(3) The *Statutory Instruments Act* does not apply to the policy.

2005, c. 30, s. 113.

Non-delegation of power

*Statutory Instruments Act*

Power to acquire, sell, etc.

**17.2** (1) The Minister may acquire or borrow assets to be held in the Exchange Fund Account, and sell or lend those assets, in order to carry out the policy.

## PARTIE II

### COMPTE DU FONDS DES CHANGES

Maintien du Compte

**17.** Continue d'exister le compte spécial intitulé «Compte du fonds des changes» ouvert au nom du ministre en vue d'aider à contrôler et à protéger la valeur de l'unité monétaire canadienne sur les marchés internationaux. Les actifs acquis et détenus dans le Compte par le ministre ou en son nom continuent d'être ainsi détenus.

L.R. (1985), ch. C-52, art. 17; 1993, ch. 33, art. 1; 2005, ch. 30, art. 113.

Politique ministérielle

**17.1** (1) Le ministre peut établir une politique concernant l'investissement des actifs détenus dans le Compte du fonds des changes, notamment afin de régir l'acquisition d'actifs. Il l'établit en se fondant sur les principes qu'une personne prudente appliquerait lorsqu'elle traite avec le bien d'autrui.

(2) Le pouvoir d'établir la politique ne peut être délégué.

(3) La *Loi sur les textes réglementaires* ne s'applique pas à la politique.

2005, ch. 30, art. 113.

Non-délégation

*Loi sur les textes réglementaires*

Pouvoir d'acquérir, de vendre, etc.

Financial transactions	(2) The Minister may carry out any transaction of a financial nature concerning assets held in the Exchange Fund Account that is in accordance with the policy.	(2) Le ministre peut, à l'égard des actifs détenus dans le Compte, effectuer toute opération financière conforme à la politique.	Opérations financières
Agents and mandataries	(3) The Minister may appoint agents and mandataries to perform services concerning the Exchange Fund Account.	(3) Le ministre peut nommer des mandataires chargés de fournir des services relativement au Compte.	Mandataires
Delegation in writing	(4) The Minister may delegate the powers set out in subsections (1) to (3) only in writing. 2005, c. 30, s. 113.	(4) Le ministre ne peut déléguer que par écrit les pouvoirs prévus aux paragraphes (1) à (3). 2005, ch. 30, art. 113.	Délégation par écrit
Crediting of Account	<b>17.3</b> All amounts received by the Minister from transactions carried out under subsections 17.2(1) and (2) shall be credited to the Exchange Fund Account. 2005, c. 30, s. 113.	<b>17.3</b> Est portée au crédit du Compte du fonds des changes toute somme reçue par le ministre dans le cadre d'opérations effectuées en vertu des paragraphes 17.2(1) et (2). 2005, ch. 30, art. 113.	Inscription au crédit du Compte
Expenses	<b>18.</b> Expenses determined by the Minister to have been incurred in respect of the operation of the Exchange Fund Account shall be paid out of the Account. R.S., c. C-39, s. 20; 1984, c. 9, s. 6.	<b>18.</b> Les frais qui, par décision du ministre, se rapportent à la gestion du Compte du fonds des changes sont imputés sur celui-ci. S.R., ch. C-39, art. 20; 1984, ch. 9, art. 6.	Dépenses
Advances out of C.R.F.	<b>19.</b> The Minister may authorize advances to the Exchange Fund Account out of the Consolidated Revenue Fund on any terms and conditions that the Minister considers appropriate. R.S., 1985, c. C-52, s. 19; 2005, c. 30, s. 114.	<b>19.</b> Le ministre peut, aux conditions qu'il juge indiquées, autoriser le versement, sur le Trésor, d'avances au Compte du fonds des changes. L.R. (1985), ch. C-52, art. 19; 2005, ch. 30, art. 114.	Avances sur le Trésor
Net income credited to C.R.F.	<b>20.</b> (1) Within three months after the end of each fiscal year, the amount of the net income of the Exchange Fund Account for the fiscal year, expressed in dollars, shall be paid into the Consolidated Revenue Fund if the net income for the year is a positive amount, and shall be charged to that Fund if the net income for the year is a negative amount.	<b>20.</b> (1) Dans les trois mois suivant la fin de chaque exercice, le résultat net — en dollars — du Compte du fonds des changes pour l'exercice est, selon qu'il est bénéficiaire ou déficitaire, versé au Trésor ou imputé sur celui-ci.	Versement au Trésor
Consistency with Public Accounts	(2) The net income of the Exchange Fund Account for a fiscal year shall be determined in accordance with accounting principles consistent with those applied in preparing the Public Accounts referred to in section 64 of the <i>Financial Administration Act</i> . R.S., 1985, c. C-52, s. 20; R.S., 1985, c. 3 (4th Suppl.), s. 1; 2005, c. 30, s. 114.	(2) Le résultat net du Compte pour un exercice est calculé en conformité avec des principes comptables compatibles avec ceux qui sont utilisés lors de l'établissement des Comptes publics visés à l'article 64 de la <i>Loi sur la gestion des finances publiques</i> . L.R. (1985), ch. C-52, art. 20; L.R. (1985), ch. 3 (4 <sup>e</sup> suppl.), art. 1; 2005, ch. 30, art. 114.	Compatibilité avec les Comptes publics
Report to Parliament	<b>21.</b> (1) The Minister shall cause to be tabled before each House of Parliament a report on the operation of the Exchange Fund Account for each fiscal year within the first 60 days on which that House is sitting after the end of that fiscal year.	<b>21.</b> (1) Le ministre fait déposer devant chaque chambre du Parlement, dans les soixante premiers jours de séance de celle-ci suivant la fin de l'exercice, un rapport sur les opérations du Compte du fonds des changes pour cet exercice.	Rapport au Parlement

Contents of report

(2) The report referred to in subsection (1) shall include

- (a) a summary of the policy established under subsection 17.1(1);
- (b) the objectives of the Exchange Fund Account for that fiscal year, and a statement of whether those objectives have been met;
- (c) the objectives of the Exchange Fund Account for the current fiscal year;
- (d) the financial statements of the Exchange Fund Account; and
- (e) a list of the agents and mandataries appointed by the Minister under subsection 17.2(3).
- (f) [Repealed, 2012, c. 19, s. 172]

R.S., 1985, c. C-52, s. 21; 2005, c. 30, s. 114; 2012, c. 19, s. 172.

Financial Administration Act

**22.** (1) The *Financial Administration Act* does not apply to the Exchange Fund Account or operations or transactions in connection with the Account.

(2) [Repealed, 2012, c. 19, s. 173]

R.S., 1985, c. C-52, s. 22; 2005, c. 30, s. 115; 2012, c. 19, s. 173.

**23.** [Repealed, 2005, c. 30, s. 116]

(2) Le rapport contient:

- a) un résumé de la politique ministérielle concernant l'investissement des actifs détenus dans le Compte;
- b) les objectifs du Compte pour l'exercice visé et un compte rendu indiquant s'ils ont été atteints;
- c) les objectifs du Compte pour l'exercice en cours;
- d) les états financiers du Compte;
- e) le nom des mandataires nommés en vertu du paragraphe 17.2(3).
- f) [Abrogé, 2012, ch. 19, art. 172]

L.R. (1985), ch. C-52, art. 21; 2005, ch. 30, art. 114; 2012, ch. 19, art. 172.

Contenu

Loi sur la gestion des finances publiques

**22.** (1) La *Loi sur la gestion des finances publiques* ne s'applique pas au Compte du fonds des changes ni aux opérations qui s'y rattachent.

(2) [Abrogé, 2012, ch. 19, art. 173]

L.R. (1985), ch. C-52, art. 22; 2005, ch. 30, art. 115; 2012, ch. 19, art. 173.

**23.** [Abrogé, 2005, ch. 30, art. 116]

# **TAB 11**

**Currency Act, s.17 (2002-12-31 to 2005-12-29)**

[Justice Laws Website \(<http://laws-lois.justice.gc.ca>\)](http://laws-lois.justice.gc.ca)

Home → Laws Website Home → Consolidated Acts → R.S.C. (Revised Statutes of Canada), 1985, c. C-52 - Table of Contents  
→ R.S.C. (Revised Statutes of Canada), 1985, c. C-52

**This Web page has been archived on the Web. (/eng/ArchiveNote)**

#### Currency Act

Version of section 17 from 2002-12-31 to 2005-12-29:

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[Next Version \(section-17-20051230.html#wb-cont\)](#)

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#### Exchange Fund Account continued

**17 (1)** The special account in the name of the Minister, known as the Exchange Fund Account, established pursuant to *The Exchange Fund Act*, chapter 60 of the Statutes of Canada, 1935, to aid in the control and protection of the external value of the monetary unit of Canada and continued by *The Foreign Exchange Control Act*, chapter 53 of the Statutes of Canada, 1946, is further continued, and all currency, deposits, securities and gold acquired and held by or on behalf of the Minister for the Exchange Fund Account shall continue to be so held.

#### Acquisitions

**(2)** The Minister may, with assets held by or on behalf of the Minister for the Exchange Fund Account, acquire or cause to be acquired

- (a) currencies designated by the Minister;
  - (b) units of account designated by the Minister;
  - (c) gold;
  - (d) deposits that are
    - (i) denominated in those currencies or units of account or in gold, and
    - (ii) held with the Bank of Canada or any other financial institution inside or outside Canada designated by the Minister; and
  - (e) securities or notes that are denominated in those currencies or units of account or in gold and are issued or guaranteed by the Government of Canada or by such
    - (i) government of another country,
    - (ii) agency or institution of the Government of Canada or of the government of another country,
    - (iii) official international financial organization, or
    - (iv) institution
- as is designated by the Minister.

#### Publication in *Canada Gazette* (<http://www.gazette.gc.ca/>)

**(2.1)** Within sixty days after making a designation under subsection (2), the Minister shall cause to be published in the *Canada Gazette* (<http://www.gazette.gc.ca/>) the name of the currency or unit of account designated or the criteria used by the Minister in making the designation under subparagraph (2)(d)(ii) or paragraph (2)(e).

#### Dealing in assets

**(3)** The Minister or an agent on behalf of the Minister may sell, lend, borrow or otherwise deal in currencies, units of account, gold, deposits or securities or notes described in subsection (2), on any terms and conditions that the Minister thinks fit, and may, for that purpose,

- (a) enter into and participate in
  - (i) futures, forward, option, repurchase and reverse repurchase agreements, and
  - (ii) derivative or associated instruments or products

relating to those currencies, units of account, gold, deposits or securities or notes;

(b) accept any of those currencies, units of account, gold, deposits or securities or notes as security for any loan or undertaking; and

(c) give undertakings and give as security for the performance of the undertakings any assets held by or on behalf of the Minister for the Exchange Fund Account.

**Publication in Canada Gazette (<http://www.gazette.gc.ca/>)**

(3.1) Within sixty days after the Minister appoints an agent under subsection (3) or a derivative or associated instrument or product is entered into or participated in under subparagraph (3)(a)(ii), the minister shall cause to be published in the Canada Gazette (<http://www.gazette.gc.ca/>) the name of the agent or a description of the derivative or associated instrument or product.

**Crediting of Account**

(4) There shall be credited to the Exchange Fund Account

(a) the proceeds, earnings and interest from all transactions pursuant to subsection (3);

(b) all amounts received by the Minister on the maturity of any deposits and securities and notes held by or on behalf of the Minister for the Account; and

(c) all earnings and interest from the currencies, units of account, gold, deposits and securities and notes held by or on behalf of the Minister for the Account.

(5) and (6) [Repealed, 1993, c. 33, s. 1]

R.S., 1985, c. C-52, s. 17; 1993, c. 33, s. 1.

**Date modified:**

2017-03-10

# TAB 12

## **United States Title 31**

- Include sections 5112(a), (e), (h), (q) (Denominations, specifications and design of coins)
- Include section 5111(d) melting penalties

## **SUBCHAPTER II—GENERAL AUTHORITY**

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### **§ 5111. Minting and issuing coins, medals, and numismatic items**

**(a) The Secretary of the Treasury—**

- (1) shall mint and issue coins described in section 5112 of this title in amounts the Secretary decides are necessary to meet the needs of the United States;
- (2) may prepare national medal dies and strike national and other medals if it does not interfere with regular minting operations but may not prepare private medal dies;
- (3) may prepare and distribute numismatic items; and
- (4) may mint coins for a foreign country if the minting does not interfere with regular minting operations, and shall prescribe a charge for minting the foreign coins equal to the cost of the minting (including labor, materials, and the use of machinery).

**(b) The Department of the Treasury has a coinage metal fund and a coinage profit fund.** The Secretary may use the coinage metal fund to buy metal to mint coins. The Secretary shall credit the coinage profit fund with the amount by which the nominal value of the coins minted from the metal exceeds the cost of the metal. The Secretary shall charge the coinage profit fund with waste incurred in minting coins and the cost of distributing the coins, including the cost of coin bags and pallets. The Secretary shall deposit in the Treasury as miscellaneous receipts excess amounts in the coinage profit fund.

**(c) Procurements Relating to Coin Production.—**

**(1) In general.**— The Secretary may make contracts, on conditions the Secretary decides are appropriate and are in the public interest, to acquire articles, materials, supplies, and services (including equipment, manufacturing facilities, patents, patent rights, technical knowledge, and assistance) necessary to produce the coins referred to in this title.

**(2) Domestic control of coinage.—**

**(A)** Subject to subparagraph (B), in order to protect the national security through domestic control of the coinage process, the Secretary shall acquire only such articles, materials, supplies, and services (including equipment, manufacturing facilities, patents, patent rights, technical knowledge, and assistance) for the production of coins as have been produced or manufactured in the United States unless the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, and publishes in the Federal Register a written finding stating the basis for the determination.

**(B)** Subparagraph (A) shall apply only in the case of a bid or offer from a supplier the principal place of business of which is in a foreign country which does not accord to United States companies the same competitive opportunities for procurements in connection with the production of coins as it accords to domestic companies.

**(3) Determination.—**

**(A) In general.**— Any determination of the Secretary referred to in paragraph (2) shall not be reviewable in any administrative proceeding or court of the United States.

**(B) Other rights unaffected.**— This paragraph does not alter or annul any right of review that arises under any provision of any law or regulation of the United States other than paragraph (2).

**(4)** Nothing in paragraph (2) of this subsection in any way affects the procurement by the Secretary of gold and silver for the production of coins by the United States Mint.

**(d) (1)** The Secretary may prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

(2) A person knowingly violating an order or license issued or regulation prescribed under paragraph (1) of this subsection, shall be fined not more than \$10,000, imprisoned not more than 5 years, or both.

(3) Coins exported, melted, or treated in violation of an order or license issued or regulation prescribed, and metal resulting from the melting or treatment, shall be forfeited to the United States Government. The powers of the Secretary and the remedies available to enforce forfeitures are those provided in part II of subchapter C of chapter 75 of the Internal Revenue Code of 1954<sup>1</sup> (26 U.S.C. 7321 et seq.).

**Footnotes**

<sup>1</sup> See References in Text note below.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub. L. 100-274, § 3, Mar. 31, 1988, 102 Stat. 49; Pub. L. 102-390, title II, § 222, Oct. 6, 1992, 106 Stat. 1629.)

**Historical and Revision Notes**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5111(a)(1)	31:272. 31:275. 31:322. 31:342. 31:345. 31:353. 31:391(a).	R.S. § 3503. R.S. § 3509; Aug. 23, 1912, ch. 350, § 1(last par. words before 7th comma under heading "Assay Office at Salt Lake City, Utah"), 37 Stat. 384. R.S. § 3516. June 4, 1897, ch. 2, § 1(1st par. under heading "Recoinage, Reissue, and Transportation of Minor Coins"), 30 Stat. 27. R.S. § 3532; Aug. 23, 1912, ch. 350, § 1(last par. words before 7th comma under heading "Assay Office at Salt Lake City, Utah"), 37 Stat. 384. R.S. § 3540; Aug. 23, 1912, ch. 350, § 1(last par. words before 7th comma under heading "Assay Office at Salt Lake City, Utah"), 37 Stat. 384. July 23, 1965, Pub. L. 89-81, § 101(a), 79 Stat. 254; restated Dec. 31, 1970, Pub. L. 91-607, § 201, 84 Stat. 1768.
5111(a)(2)	31:368.	R.S. § 3551; Aug. 23, 1912, ch. 350, § 1(last par. words before 7th comma under heading "Assay Office at Salt Lake City, Utah"), 37 Stat. 384.
5111(a)(3)	31:324h.	Oct. 18, 1973, Pub. L. 93-127, § 5, 87 Stat. 456.
5111(a)(4)	31:367.	Jan. 29, 1874, ch. 19, 18 Stat. 6.
5111(b)	31:340.	R.S. § 3528; Apr. 24, 1906, ch. 1861, 34 Stat. 132; Dec. 2, 1918, ch. 1, 40 Stat. 1051; Aug. 14, 1937, ch. 631, 50 Stat. 647; June 21, 1941, ch. 213, 55 Stat. 255; June 30, 1954, ch. 427, 68 Stat. 336; July 9, 1956, ch. 535, § 1, 70 Stat. 518; restated July 23,

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

- Pub. L. 100–437, §§ 1–3, Sept. 20, 1988, 102 Stat. 1717, recognizing Jesse Owens.
- Pub. L. 100–210, §§ 1, 2, Dec. 24, 1987, 101 Stat. 1441, recognizing Mary Lasker.
- Pub. L. 99–418, Sept. 23, 1986, 100 Stat. 952, recognizing Aaron Copland.
- Pub. L. 99–311, May 20, 1986, 100 Stat. 464, recognizing Harry Chapin.
- Pub. L. 99–298, May 13, 1986, 100 Stat. 432, recognizing Natan (Anatoly) and Avital Shcharansky.
- Pub. L. 99–295, May 12, 1986, 100 Stat. 427; Pub. L. 100–210, § 3, Dec. 24, 1987, 101 Stat. 1441; Pub. L. 100–437, § 4, Sept. 20, 1988, 102 Stat. 1717, commemorating the Young Astronaut Program.
- Pub. L. 95–630, title IV, §§ 401–407, Nov. 10, 1978, 92 Stat. 3679, 3680, recognizing outstanding individuals in the American arts.
- .....

## **§ 5112. Denominations, specifications, and design of coins**

- (a) The Secretary of the Treasury may mint and issue only the following coins:
- (1) a dollar coin that is 1.043 inches in diameter.
  - (2) a half dollar coin that is 1.205 inches in diameter and weighs 11.34 grams.
  - (3) a quarter dollar coin that is 0.955 inch in diameter and weighs 5.67 grams.
  - (4) a dime coin that is 0.705 inch in diameter and weighs 2.268 grams.
  - (5) a 5-cent coin that is 0.835 inch in diameter and weighs 5 grams.
  - (6) except as provided under subsection (c) of this section, a one-cent coin that is 0.75 inch in diameter and weighs 3.11 grams.
  - (7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.
  - (8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.
  - (9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.
  - (10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.
  - (11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.
  - (12) A \$25 coin of an appropriate size and thickness, as determined by the Secretary, that weighs 1 troy ounce and contains .9995 fine palladium.
- (b) The half dollar, quarter dollar, and dime coins are clad coins with 3 layers of metal. The 2 identical outer layers are an alloy of 75 percent copper and 25 percent nickel. The inner layer is copper. The outer layers are metallurgically bonded to the inner layer and weigh at least 30 percent of the weight of the coin. The dollar coin shall be golden in color, have a distinctive edge, have tactile and visual features that make the denomination of the coin readily discernible, be minted and fabricated in the United States, and have similar metallic, anti-counterfeiting properties as United States coinage in circulation on the date of enactment of the United States \$1 Coin Act of 1997. The 5-cent coin is an alloy of 75 percent copper and 25 percent nickel. In minting 5-cent coins, the Secretary shall use bars that vary not more than 2.5 percent from the percent of nickel required. Except as provided under subsection (c) of this section, the one-cent coin is an alloy of 95 percent copper and 5 percent zinc. In minting gold coins, the Secretary shall use alloys that vary not more than 0.1 percent from the percent of gold required. The specifications for alloys are by weight.
- (c) The Secretary may prescribe the weight and the composition of copper and zinc in the alloy of the one-cent coin that the Secretary decides are appropriate when the Secretary decides that a different weight and alloy of copper and zinc are necessary to ensure an adequate supply of one-cent coins to meet the needs of the United States.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

- (d) (1) United States coins shall have the inscription "In God We Trust". The obverse side of each coin shall have the inscription "Liberty". The reverse side of each coin shall have the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. Subject to other provisions of this subsection, the obverse of any 5-cent coin issued after December 31, 2005, shall bear the likeness of Thomas Jefferson and the reverse of any such 5-cent coin shall bear an image of the home of Thomas Jefferson at Monticello. The Secretary of the Treasury, in consultation with the Congress, shall select appropriate designs for the obverse and reverse sides of the dollar coin. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the Secretary may inscribe coins of the denomination with the year that was last inscribed on coins of the denomination.
- (2) The Secretary shall prepare the devices, models, hubs, and dies for coins, emblems, devices, inscriptions, and designs authorized under this chapter. The Secretary may, after consulting with the Citizens Coinage Advisory Committee and the Commission of Fine Arts, adopt and prepare new designs or models of emblems or devices that are authorized in the same way as when new coins or devices are authorized. The Secretary may change the design or die of a coin only once within 25 years of the first adoption of the design, model, hub, or die for that coin. The Secretary may procure services under section 3109 of title 5 in carrying out this paragraph.
- (e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in qualities and quantities that the Secretary determines are sufficient to meet public demand, coins which—
- (1) are 40.6 millimeters in diameter and weigh 31.103 grams;
  - (2) contain .999 fine silver;
  - (3) have a design—
    - (A) symbolic of Liberty on the obverse side; and
    - (B) of an eagle on the reverse side;
  - (4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and
  - (5) have reeded edges.
- (f) **Silver Coins.**—
- (1) **Sale price.**— The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).
  - (2) **Bulk sales.**— The Secretary shall make bulk sales of the coins minted under subsection (e) at a reasonable discount.
  - (3) **Numismatic items.**— For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) shall be considered to be numismatic items.
- (g) For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.
- (h) The coins issued under this title shall be legal tender as provided in section 5103 of this title.
- (i) (1) Notwithstanding section 5111 (a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in qualities and quantities that the Secretary determines are sufficient to meet public demand, and such gold coins shall—
  - (A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have—
    - (i) on the obverse side, a design symbolic of Liberty; and

**(5) Review of co-circulation.**— At such time as the Secretary determines to be appropriate, and after consultation with the Board of Governors of the Federal Reserve System, the Secretary shall notify the Congress of its assessment of issues related to the co-circulation of any circulating \$1 coin bearing any design, other than the so-called “Sacagawea-design” \$1 coin, in effect before the issuance of coins required under subsection (n), including the effect of co-circulation on the acceptance and use of \$1 coins, and make recommendations to the Congress for improving the circulation of \$1 coins.

**(q) Gold Bullion Coins.—**

**(1) In general.**— Not later than 6 months after the date of enactment of the Presidential \$1 Coin Act of 2005, the Secretary shall commence striking and issuing for sale such number of \$50 gold bullion and proof coins as the Secretary may determine to be appropriate, in such quantities, as the Secretary, in the Secretary’s discretion, may prescribe.

**(2) Initial design.—**

**(A) In general.**— Except as provided under subparagraph (B), the obverse and reverse of the gold bullion coins struck under this subsection during the first year of issuance shall bear the original designs by James Earle Fraser, which appear on the 5-cent coin commonly referred to as the “Buffalo nickel” or the “1913 Type 1”.

**(B) Variations.**— The coins referred to in subparagraph (A) shall—

(i) have inscriptions of the weight of the coin and the nominal denomination of the coin incused in that portion of the design on the reverse of the coin commonly known as the “grassy mound”; and

(ii) bear such other inscriptions as the Secretary determines to be appropriate.

**(3) Subsequent designs.**— After the 1-year period described to in paragraph (2), the Secretary may—

(A) after consulting with the Commission of Fine Arts, and subject to the review of the Citizens Coinage Advisory Committee, change the design on the obverse or reverse of gold bullion coins struck under this subsection; and

(B) change the maximum number of coins issued in any year.

**(4) Source of gold bullion.—**

**(A) In general.**— The Secretary shall acquire gold for the coins issued under this subsection by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined.

**(B) Price of gold.**— The Secretary shall pay not more than the average world price for the gold mined under subparagraph (A).

**(5) Sale of coins.**— Each gold bullion coin issued under this subsection shall be sold for an amount the Secretary determines to be appropriate, but not less than the sum of—

(A) the market value of the bullion at the time of sale; and

(B) the cost of designing and issuing the coins, including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping.

**(6) Legal tender.**— The coins minted under this title shall be legal tender, as provided in section 5103.

**(7) Treatment as numismatic items.**— For purposes of section<sup>1</sup> 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

**(8) Protective covering.—**

**(A) In general.**— Each bullion coin having a metallic content as described in subsection (a)(11) and a design specified in paragraph (2) shall be sold in an inexpensive covering that will protect the coin from damage due to ordinary handling or storage.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

**(B) Design.**— The protective covering required under subparagraph (A) shall be readily distinguishable from any coin packaging that may be used to protect proof coins minted and issued under this subsection.

**(r) Redesign and Issuance of Circulating \$1 Coins Honoring Native Americans and the Important Contributions Made by Indian Tribes and Individual Native Americans in United States History.—**

**(1) Redesign beginning in 2008.—**

**(A) In general.**— Effective beginning January 1, 2008, notwithstanding subsection (d), in addition to the coins to be issued pursuant to subsection (n), and in accordance with this subsection, the Secretary shall mint and issue \$1 coins that—

- (i)** have as the designs on the obverse the so-called “Sacagawea design”; and
- (ii)** have a design on the reverse selected in accordance with paragraph (2)(A), subject to paragraph (3)(A).

**(B) Delayed date.**— If the date of the enactment of the Native American \$1 Coin Act is after August 25, 2007, subparagraph (A) shall be applied by substituting “2009” for “2008”.

**(2) Design requirements.**— The \$1 coins issued in accordance with paragraph (1) shall meet the following design requirements:

**(A) Coin reverse.**— The design on the reverse shall bear—

- (i)** images celebrating the important contributions made by Indian tribes and individual Native Americans to the development of the United States and the history of the United States;
- (ii)** the inscription “\$1”; and
- (iii)** the inscription “United States of America”.

**(B) Coin obverse.**— The design on the obverse shall—

- (i)** be chosen by the Secretary, after consultation with the Commission of Fine Arts and review by the Citizens Coinage Advisory Committee; and
- (ii)** contain the so-called “Sacagawea design” and the inscription “Liberty”.

**(C) Edge-incused inscriptions.**—

**(i) In general.**— The inscription of the year of minting and issuance of the coin and the inscription “E Pluribus Unum” shall be edge-incused into the coin.

**(ii) Preservation of distinctive edge.**— The edge-incusing of the inscriptions under clause (i) on coins issued under this subsection shall be done in a manner that preserves the distinctive edge of the coin so that the denomination of the coin is readily discernible, including by individuals who are blind or visually impaired.

**(D) Reverse design selection.**— The designs selected for the reverse of the coins described under this subsection—

**(i)** shall be chosen by the Secretary after consultation with the Committee on Indian Affairs of the Senate, the Congressional Native American Caucus of the House of Representatives, the Commission of Fine Arts, and the National Congress of American Indians;

**(ii)** shall be reviewed by the Citizens Coinage Advisory Committee;

**(iii)** may depict individuals and events such as—

- (I)** the creation of Cherokee written language;
- (II)** the Iroquois Confederacy;
- (III)** Wampanoag Chief Massasoit;
- (IV)** the “Pueblo Revolt”;
- (V)** Olympian Jim Thorpe;

# **TAB 13**

**Criminal Code, s380, 467, 469**

(b) that does not show on its face the place where it is delivered and the merchantable value thereof, or

(c) that may not be redeemed on demand at any time,

but an offer, endorsed by the manufacturer on a wrapper or container in which goods are sold, of a premium or reward for the return of that wrapper or container to the manufacturer is not a trading stamp.

R.S., c. C-34, s. 337.

Fraud

**380.** (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

Minimum punishment

(1.1) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.

Affecting public market

(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of stocks, shares, merchandise or anything that is offered for sale to the public is

c) n'est pas rachetable sur demande, à tout moment.

Toutefois, une offre, mentionnée par le fabricant sur une enveloppe ou un contenant dans lequel les marchandises sont vendues, d'une prime ou d'une récompense pour le renvoi au fabricant de cette enveloppe ou de ce contenant, ne constitue pas un bon-prime.

«*marchandises*» Toute chose qui fait l'objet d'un commerce.

«*goods*»

S.R., ch. C-34, art. 337.

FRAUD

FRAUDE

Fraude

**380.** (1) Quiconque, par supercherie, mensonge ou autre moyen dolosif, constituant ou non un faux semblant au sens de la présente loi, frustré le public ou toute personne, déterminée ou non, de quelque bien, service, argent ou valeur :

a) est coupable d'un acte criminel et possible d'un emprisonnement maximal de quatorze ans, si l'objet de l'infraction est un titre testamentaire ou si la valeur de l'objet de l'infraction dépasse cinq mille dollars;

b) est coupable :

(i) soit d'un acte criminel et possible d'un emprisonnement maximal de deux ans,

(ii) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire,

si la valeur de l'objet de l'infraction ne dépasse pas cinq mille dollars.

Peine minimale

(1.1) Le tribunal qui détermine la peine à infliger à une personne qui, après avoir été poursuivie par acte d'accusation, est déclarée coupable d'une ou de plusieurs infractions prévues au paragraphe (1) est tenu de lui infliger une peine minimale d'emprisonnement de deux ans si la valeur totale de l'objet des infractions en cause dépasse un million de dollars.

Influence sur le marché public

(2) Est coupable d'un acte criminel et possible d'un emprisonnement maximal de quatorze ans quiconque, par supercherie, mensonge ou autre moyen dolosif, constituant ou non un faux semblant au sens de la présente loi, avec l'intention de frauder, influe sur la cote pu-

Trade union, exception	(2) The purposes of a trade union are not, by reason only that they are in restraint of trade, unlawful within the meaning of subsection (1).  R.S., 1985, c. C-46, s. 466; 1992, c. 1, s. 60(F).	(2) Les objets d'un syndicat ne sont pas illégaux au sens du paragraphe (1) pour la seule raison qu'ils restreignent le commerce.  L.R. (1985), ch. C-46, art. 466; 1992, ch. 1, art. 60(F).	Syndicats exceptés
Saving	<b>467.</b> (1) No person shall be convicted of the offence of conspiracy by reason only that he  (a) refuses to work with a workman or for an employer; or  (b) does any act or causes any act to be done for the purpose of a trade combination, unless that act is an offence expressly punishable by law.	<b>467.</b> (1) Nul ne peut être déclaré coupable de l'infraction de complot, du seul fait que, selon le cas :  a) il refuse de travailler avec un ouvrier ou pour un patron;  b) il accomplit un acte ou fait accomplir un acte aux fins d'une entente industrielle ou coalition industrielle, à moins que cet acte ne constitue une infraction expressément punissable par la loi.	Réserve
Definition of “trade combination”	(2) In this section, “trade combination” means any combination between masters or workmen or other persons for the purpose of regulating or altering the relations between masters or workmen, or the conduct of a master or workman in or in respect of his business, employment or contract of employment or service.  R.S., c. C-34, s. 425.	(2) Au présent article, «entente industrielle» ou «coalition industrielle» désigne toute entente entre patrons ou ouvriers ou d'autres personnes pour réglementer ou changer les rapports entre patrons ou ouvriers ou la conduite d'un patron dans ses affaires ou d'un ouvrier dans son emploi ou contrat de travail ou service, ou concernant ces affaires, emploi, contrat de travail ou service.  S.R., ch. C-34, art. 425.	Définition de «entente industrielle» ou «coalition industrielle»
Definitions	<b>467.1</b> (1) The following definitions apply in this Act.  “criminal organization” means a group, however organized, that  (a) is composed of three or more persons in or outside Canada; and  (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.  It does not include a group of persons that forms randomly for the immediate commission of a single offence.  “serious offence” means an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.	<b>467.1</b> (1) Les définitions qui suivent s'appliquent à la présente loi.  «infraction grave» Tout acte criminel — prévu à la présente loi ou à une autre loi fédérale — passible d'un emprisonnement maximal de cinq ans ou plus, ou toute autre infraction désignée par règlement.  «organisation criminelle» Groupe, quel qu'en soit le mode d'organisation :  a) composé d'au moins trois personnes se trouvant au Canada ou à l'étranger;  b) dont un des objets principaux ou une des activités principales est de commettre ou de faciliter une ou plusieurs infractions graves qui, si elles étaient commises, pourraient lui procurer — ou procurer à une personne qui en fait partie — , directement ou indirectement, un avantage matériel, notamment financier.  La présente définition ne vise pas le groupe d'individus formé au hasard pour la perpétration immédiate d'une seule infraction.	Définitions  «infraction grave» “serious offence”  «organisation criminelle» “criminal organization”
Facilitation	(2) For the purposes of this section, section 467.11 and 467.111, facilitation of an offence	(2) Pour l'application du présent article et des articles 467.11 et 467.111, il n'est pas né-	Facilitation

	does not require knowledge of a particular offence the commission of which is facilitated, or that an offence actually be committed.	cessaire, pour qu'il y ait facilitation d'une infraction, que la nature de celle-ci soit connue, ni que l'infraction soit réellement commise.
Commission of offence	(3) In this section and in sections 467.11 to 467.13, committing an offence means being a party to it or counselling any person to be a party to it.	(3) Au présent article et aux articles 467.11 à 467.13, le fait de commettre une infraction comprend le fait de participer à sa perpétration ou de conseiller à une personne d'y participer.
Regulations	(4) The Governor in Council may make regulations prescribing offences that are included in the definition "serious offence" in subsection (1).	(4) Le gouverneur en conseil peut, par règlement, désigner les infractions qui sont comprises dans la définition de « infraction grave » au paragraphe (1).
	1997, c. 23, s. 11; 2001, c. 32, s. 27; 2014, c. 17, s. 8.	1997, ch. 23, art. 11; 2001, ch. 32, art. 27; 2014, ch. 17, art. 8.
Participation in activities of criminal organization	<b>467.11</b> (1) Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this or any other Act of Parliament, knowingly, by act or omission, participates in or contributes to any activity of the criminal organization is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.	<b>467.11</b> (1) Est coupable d'un acte criminel et possible d'un emprisonnement maximal de cinq ans quiconque sciemment, par acte ou omission, participe à une activité d'une organisation criminelle ou y contribue dans le but d'accroître la capacité de l'organisation de faciliter ou de commettre un acte criminel prévu à la présente loi ou à une autre loi fédérale.
Prosecution	(2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that <ul style="list-style-type: none"> <li>(a) the criminal organization actually facilitated or committed an indictable offence;</li> <li>(b) the participation or contribution of the accused actually enhanced the ability of the criminal organization to facilitate or commit an indictable offence;</li> <li>(c) the accused knew the specific nature of any indictable offence that may have been facilitated or committed by the criminal organization; or</li> <li>(d) the accused knew the identity of any of the persons who constitute the criminal organization.</li> </ul>	(2) Dans une poursuite pour l'infraction prévue au paragraphe (1), le poursuivant n'a pas à établir les faits suivants : <ul style="list-style-type: none"> <li>a) l'organisation criminelle a réellement facilité ou commis un acte criminel;</li> <li>b) la participation ou la contribution de l'accusé a accru la capacité de l'organisation criminelle de faciliter ou de commettre un acte criminel;</li> <li>c) l'accusé connaissait la nature exacte d'un acte criminel susceptible d'avoir été facilité ou commis par l'organisation criminelle;</li> <li>d) l'accusé connaissait l'identité de quiconque fait partie de l'organisation criminelle.</li> </ul>
Factors	(3) In determining whether an accused participates in or contributes to any activity of a criminal organization, the Court may consider, among other factors, whether the accused <ul style="list-style-type: none"> <li>(a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organization;</li> <li>(b) frequently associates with any of the persons who constitute the criminal organization;</li> </ul>	(3) Pour déterminer si l'accusé participe ou contribue à une activité d'une organisation criminelle, le tribunal peut notamment prendre en compte les faits suivants : <ul style="list-style-type: none"> <li>a) l'accusé utilise un nom, un mot, un symbole ou une autre représentation qui identifie l'organisation criminelle ou y est associée;</li> <li>b) il fréquente quiconque fait partie de l'organisation criminelle;</li> </ul>

<p>Recruitment of members by a criminal organization</p>	<p>(c) receives any benefit from the criminal organization; or  (d) repeatedly engages in activities at the instruction of any of the persons who constitute the criminal organization.</p>	<p>c) il reçoit des avantages de l'organisation criminelle;  d) il exerce régulièrement des activités selon les instructions d'une personne faisant partie de l'organisation criminelle.</p>	<p>Recrutement de membres par une organisation criminelle</p>
<p>2001, c. 32, s. 27.</p> <p><b>467.111</b> Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this Act or any other Act of Parliament, recruits, solicits, encourages, coerces or invites a person to join the criminal organization, is guilty of an indictable offence and liable,</p> <p>(a) in the case where the person recruited, solicited, encouraged or invited is under 18 years of age, to imprisonment for a term not exceeding five years, and to a minimum punishment of imprisonment for a term of six months; and</p> <p>(b) in any other case, to imprisonment for a term not exceeding five years.</p>	<p>2001, ch. 32, art. 27.</p> <p><b>467.111</b> Quiconque recrute une personne pour faire partie d'une organisation criminelle — ou l'invite, l'encourage ou la contraint à en faire partie ou la sollicite à cette fin — dans le but d'accroître la capacité de celle-ci de faciliter ou de commettre un acte criminel prévu par la présente loi ou une autre loi fédérale est coupable d'un acte criminel et passible :</p> <p>a) dans le cas où la personne recrutée, sollicitée, invitée ou encouragée est âgée de moins de dix-huit ans, d'un emprisonnement maximal de cinq ans, la peine minimale étant de six mois;</p> <p>b) dans tous les autres cas, d'un emprisonnement maximal de cinq ans.</p>	<p>Recrutement de membres par une organisation criminelle</p>	
<p>2014, c. 17, s. 9.</p> <p><b>467.12</b> (1) Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.</p>	<p>2014, ch. 17, art. 9.</p> <p><b>467.12</b> (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque commet un acte criminel prévu à la présente loi ou à une autre loi fédérale au profit ou sous la direction d'une organisation criminelle, ou en association avec elle.</p>	<p>Infraction au profit d'une organisation criminelle</p>	
<p>Prosecution</p>	<p>(2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the accused knew the identity of any of the persons who constitute the criminal organization.</p>	<p>(2) Dans une poursuite pour l'infraction prévue au paragraphe (1), le poursuivant n'a pas à établir que l'accusé connaissait l'identité de quiconque fait partie de l'organisation criminelle.</p>	<p>Poursuite</p>
<p>2001, c. 32, s. 27.</p> <p><b>467.13</b> (1) Every person who is one of the persons who constitute a criminal organization and who knowingly instructs, directly or indirectly, any person to commit an offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, the criminal organization is guilty of an indictable offence and liable to imprisonment for life.</p>	<p>2001, ch. 32, art. 27.</p> <p><b>467.13</b> (1) Est coupable d'un acte criminel et passible d'un emprisonnement à perpétuité quiconque fait partie d'une organisation criminelle et, sciemment, charge directement ou indirectement une personne de commettre une infraction prévue à la présente loi ou à une autre loi fédérale au profit ou sous la direction de l'organisation criminelle, ou en association avec elle.</p>	<p>Charger une personne de commettre une infraction</p>	
<p>Prosecution</p>	<p>(2) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that</p>	<p>(2) Dans une poursuite pour l'infraction prévue au paragraphe (1), le poursuivant n'a pas à établir les faits suivants :</p>	<p>Poursuite</p>

	PART XIV	PARTIE XIV	
	JURISDICTION	DISPOSITIONS GÉNÉRALES	
	GENERAL		
Superior court of criminal jurisdiction	<p><b>468.</b> Every superior court of criminal jurisdiction has jurisdiction to try any indictable offence.</p> <p>R.S., c. C-34, s. 426.</p>	<p><b>468.</b> Toute cour supérieure de juridiction criminelle est compétente pour juger un acte criminel.</p> <p>S.R., ch. C-34, art. 426.</p>	Cour supérieure de juridiction criminelle
Court of criminal jurisdiction	<p><b>469.</b> Every court of criminal jurisdiction has jurisdiction to try an indictable offence other than</p> <p>(a) an offence under any of the following sections:</p> <ul style="list-style-type: none"> <li>(i) section 47 (treason),</li> <li>(ii) section 49 (alarming Her Majesty),</li> <li>(iii) section 51 (intimidating Parliament or a legislature),</li> <li>(iv) section 53 (inciting to mutiny),</li> <li>(v) section 61 (seditious offences),</li> <li>(vi) section 74 (piracy),</li> <li>(vii) section 75 (piratical acts), or</li> <li>(viii) section 235 (murder);</li> </ul> <p>(b) the offence of being an accessory after the fact to high treason or treason or murder;</p> <p>(c) an offence under section 119 (bribery) by the holder of a judicial office;</p> <p>(c.1) an offence under any of sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>;</p> <p>(d) the offence of attempting to commit any offence mentioned in subparagraphs (a)(i) to (vii); or</p> <p>(e) the offence of conspiring to commit any offence mentioned in paragraph (a).</p>	<p><b>469.</b> Toute cour de juridiction criminelle est compétente pour juger un acte criminel autre :</p> <p>a) qu'une infraction visée par l'un des articles suivants :</p> <ul style="list-style-type: none"> <li>(i) l'article 47 (trahison),</li> <li>(ii) l'article 49 (alarmer Sa Majesté),</li> <li>(iii) l'article 51 (intimider le Parlement ou une législature),</li> <li>(iv) l'article 53 (incitation à la mutinerie),</li> <li>(v) l'article 61 (infractions séditieuses),</li> <li>(vi) l'article 74 (piraterie),</li> <li>(vii) l'article 75 (actes de piraterie),</li> <li>(viii) l'article 235 (meurtre);</li> </ul> <p>b) que l'infraction d'être complice après le fait d'une haute trahison, d'une trahison ou d'un meurtre;</p> <p>c) qu'une infraction aux termes de l'article 119 (corruption) par le détenteur de fonctions judiciaires;</p> <p>c.1) qu'une infraction visée à l'un des articles 4 à 7 de la <i>Loi sur les crimes contre l'humanité et les crimes de guerre</i>;</p> <p>d) que l'infraction de tentative de commettre une infraction mentionnée aux sous-alinéas a)(i) à (vii);</p> <p>e) que l'infraction de comploter en vue de commettre une infraction mentionnée à l'alinéa a).</p>	Cour de juridiction criminelle
Accessories	R.S., 1985, c. C-46, s. 469; R.S., 1985, c. 27 (1 <sup>st</sup> Suppl.), s. 62; 2000, c. 24, s. 44.	L.R. (1985), ch. C-46, art. 469; L.R. (1985), ch. 27 (1 <sup>er</sup> suppl.), art. 62; 2000, ch. 24, art. 44.	Complicité
Crimes against humanity			Crimes contre l'humanité
Attempts			Tentatives
Conspiracy			Complot
Jurisdiction over person	<p><b>470.</b> Subject to this Act, every superior court of criminal jurisdiction and every court of criminal jurisdiction that has power to try an indictable offence is competent to try an accused for that offence</p>	<p><b>470.</b> Sous réserve des autres dispositions de la présente loi, toute cour supérieure de juridiction criminelle, comme toute cour de juridiction criminelle qui a le pouvoir de juger un acte criminel, est compétente pour juger un accusé à l'égard de cette infraction dans l'un ou l'autre des cas suivants :</p>	Juridiction sur les personnes

# TAB 14

**CBC article on the retiring of the \$1000 banknote.**

Originally from: <http://www.cbc.ca/news/business/bank-of-canada-kills-1000-bill-1.235393>

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## Business

# Bank of Canada kills \$1000 bill

CBC News Posted: Sep 26, 2000 1:24 PM ET | Last Updated: Nov 10, 2000 11:59 PM ET

14 shares

The Bank of Canada will no longer issue \$1,000 bills as of this Friday in an effort to fight organized crime and money laundering.

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## Latest Business Headlines



- Keystone XL pipeline gets OK from U.S. State Department March 24, 2:33 PM ET

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- FCA to wind down transport operations in Windsor March 24, 3:47 PM ET

Nicknamed "pinkies" for their reddish-purple hue, \$1000 bills were an easy way for criminals to hide and carry their earnings.

## External Links

- [Bank of Canada press release](#)  
(Note: CBC does not endorse and is not responsible for the content of external links.)

The next largest denomination is now \$100, which will make stacks of cash heavier and bulkier.

The central bank says the \$1000 bill is still legal tender but no new ones will be printed. It stressed individuals can hold onto their \$1000 bills as long as they want. But commercial banks have been asked to return any \$1000 bills customers deposit or exchange. The notes will be eventually taken out of circulation and destroyed by the central bank.

The bills have a portrait of the Queen on the front and a pair of pine grosbeaks on the back. They've been in circulation since 1935. The Bank of Canada estimates a \$1000 bill has a lifespan of 13 years.

The central bank says the bill's withdrawal will have little impact since it makes up only 0.3 per cent of the Canadian currency in circulation.



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- Wynne: Ontario auto sector concerned about U.S. trade March 24, 2:27 PM ET

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7:16

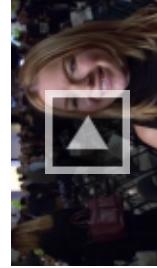
Personal finance expert Rubina Ahmed-Haq on Ontario's plan to improve knowledge of money among young people

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[Youth in sales](#)

7:46

Marvin Ryder, assistant business professor at McMaster University, talks about some of the day's top stories



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# TAB 15

**National Post Article “The hunt for Canada's \$1000 bills”**

Originally from <http://news.nationalpost.com/news/canada/the-hunt-for-canadas-1000-bills-there-are-nearly-a-million-left-most-in-the-hands-of-criminal-elites>

# NATIONAL POST

November 15, 2012

## The hunt for Canada's \$1,000 bills: There are nearly a million left, most in the hands of criminal elites

By Adrian Humphreys

*More than 10 years after the \$1,000 bill disappeared from circulation 946,043 of them are still out there, somewhere*

More than 10 years after the \$1,000 bill disappeared from circulation 946,043 of them are still out there, somewhere.

The whereabouts of almost \$1-billion worth of the banknotes is a mystery rekindled this month at Quebec's corruption probe when a witness spoke of a safe over-stuffed with cash, including \$1,000 notes, inside a political office.



Postmedia files The remaining Canadian \$1,000 notes are the highest denomination legal tender in the Western world.

Retired on May 12, 2000, for being mostly used in criminal transactions, any \$1,000 note deposited at a bank is destroyed, although the bills - nicknamed "pinkies" by gangsters because of the pinkish-purple ink - remain legal tender.

Money-laundering experts believe most of the missing bills continue to circulate among criminal elites who use them to pay large debts, with the recipient, in turn, using them to pay their own debts with only a portion of the notes bleeding off into the legitimate banking system.

"They are used now to pay off IOUs, not as traditional cash. They are used for buying and selling but not for cashing, because they know if they cash them, it is traceable," said Jeffrey Robinson, a New York-based author of several landmark books on money laundering.

"They keep paying with them, over and over, and it's only the last guy in line who has to worry about cashing them."

The notes were retired as part of the fight against organized crime at the recommendation of the RCMP, said Jeremy Harrison, spokesman for the Bank of Canada.

He said the bank could not speculate about where the missing \$1,000 bills are or how they might be used.

At Quebec's Charbonneau corruption commission, a former organizer for the Union Montreal, said the political party was awash with cash, some of it in \$1,000 bills. Martin Dumont said the party's chief fundraiser had a safe in his office so stuffed that he once needed help closing it.

"They were red, brown and pink," Mr. Dumont told the commission, listing the colours of the Canadian \$50, \$100 and \$1,000 bills.

High-denomination bank notes are popular with high-end criminals because it makes moving large amounts of cash so much easier.

Every Canadian bank note weighs the same - one gram - and for cash deals as big as those done by drug rings, payment can require a duffle bag.

A \$1-million payment in \$100 bills, currently the highest denomination circulating Canadian note, requires 10,000 bills and weighs 10 kilograms.

But in \$1,000 bills, it is a manageable 1,000 notes weighing one kilo.

"The \$1,000 bill is cool for these guys because it means you just reduced the bulk on \$1-million by a factor of 10. You can put that in your pockets," said Mr. Robinson.

"The weight of money always exceeds the weight of the cocaine," said Peter Lamey, spokesman for the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a government agency collecting information on suspected money laundering.

"Money can be cumbersome when conducting drug transactions," he said.

In the 1980s, the Caruana Mafia clan in Montreal was depositing so much money that they backed a pickup truck up to the doors of a Montreal bank and tossed out hockey bags stuffed with cash.

The boss of the clan paid tellers to set aside any \$1,000 bills for him.

When the notes were first withdrawn, 2,827,702 of them were circulating, according to Bank of Canada statistics. That has steadily declined as stray notes were deposited or exchanged at Canada's banks.

In 2011, the value of missing notes, which remains on the Bank of Canada's books as a liability, dipped for the first time to below \$1-billion.

Some of them will be in safety deposit boxes or similarly hidden, kept as liquid assets. Others will remain in the hands of collectors who like to hoard bills that might become rare, financial experts say.

But few doubt that the majority of the remaining bills continue to fuel the drug trade as the highest denomination legal tender in the Western world.

As the stash continues to dwindle, that claim slowly passes to the eurozone's €500 note.

*National Post*

• Email: [ahumphreys@nationalpost.com](mailto:ahumphreys@nationalpost.com)<sup>1</sup> | Twitter: [AD\\_Humphreys](https://twitter.com/AD_Humphreys)<sup>2</sup>



Postmedia News Legal tender: The notes are nicknamed 'pinkies' because of their pinkish-purple ink.

1. [ahumphreys@nationalpost.com](mailto:ahumphreys@nationalpost.com)  
2. [twitter.com/ad\\_humphreys](https://twitter.com/ad_humphreys)

# **TAB 16**

**Officer Debski Narrative Report**

NARRATIVE REPORT / RAPPORT NARRATIF

**SEIZURE NUMBER/NUMÉRO DE SAISIE:** 4273-14-0724      **REPORT DATE/DATE DU RAPPORT:** 2014/10/21  
**REPORT TYPE/TYPE DU RAPPORT:** Seizing  
**OFFICER NAME/NOM DE L'AGENT:** DEBSKI, Christopher  
**WLOC NAME/WLOC NOM:** Queenston Bridge - Traffic  
**BADGE NO./N°. D'INSIGNE:** 11276

---

I asked HOCIUNG for his receipts and he provided me a receipt from Bailey Tire Inc. in the amount of \$499.70. I asked HOCIUNG if he had purchased all four tires or only two. HOCIUNG stated that he had only purchased two tires. I asked HOCIUNG if they were already installed on the vehicle. HOCIUNG stated that they were already installed on the vehicle, the rear tires. I advised HOCIUNG that I would be conducting an examination of his vehicle to verify his declaration.

I began my systematic examination on the drivers' side of the vehicle. I worked my way around the vehicle in a counter-clockwise direction. Upon getting to the front passenger side of the vehicle there were various receipts and documents on the front passenger seat. I also observed a pill container of Advil Cold medication and a bottle of water. Upon looking at the documents on the front seat I noticed that there was a piece of paper approximately the size of a queue card with various business addresses on it. The card contained the address of Bailey Tire Inc and also the card included the name and addresses of various coin shops in New York. Jack Hunt, The Coin Shop, and The Gold Mine. I continued to complete the examination of the vehicle. Upon looking back at HOCIUNG I could tell he was visibly distraught as he was pacing the sidewalk in front of the Secondary Operations office. Upon opening the glove compartment I discovered a receipt from Jack Hunt - Coin Broker Inc. dated 10/21/14, (21OCT2014). The receipt was in the amount of \$5,700.00 USD. The goods on the receipt were listed as a quantity of four, (4), Gold Buffalos totaling \$5,300.00 USD and twenty, (20), Silver Eagles. The address listed on the receipt matched the address of the location on the queue card.

I approached HOCIUNG and asked him what else he had purchased while away. HOCIUNG stated that he purchased from medicine. I again wanted to give HOCIUNG the opportunity to be truthful and asked again if he had purchased anything else. HOCIUNG then stated that he had purchased gold.

I then showed HOCIUNG the receipt that was discovered and told him that this was serious as he failed to declare \$5,700.00 USD in goods. HOCIUNG was visibly agitated and advised me that it was currency and he did not have to declare any currency under \$10,000.00 CDN. I then told HOCIUNG that currency is one thing but the coins he was smuggling are not considered coins but instead they are considered as goods. HOCIUNG did not agree with my explanation.

I told HOCIUNG that I would look into the matter and get guidance from a superintendent and get back to him. I requested that he give to me the keys to the vehicle, his passport, drivers' license, ownership and the gold coins. I then told HOCIUNG to have a seat in the office.

Upon consultation with the superintendent on duty and through reviewing operational bulletins it was determined that coins are also to be treated as goods and not as currency. Although the coins technically have legal tender status, 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.

I then advised HOCIUNG that I would be seizing the goods that were not declared. I asked him where the Silver Eagles were and HOCIUNG opened his jacket and pulled out a sealed tube of silver dollars. I told HOCIUNG that when the paperwork is complete and the penalty is paid he would be free to leave. HOCIUNG asked how much the penalty would be. I stated that I was not sure and would have an answer for him after the paperwork was completed. HOCIUNG was agitated by this and asked who would be completing the paperwork. I advised HOCIUNG that I would be completing the paperwork and I would get back to him as soon as it was complete.

NARRATIVE REPORT / RAPPORT NARRATIF

SEIZURE NUMBER/NUMÉRO DE SAISIE: 4273-14-0724

REPORT DATE/DATE DU RAPPORT: 2014/10/21

REPORT TYPE/TYPE DU RAPPORT: Seizing

OFFICER NAME/NOM DE L'AGENT: DEBSKI, Christopher

WLOC NAME/WLOC NOM: Queenston Bridge - Traffic

BADGE NO./N°. D'INSIGNE: 11276

The gold and silver coins were seized for non-report and the terms of release for the goods was \$1,606.97 CDN.

I called HOCIUNG to the counter area and gave him the seizure package and told him the terms of release to get the goods back. Immediately HOCIUNG interrupted what I was telling him and told me he will not pay the terms of release until he speaks to his lawyer. HOCIUNG than brought out a list of questions that he had written down on a pamphlet and began to ask questions. He asked how many days he has to appeal the seizure and how will he get his goods back. HOCIUNG asked if we ship the goods to him. I advised HOCIUNG that he can hold the items for him for 90 days or until the terms of release is paid and I advised him that I was not sure about shipping but I do not think we ship items. I advised HOCIUNG that I would have to change the seizure documentation to reflect that the goods were being held for payment and would come back again.

After retrieving the new seizure package I explained again that the goods would be held for 90 days or until the terms of release are paid.

HOCIUNG again began to question the seizure of the coins stating that it is currency. I stated that it was not considered currency as the coins in his possession were not in circulation and he would not pay for something with his gold coin that is labelled with a value of \$50.00 USD. I told HOCIUNG that I was not going to argue and my decision has been made. As a courtesy, an online rating print off was given to HOCIUNG to show him the approximate tax he would pay on the coins if he had declared them. HOCIUNG again began to get agitated and raised his voice saying that he wants the rating to reflect the specific coin he had. I told HOCIUNG that this was only an approximate rating and was done as a courtesy to him and that it had nothing to do with the seizure package.

HOCIUNG understood and left.

Upon placing the coins into a sealed evidence bag to be put into the safe, HOCIUNG came back into the building and requested my presence.

HOCIUNG asked me how much extra he must pay for tax after the terms of release is paid. I advised HOCIUNG that \$1,606.97 CDN was all he had to pay to have the goods released into his possession. HOCIUNG again asked about the tax that he must pay when the coins are picked up. I again told HOCIUNG that when he pays the terms of release of \$1,606.97 CDN he may take the goods and leave and that there were no other costs associated with the seizure of the goods.

HOCIUNG stated, `Interesting.', and left the office area.

I placed the gold and silver coins into an evidence bag and sealed it. I than asked the superintendent on duty to accompany me to the secure bond room to place the gold and silver coins into the safe.

I had no further contact with HOCIUNG, his vehicle or the gold and silver coins.

Respectfully submitted,

BSO Christopher Debski



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

- PROTECTED B/ PROTÉGÉ B-

**NARRATIVE REPORT / RAPPORT NARRATIF**

**SEIZURE NUMBER/NUMÉRO DE SAISIE:** 4273-14-0724

**REPORT DATE/DATE DU RAPPORT:** 2014/10/21

**REPORT TYPE/TYPE DU RAPPORT:** Seizing

**OFFICER NAME/NOM DE L'AGENT:** DEBSKI, Christopher

**WLOC NAME/WLOC NOM:** Queenston Bridge - Traffic

**BADGE NO./N°. D'INSIGNE:** 11276

---

Badge # 11276

Canada Border Services Agency

Queenston Bridge Traffic

# TAB 17

**Evidence taken by officer Debski, photos, photocopies**



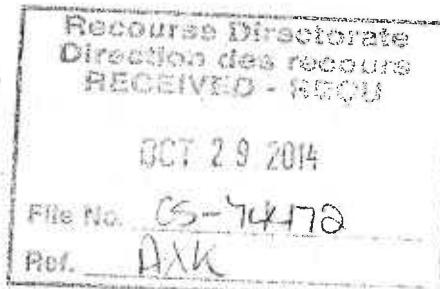
Agence des services  
frontaliers du Canada

Canada Border  
Services Agency

4273-14-0724

SEIZURE NO.

SUBJECT	HOCLUNG		Bring Forward (BF) Record
LOCATION	QBT		To
DATE	21 OCT 2014		Date
TYPE	PERSONAL		
PRIMARY OFFICER	STEWART		
SECONDARY OFFICER	DEBSKI		
ASSISTING OFFICER			
ASSISTING OFFICER			
SUPERINTENDENT	KROEKER		
NOTICE OF CLAIM/ADJUDICATIONS			
DATE CLAIM RECEIVED	FURTHER REPORT		RESULTS & DATE OF FINAL DECISION
	DATE ASKED	DATE RECEIVED	
DATE CLOSED			



- Refused to  
pay TOR may  
come back to  
pay later

Do not close

# BORDER SERVICES OFFICER SEIZURE CHECKLIST

SEIZURE #: 4273-14-0724

DATE: yyyy/mm/dd  
2014/10/21

PERSONAL GOODS

COMMERCIAL GOODS

## SEIZURE DETAILS

PRIMARY OFFICER: STEWART

BADGE#: 17188

SEIZING OFFICER: DEBSKI

BADGE#: 11276

SUPERINTENDENT:

BADGE#:

ASSISTING OFFICER:  
(IF APPLICABLE)

BADGE#:

ASSISTING OFFICER:  
(IF APPLICABLE)

BADGE#:

## RELATED DOCUMENTATION

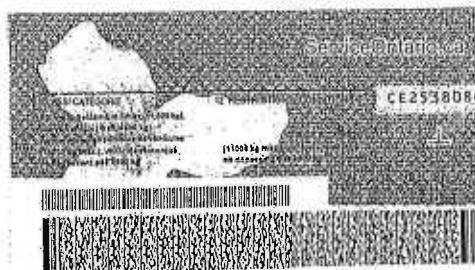
RELATED DOCUMENTATION (E350/CCIR REPORT/FOSS I.D. ETC.)

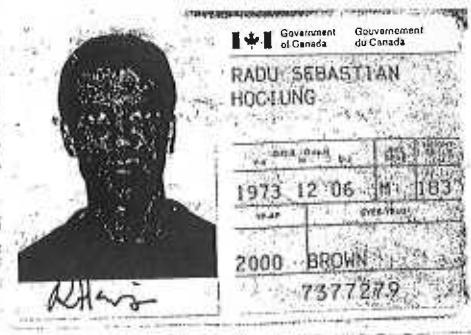
<input checked="" type="checkbox"/> PERSONAL <i>COINS of PRECIOUS METALS (PLEASE SPECIFY)</i>	<input type="checkbox"/> NARCOTICS	<input type="checkbox"/> FIREARMS	<input type="checkbox"/> CURRENCY
<input checked="" type="checkbox"/> COPY OF IDENTIFICATION <input checked="" type="checkbox"/> E-67 REFERRAL SLIP <input checked="" type="checkbox"/> COPY OF VEHICLE INFORMATION (IF APPLICABLE) <input checked="" type="checkbox"/> K19 SEIZURE RECEIPT <input checked="" type="checkbox"/> SEIZURE SYNOPSIS <input checked="" type="checkbox"/> NARRATIVE REPORT <input type="checkbox"/> K21 GENERAL RECEIPT <input checked="" type="checkbox"/> ADDITIONAL PAPERWORK RECEIPTS/ INVOICES/ WRITTEN STATEMENTS (IF APPLICABLE) <input type="checkbox"/> E44 CUSTOMS NOTICE FOR UNCLAIMED GOODS (IF NECESSARY) <input type="checkbox"/> E352 EVIDENCE SEIZURE RECEIPT (IF NECESSARY) <input checked="" type="checkbox"/> OTHER PAPERWORK (IF NECESSARY)  <small>(PLEASE SPECIFY)</small>	<input type="checkbox"/> COPY OF IDENTIFICATION <input type="checkbox"/> E-67 REFERRAL SLIP <input type="checkbox"/> COPY OF VEHICLE INFORMATION (IF APPLICABLE) <input type="checkbox"/> K19 SEIZURE RECEIPT <input type="checkbox"/> SEIZURE SYNOPSIS <input type="checkbox"/> NARRATIVE REPORT <input type="checkbox"/> HC SC 3515 DRUG OFFENCE AND DISPOS. REPORT <input type="checkbox"/> K129 EXHIBIT CONTROL (IF NECESSARY) <input type="checkbox"/> E44 CUSTOMS NOTICE FOR UNCLAIMED GOODS (IF NECESSARY) <input type="checkbox"/> E352 EVIDENCE SEIZURE RECEIPT (IF NECESSARY) <input type="checkbox"/> K21 GENERAL RECEIPT (IF NECESSARY) <input type="checkbox"/> OTHER PAPERWORK (IF NECESSARY)  <small>(PLEASE SPECIFY)</small>	<input type="checkbox"/> COPY OF IDENTIFICATION <input type="checkbox"/> E-67 REFERRAL SLIP <input type="checkbox"/> COPY OF VEHICLE INFORMATION (IF APPLICABLE) <input type="checkbox"/> K19 SEIZURE RECEIPT <input type="checkbox"/> SEIZURE SYNOPSIS <input type="checkbox"/> NARRATIVE REPORT <input type="checkbox"/> FIREARMS TRACE FORM <input type="checkbox"/> K129 EXHIBIT CONTROL (IF NECESSARY) <input type="checkbox"/> E352 EVIDENCE SEIZURE RECEIPT (IF NECESSARY) <input type="checkbox"/> E44 CUSTOMS NOTICE FOR UNCLAIMED GOODS (IF NECESSARY) <input type="checkbox"/> K21 GENERAL RECEIPT (IF NECESSARY) <input type="checkbox"/> CCIR <input type="checkbox"/> OTHER PAPERWORK (IF NECESSARY)  <small>(PLEASE SPECIFY)</small>	<input type="checkbox"/> COPY OF IDENTIFICATION <input type="checkbox"/> E-67 REFERRAL SLIP <input type="checkbox"/> COPY OF VEHICLE INFORMATION (IF APPLICABLE) <input type="checkbox"/> K19C CURRENCY SEIZURE RECEIPT <input type="checkbox"/> SEIZURE SYNOPSIS <input type="checkbox"/> NARRATIVE REPORT <input type="checkbox"/> K129 EXHIBIT CONTROL (IF NECESSARY) <input type="checkbox"/> E352 EVIDENCE SEIZURE RECEIPT (IF NECESSARY) <input type="checkbox"/> E44 CUSTOMS NOTICE FOR UNCLAIMED GOODS (IF NECESSARY) <input type="checkbox"/> K21 GENERAL RECEIPT (IF NECESSARY) <input type="checkbox"/> OTHER PAPERWORK (IF NECESSARY)  <small>(PLEASE SPECIFY)</small>

## OFFICER COMMENTS

HELD FOR APPRAISAL	<input type="checkbox"/>	7118.90.00.10 GOLD COINS
HELD FOR PROSECUTION	<input type="checkbox"/>	7118.90.00.99 SILVER
HELD FOR DETERMINATION	<input type="checkbox"/>	YES
INCOMPLETE		
REVIEW		
SUPERINTENDENT COMMENTS/CONCERNs		









	Canada Border Services Agency	Agence des services frontaliers du Canada
<input checked="" type="checkbox"/> Resident	Length of absence	Durée de l'absence
<input type="checkbox"/> Non-resident	Length of stay	Durée du séjour
<input type="checkbox"/> Other (specify)		
<input type="checkbox"/> Autres (précisez)		

	Value - Montant	No - Non
Goods declared	\$ <u>500</u>	<input type="checkbox"/>
Marchandises déclarées		<input type="checkbox"/>
Currency / Monetary instruments		<input type="checkbox"/>
Espèces / États		<input type="checkbox"/>
Commercial goods		<input type="checkbox"/>
Marchandises commerciales		<input type="checkbox"/>
Gifts		<input type="checkbox"/>
Cadeaux		<input type="checkbox"/>
Firarms/weapons		<input type="checkbox"/>
Armes à feu/armes		<input type="checkbox"/>
Food, Plants and Animals		<input type="checkbox"/>
Produits alimentaires, végétaux et animaux		<input type="checkbox"/>
Duty free shop purchase		<input type="checkbox"/>
Achats d'une boutique hors-taxes		<input type="checkbox"/>
Immigration		<input type="checkbox"/>
Remarks - Observations		

500 VAT

<input checked="" type="checkbox"/> MAN	<input checked="" type="checkbox"/> SEL	Time of referral Temps de renvoi	<u>1748</u>
<input checked="" type="checkbox"/> DOL	<input checked="" type="checkbox"/> SEL	Province/State Province/État	<u>SD</u>
Licence <u>DR MRS</u>		Lane/Voie	<u>6</u>

Border Services Officer - Agent des services frontaliers		Lane/Voie	<u>6</u>
<input type="checkbox"/> Released	<input type="checkbox"/> Enforcement action		
<input type="checkbox"/> Detained	<input type="checkbox"/> Execution		
<input type="checkbox"/> Document stamp	<input type="checkbox"/> Returned to the U.S.		
	<input type="checkbox"/> Returned aux É.-U.		
EE7 (16)		EE7 (16)	(See reverse - Voir au verso)

Bailey Tire Inc.  
536 ENGLEWOOD AVE  
Buffalo, NY. 14223  
Phone - 716-834-4434 Fax - 716-834-4435  
SERVING WESTERN N.Y. FOR OVER 40 YEARS

INVOICE  
41660  
Org. Est. # 063437  
5150208  
FED ID# 16-0972850

**INVOICE**

Work Completed Date: 10/16/2014

Print Date: 10/21/2014

HOCIUNJ, RADU

Cust ID : 8943	Lic # :	Odometer In : 102916
Part Description / Number	Unit #:	Odometer Out : 102916
Part Description / Number	Vin #:	
Part Description / Number	Ref #:	
TIRE STEMS TS123	0	
CONTINENTAL EXTREAM CONTACT DW TIRE 275/35/18	DISMOUNT AND MOUNT TIRES	0.00
Shop Supplies	COMPUTER SPIN BALANCE TIRES	16.00
	NYS. WASTE TIRE MANAGEMENT FEE	5.00
	MADE IN USA	
Qty	Sale	Extended
2.00	2.50	5.00
2.00	214.95	429.90
	4.00	4.00

Org. Estimate \$ 499.70	Revisions \$ 0.00	Current Estimate \$ 499.70	Labor: 21.00
			Parts: 438.90
			Sublet: \$0.00
			Sub: 459.90
			Tax: 39.80
			Total: 499.70
			Bal Due: \$499.70

(Payments - )

FIND US ON FACEBOOK

I hereby authorize the above repair work to be done along with the necessary material and hereby grant you and/or your employees permission to operate the car or truck herein described on street, highways or elsewhere for the purpose to testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs thereto. Warranty on parts and labor is one years or 12,000 miles whichever comes first. Warranty work has to be performed in our shop & cannot exceed the original cost of repair.

Signature \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_

Page 1 of 1

Copyright (c) 2014 Mitchell Repair Information Company, LLC Inv#rs 03.18.2011 JD

JACK HUNT - COIN BROKER INC.

2746 Delaware Ave.

P.O. Box 194

KENMORE, NY 14217

(716) 874-7777

CUSTOMER'S ORDER NO.		NAME	
OTC		D. Galt Elmwood Ave Buffalo NY 14202	
ADDRESS		DATE 10/21/14	
REGULARITY		CASH	✓
PRODUCTS		C.O.D.	
		CHANGE	
		ON ACCT.	
		MORE F/T	
		Paid Out	
DESCRIPTION	QTY	PRICE	AMOUNT
1 T10 Gold & Buffalo Silver Eagles	4	5300.10	21200.40
Palm Tree w/ Cash	20	20	400
		10	100
		TAX	
			<u>5700.50</u>

## Coins Invoice

S.101(2002-09)

bilis de l'assureur.

ANSWER

ON 15A AK7



thePersonal

The Personal Insurance Company  
P.O. Box 7065, Mississauga L5A 4K7  
1 888 277-6481

POLICY NO./POLICE N°

INSURED/ASSURÉ

K1209657

HOCIUNG RADU

EFFECTIVE DATE/ENTREÉE EN VIGUEUR

2013-09-01

226, WILLOWDALE AVE

WATERLOO ON N2J 3M1

EXPIRY DATE/EXPIRATION

2014-09-01

VEHICLE/VEHICULE/NOM, MODÈLE, N° SÉRIE

1 2004 BMW 545I 4D

WBANB33584B088408

This certificate is subject to the terms and conditions of the insurer's standard automobile policy.

This certificate attests that the party named herein is insured against liability for bodily injury and property damage by reason of the operation of the motor vehicle described herein, in an amount not less than the statutory minimum requirements in any area of Canada.

**WARNING** — Any person who issues or produces a card to show that there is in force a policy of insurance as indicated herein that is in fact not in force is liable to a heavy fine and/or imprisonment and his licence may be suspended.

This card should be carried in the insured vehicle for production as proof of insurance when demanded by police.

CANADA INTER PROVINCE MOTOR VEHICLE LIABILITY INSURANCE  
CARD APPLICABLE WITHIN CANADA AND THE UNITED STATES OF AMERICA  
CERTIFICAT D'ASSURANCE AUTOMOBILE RESPONSABILITÉ EN VIGUEUR  
AU CANADA ET AUX ÉTATS-UNIS D'AMÉRIQUE.

Le présent certificat est soumis aux dispositions et conditions de la police d'assurance automobile de l'Assureur.

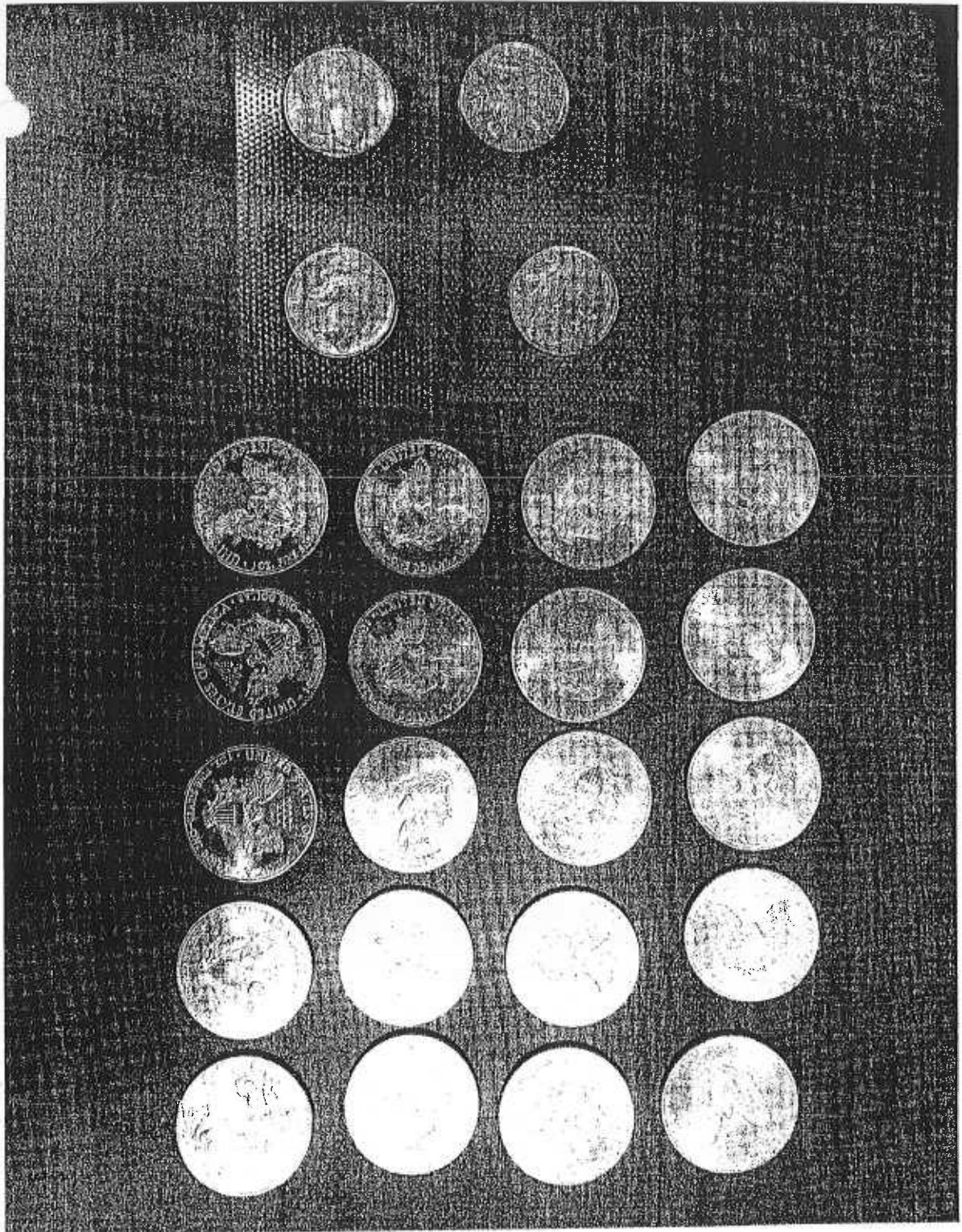
Le certificat atteste qu'il y a présent un assuré et est assuré contre la responsabilité pour blessures et dommages aux biens découlant de l'utilisation du véhicule décrit dans les présentes, conformément aux termes minimaux exigés par les lois d'assurance en vigueur partout au Canada.

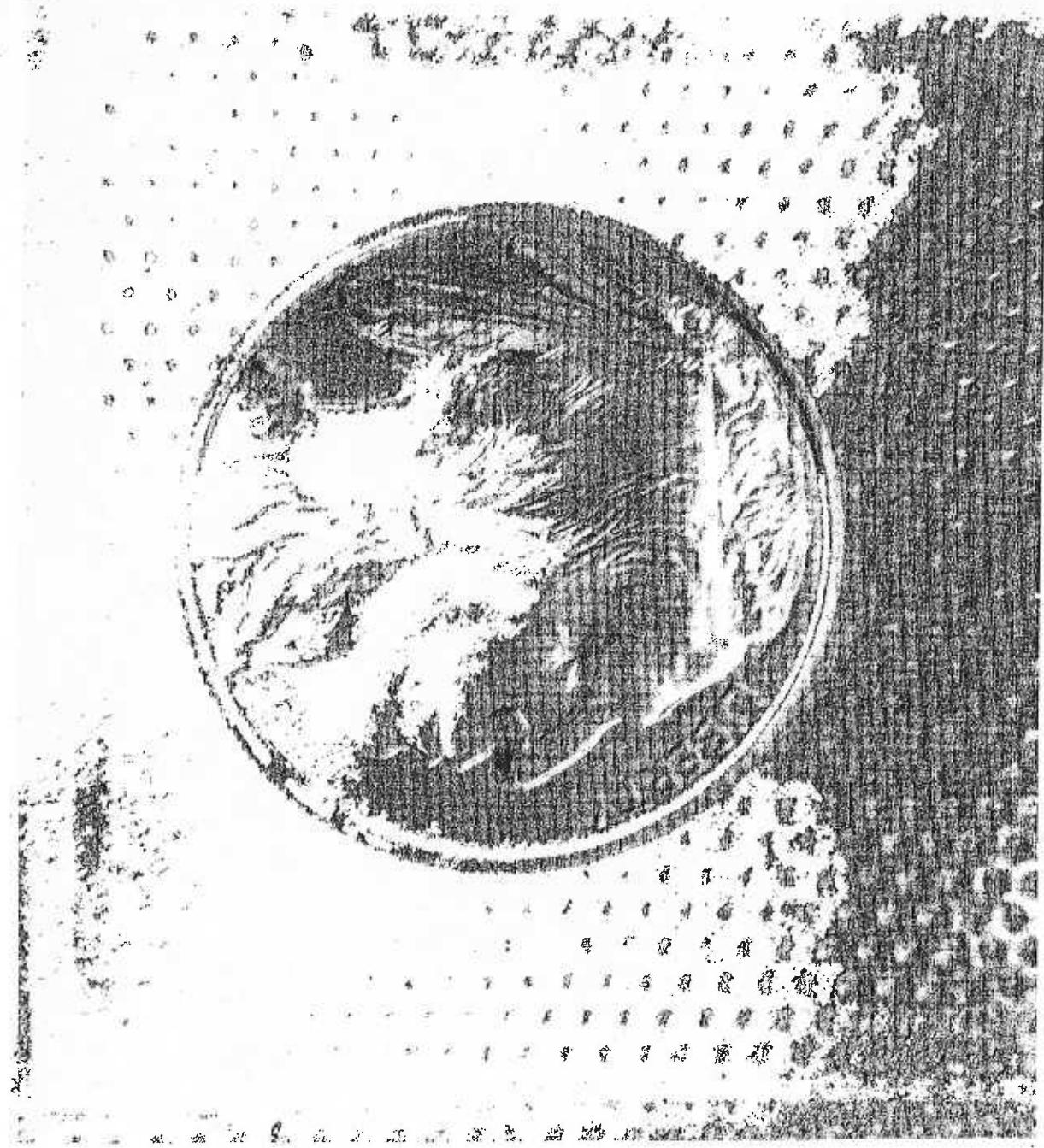
**AVERTISSEMENT** — Toute personne ayant ou présentant un tel certificat et montrant qu'il y a une police d'assurance responsable qui effectivement n'est pas en vigueur, est coupable d'une infraction passible d'une forte amende si elle s'empêche d'obtenir et d'apporter de son pareil, ce certificat dans le véhicule dans lequel la police l'exige.

735 101 (2002/09)















Rocky Tree Ave	5746 Elmwood Ave	5746 Melrose Ave
5746 Elmwood Ave	5746 Melrose Ave	5746 Melrose Ave
Buffalo NY, 14225	Buffalo NY, 14214	Buffalo NY, 14214
716 834-4434	716 834-4434	716 834-7777

7. ~~Car~~ Shot  
457 Main St.  
Johnson City NY 13790  
~~The Grand Hotel~~  
~~hot ~~area~~~~  
The Gold Mine  
31 Franklin St.  
East Aurora St.  
End Avenue RT 1 14052



QUEENSTON TRAFFIC  
14154 NIAGARA PARKWAY RD  
NIAGARAONLAKE ON L0S1J0  
9052621043

MERCHANT ID: 1732273194 TERM ID: 001

**SALE**

XXXXXXXXXXXXXX2619  
DEBIT/CHQ ENTRY METHOD: CHIP

10/21/14 17:53:36  
INR #: 000041 APPR CODE: 175861  
RET REF#: 00000011 BATCH #: 000037  
TRACE: 00515108 REF #: 041  
CUST REF #: 61276

AMOUNT \$73.30

PIN VERIFIED BY CARD ISSUER  
ACCOUNT WILL BE DEBITED WITH THE  
ABOVE AMOUNT  
(OR CREDITED IF CREDIT VOUCHER)  
RETAIN THIS COPY FOR STATEMENT  
VERIFICATION

CARDHOLDER COPY

APPROVED

APPLICATION LABEL: INTERAC  
AID: A0000002771010  
TWR: 00 00 80 00  
TSI: FB 00

# TAB 18

**Discovery of the Defendant, written answers part 1**



# FACSIMILE TRANSMISSION TRANSMISSION PAR TÉLÉCOPIEUR

SEND TO / ENVOYER À	FROM / DE	
Name / Nom:  Radu Hociung	Name / Nom:  Eric Peterson Counsel	
Address / Adresse:  By fax only	Address / Adresse:  Ontario Regional Office The Exchange Tower 130 King St. West Suite 3400, Box 36 Toronto, Ontario M5X 1K6	
Fax # / No du télécopieur:  226-336-8327	Tel. No. / No du Tél:  Fax # / No du télécopieur:  (416) 973-5004	Tel. No. / No du Tél:  (416) 952-6334

## Comments / Commentaires:

**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.**

## SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ

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.

Protected documents? / Documents protégés?  Yes / Oui  No / Non

## TRANSMISSION

Pages (including cover sheet)	Date:	Time:
13	January 31, 2017	

### NOTICE:

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this communication in error, please notify us immediately by telephone. Thank you.

Cette communication est exclusivement destinée à qui elle est adressée. Elle peut contenir de l'information privilégiée, confidentielle et ne pouvant être divulguée selon la loi applicable à l'espèce. Si vous avez reçu cette communication par erreur, veuillez nous en aviser immédiatement par téléphone. Merci.

In the event of transmission problems, kindly contact / Si cette liaison n'est pas claire, communiquez avec:  
 Name / Nom: Donna Robinson at / au: 416-952-6886

Court File No. T-1450-15

**FEDERAL COURT OF CANADA**

BETWEEN:

**Radu Sebastian HOIUNG**

**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:**

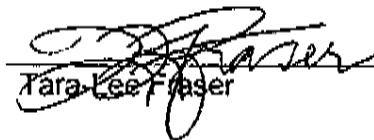
1. I am employed by the Canada Border Services Agency and have been authorized by the Defendant to make this Affidavit.
  
2. Attached hereto and marked as Exhibit "A" is the Defendant's Responses to Written Examination, being the Defendant's answers to the Plaintiff's written examination for discovery.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

- 2 -

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

X 10

Commissioner for Taking Affidavits  
for the Province of Ontario

  
Para-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.

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.

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

SNZ

### 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 Lefebre" 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.

Jeffrey 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.**

**Niagara / Fort Erie**

**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?***

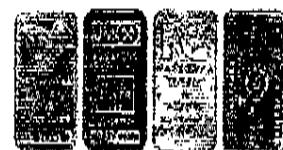
A metal is deemed to be precious if it is rare. A precious metal is defined in the Excise Tax Act as:

- ...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:
- 99.5% in the case of gold and platinum, and
  - 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.



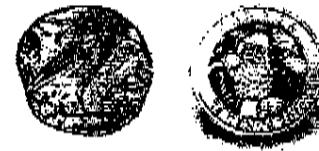
A coin is a piece of metal intended for use as legal tender and stamped with marks or inscriptions which show that it was issued by an authority that guarantees its weight and purity. The word 'bullion' is also used to refer to coins and many mints issue bullion in coin form. Although a precious metal 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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## Niagara / Fort Erie

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.scotiarmocatta.com](http://www.scotiarmocatta.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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# **TAB 19**

**Plaintiff Oral Discovery Examination**

Court File No. T1450-15

FEDERAL COURT

BETWEEN:

RADU HOCIUNG

Appellant

- and -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

---

This is the examination of RADU HOCIUNG, for discovery held  
on consent of the parties at The Department of Justice,  
130 King Street West, 34<sup>th</sup> Floor, Toronto, Ontario, on the  
5<sup>th</sup> day of January, 2017.

---

APPEARANCES:

Radu Hociung	Self-represented
Mr. Eric Peterson	For the Respondent
Ms. Jeanette Duda	Court Reporter

International Reporting Inc.  
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(ii)

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1 question at the border.

2 So, first of all, can you tell me a bit of  
3 your background, your educational background?

4 A. I attended University of Waterloo for  
5 Engineering from 1994 until 2000. Before that, of  
6 course, high school. I never finished the  
7 university. I didn't actually graduate and earn a  
8 Bachelor. And, that is my education, I think.

9 7 Q. Okay. And, I think you mentioned in  
10 one of the conferences you're an engineer?

11 A. Yes.

12 8 Q. All right. But, so are you a  
13 professional engineer?

14 A. I am not a professional engineer, no.

15 9 Q. Okay. Okay. So, what type of work  
16 do you do? What type of engineering work do you do?

17 A. How is this relevant?

18 10 Q. It's simply -- sometimes the court  
19 would like to see what professional background you  
20 have when you -- what you bring to the table if you  
21 don't have a lawyer with you.

22 A. But, you are here for evidence;  
23 right?

24 11 Q. Right. If you don't want to answer,  
25 that's fine.

26 A. I do not want to answer.

27 12 Q. All right. Let's get to the day in  
28 question then. On -- first of all, this is on

1       October 21, 2014, you were coming back from the  
2       United States crossing into Canada. What was the  
3       purpose of your trip to the United States?

4           A. I went to the United States to  
5       purchase tires for my car.

6 13           Q. All right.

7           A. That was the main purpose of my trip.

8 14           Q. All right. And, you also purchased  
9       some collectible coins I understand?

10          A. I purchased some coins while on the  
11       trip, yes.

12 15          Q. All right. And, were those coins  
13       purchased on that same trip in the United States?

14          A. Yes.

15 16          Q. All right. How much did you pay for  
16       those coins?

17          A. I paid 50 -- if my memory serves  
18       correctly, \$5,700.00 U.S. dollars.

19 17          Q. All right. And, did you have a  
20       receipt for that?

21          A. I do, yes.

22 18          Q. Okay. Had you gone to the United  
23       States previously to buy collectible coins or was  
24       that the first time you had done so?

25          A. I have been to the United States  
26       before, but never bought collectible coins in the  
27       United States before.

28 19          Q. Okay. Have you ever purchased

1       collectible coins from the United States elsewhere  
2       and brought them into Canada, other than United  
3       States?

4                     A. Sorry, repeat?

5 20                 Q. So, have you ever bought collectible  
6       coins from the U.S. or any other country abroad, and  
7       then brought it into Canada?

8                     A. I don't understand the relevance.

9 21                 Q. All right. Have you ever bought  
10      collectible coins ---

11                     A. I don't understand the relevance.

12 22                 Q. My ---

13                     A. I understand your question.

14 23                 Q. Right. The relevance is if you have  
15       declared those coins at Canada customs before or if  
16       you have also maintained the position that they are  
17       not -- they don't have to be declared. Was this the  
18       first time when you ---

19                     A. No, I understand the question.

20 24                 Q. Right.

21                     A. I'm thinking about whether -- how I  
22       should answer it.

23 25                 Q. Okay.

24                     A. The answer is no.

25 26                 Q. You had never previously ---

26                     A. I have never purchased coins outside  
27       of the United States and brought -- outside of  
28       Canada and brought them into Canada without

11

1 reporting them.

2 27 Q. Okay. Had you ever declared  
3 collectible coins in the past at the Canadian  
4 border?

5 A. Had I or have I, or had I ---

6 28 Q. Had I.

7 A. --- after that time?

8 29 Q. Had you at that time previously ever  
9 declared to Canadian customs that you had purchased  
10 collectible coins?

11 A. No, I have not.

12 30 Q. Okay. Are you in the business of  
13 collecting coins? Are you ---

14 A. I am not, no.

15 31 Q. No. Is it ---

16 A. However, I'm a collector of coins  
17 like everybody else.

18 32 Q. Okay. So, had you previously  
19 purchased U.S. collectible coins in Canada or is the  
20 first time ---

21 A. That is not relevant, I believe.

22 33 Q. Was this the first time you had ever  
23 purchased U.S. collectible coins?

24 A. U.S. minted?

25 34 Q. Yes.

26 A. I am not sure.

27 35 Q. Okay. All right. So, then, tell me  
28 -- well, let's move on to October 21, 2014. Tell me

1       in your own words what took place when you  
2       approached the Canadian border. You approached in  
3       your car, and you were in a line-up, and then what  
4       happened?

5           A. So, at first, of course, there's a --  
6       the primary check window where I stopped. The  
7       officer there asked me -- I believe he asked me what  
8       -- I don't remember the words exactly. I believe  
9       the extent of his answer -- of his questions was  
10      whether I was bringing goods into Canada, whether I  
11      had purchased goods to bring into Canada.

12 36       Q. Right.

13       A. I told him about the tires that I had  
14      bought. On the day it happened, I had a little bit  
15      of a migraine, and I had bought some Advil and some  
16      water, and that is all. That is all the goods that  
17      I told him about.

18 37       Q. All right.

19       A. He never asked me about whether I  
20      brought currency, about how much currency or  
21      financial instruments I have.

22 38       Q. He never asked you if you were in  
23      possession of currency over \$10,000.00?

24       A. He did not.

25 39       Q. He did not?

26       A. I believe he did not.

27 40       Q. Okay. All right. And, was it your  
28      understand at that time that the collectible coins

1       in your possession did not have to be declared?

2                  A.     Absolutely.

3    41                  Q.     And, what was the basis of your  
4                         understanding? Was it anything that you read at the  
5                         customs border crossing or ---

6                  A.     No, I had researched the topic well  
7                         ahead of time, and these coins are minted by the  
8                         United States Mint according to the United States  
9                         code, and I forget the number. I believe it's 31.  
10                  It deals with the money and the currency of the  
11                         United States. So, they are minted at the United  
12                         States Mint by the United States Treasury according  
13                         to this law. And, in the law, they are clearly  
14                         stated to be a legal tender.

15                  The mint itself on the site, the mint that  
16                         produces them, U.S. Mint, states clearly that they  
17                         are legal tender and, to me, that was enough to know  
18                         that this is currency that apply -- and, therefore,  
19                         currency regulations apply to it.

20    42                  Q.     So, they would be legal tender at  
21                         their face value or at their ---

22                  A.     Correct.

23    43                  Q.     --- commercial value?

24                  A.     Legal tender by definition is based  
25                         on the denomination.

26    44                  Q.     All right.

27                  A.     Not on any other value, but their  
28                         denomination, which is \$50.00 for the gold coins in

1       this case, and I believe \$1.00 for the silver coins.

2   45           Q.    But, you paid \$5,700.00 for ---

3               A.    That is correct.

4   46           Q.    So, the commercial value far exceeded  
5       the face value?

6               A.    There is no such thing as a  
7       commercial value. This is currency just like --  
8       it's just currency. You can obtain currency at any  
9       other value. The value that you obtain currency at  
10      does not have to relate to the value of the  
11      currency. The value of the currency is the  
12      denomination ---

13   47           Q.    Right.

14               A.    --- and that is given by law.

15   48           Q.    But, you did not pay the face value  
16      of those coins.

17               A.    I did not.

18   49           Q.    Okay. So, if it's not the commercial  
19      value, you paid, then, the retail value or...?

20               A.    There's no such thing as retail.

21               Again, these are -- I believe it's not called the  
22      retail value.

23   50           Q.    What would it be called then? The  
24      purchase price?

25               A.    I'm not sure ---

26   51           Q.    Okay. Fair enough.

27               A.    --- what that -- what the number is  
28      called.

1 52 Q. All right. So, at the primary line  
2 of inspection, did you -- do you have any complaint  
3 with what happened between you and the officer? Are  
4 you taking issue with that particular officer in  
5 this action?

6 A. I will not answer that at this time.  
7 I may -- when I amend the Statement of Claim, there  
8 may be additional claims.

9 53 Q. Okay. And then what happened next?  
10 You weren't free to leave. That wasn't the end of  
11 that.

12 A. Well, next, I had to go and pay the  
13 taxes, import taxes for my tires ---

14 54 Q. Right.

15 A. --- and the other two items that I  
16 brought. So, I went inside the customs office,  
17 declared it to the officer what I had brought, which  
18 was the tires and the other two items, and he  
19 directed me to the cashier window, I paid the taxes  
20 for the goods ---

21 55 Q. Right.

22 A. --- for the three items, and then he  
23 said I was free to go, so I left ---

24 56 Q. Okay.

25 A. --- the customs office.

26 57 Q. Right, right. And then what happened  
27 after that?

28 A. And then after that, on the way to my

1 car -- at this point, I didn't know that I was to be  
2 secondarily inspected, so on the way to my car,  
3 another officer, which is Officer Debski, came out  
4 of his office with, I would say, a confrontational  
5 greeting. He greeted me with a greeting, "What do  
6 we have here?" Those were his exact words. I  
7 remember them because they struck me as very odd.

8 I was, of course, a little taken aback,  
9 not knowing if I'm in the back alley somewhere or at  
10 the government building. I showed him my paper, my  
11 paperwork, and I believe he asked me whether he can  
12 look at my car. He asked me if the car -- if the  
13 tires are mounted. I, of course, answered, "Yes,  
14 they're mounted on." I think he had a very cursory  
15 look at the tires, and I don't recall if he asked  
16 for permission to search the car or not, but I  
17 didn't oppose it anyway. So, he went on to search  
18 my car.

19 58 Q. All right. And, that's when he found  
20 the collectible coins; correct?

21 A. No.

22 59 Q. No. Okay.

23 A. That's when he found the receipt,  
24 which I believe was on the front -- either on the  
25 front seat of the car or -- on the passenger front  
26 seat or in the glove compartment.

27 60 Q. Okay. And then ---

28 A. And then ---

1 61 Q. Yes, what happened next?

2 A. And then when he came out, he

3 confronted me. He asked me whether I reported

4 everything, whether I want to change my story, and

5 then I said, "No, I have nothing further to report."

6 So, he showed me the receipt and said, "What's

7 this?" And, I told him, "This is currency that I

8 purchased and I do not have to report it."

9 62 Q. Okay.

10 A. And, I'm not reporting it.

11 63 Q. Okay. And then what happened next?

12 They searched the vehicle and found the coins?

13 A. No, the coins were in my pocket.

14 So ---

15 64 Q. Oh.

16 A. --- all he did is he asked me, "Where

17 are the coins," because at this point he only had

18 the receipt from the car. So, I, of course, had the

19 coins in my pocket, as I keep all money. I don't

20 keep money around the car. And, I showed him, I

21 gave him the coins. He took them, fondled them

22 quite a bit I would say -- I might say. I think he

23 was quite inexperienced with coins like this. Maybe

24 he was happy to have them in his hand, I don't know.

25 And then he proceeded to explain a few

26 times that they are goods, goods, goods. And, of

27 course, I told him that they are stated on the Mint

28 website and the U.S. law that they are currency and

1 legal tender.

2 65 Q. Okay.

3 A. After which he -- he was very  
4 confrontational. He was -- he took the stance --  
5 his stance was also very confrontational. He made  
6 me aware immediately that he was wearing -- or  
7 carrying a gun. Like, his gun was, of course, in  
8 his holster. He never drew his gun ---

9 66 Q. Right.

10 A. --- but he was facing me in such a  
11 way that he was -- it seemed to me, I'm not  
12 experienced with guns, but I was left with a feeling  
13 that he's ready to pull it.

14 67 Q. Right.

15 A. And, he also said that this is a very  
16 serious offence, and proceeded to explain that it is  
17 an arrestable offence. He mentioned that at least  
18 twice while outside ---

19 68 Q. Right.

20 A. --- that this was an arrest -- that  
21 -- I don't believe -- I don't know if he used the  
22 word "smuggling". I don't think he specifically  
23 said what the offence was; however, he did say it's  
24 an arrestable offence. He made it very clear that  
25 he could have arrested me right then and there.

26 69 Q. Okay. And, but -- so what happened  
27 next? At that point, did the conversation stop and  
28 he let you go or...?

1                   A. No, at that point, he went inside to  
2 check with his supervisor or to do paperwork. He  
3 ordered me to go to the -- inside the customs office  
4 again and wait on the bench.

5 70               Q. Okay.

6                   A. It was an order. He was yelling, at  
7 this point, at me. I went inside, I waited for him,  
8 it might have been maybe 15 minutes that I waited  
9 for him. I think he came back one more time to ask  
10 some questions about the coins. This was, of  
11 course, about -- this was more than two years  
12 ago ---

13 71              Q. Right.

14                  A. --- and keeping in mind that I didn't  
15 come to Canada to meet with you, so I didn't review  
16 any of my papers, I didn't bring any of my notes.  
17 I'm just recollecting memory that's two years old at  
18 this point.

19                  I believe my recollection is that he came  
20 out one more time, at which point I -- that's when,  
21 I believe, he told me that he would have to seize  
22 them, and that's when I asked him what he would do  
23 with them, what would happen with them, and  
24 that's, I believe, at the point, he said that they  
25 would be destroyed -- that I have to pay to get them  
26 back. He wouldn't tell me how much, he hadn't  
27 decided yet, but I asked him, "Who's going to  
28 decide?"

1 72 Q. Right.

2 A. And, he responded that he would be  
3 deciding. And, I asked him, "What happens if I  
4 don't pay?" Of course, I knew that I don't owe a  
5 penny since this do not have to be recorded --  
6 reported, so I did not have -- I did not expect I  
7 would have to pay anything to get my coins.

8 He said that if I do not pay his terms,  
9 that the coins would be destroyed after either 30  
10 days or 90 days. I don't recall the number he said,  
11 but he gave a specific number like that, a multiple  
12 of 30, and he said they would be destroyed if I  
13 don't pay after that time.

14 73 Q. Okay.

15 A. After that, he went back into his  
16 office to do more of paperwork or what he had to do.  
17 Finally, when he came out, he cleared with the -- he  
18 explained that he cleared with his supervisor that  
19 he would not be arresting me, that it is not, in  
20 fact, an arrestable offence as he had claimed  
21 earlier, but he would have to continue with his  
22 seizure paperwork.

23 74 Q. Okay. And then he gave you the  
24 seizure paperwork?

25 A. And then he gave me the seizure  
26 paperwork. I asked him a few questions when he  
27 asked me the seizure paperwork, which he admitted  
28 from his narrative report.

1 75 Q. Okay.

2 A. One specific question that I asked  
3 him, since I knew that these coins would be  
4 currency, I asked him -- and I knew there would be a  
5 limit according to the *Proceeds of Crime and*  
6 *Terrorist Financing Act*, there would be a limit up  
7 to which -- under which they don't have to be --  
8 currency does not have to be recorded, that is the  
9 \$10,000.00 limit.

10 So, then, I asked him, what if somebody  
11 were to come through the border with a suitcase of  
12 gold coins like these that he thinks are goods?  
13 Like, how would they have to be reported? And, he  
14 said, "As long as they pay the tax, as long as they  
15 report and pay the taxes, or the tax, then there's  
16 no problem. They're free to go. You can bring any  
17 amount," he said.

18 76 Q. Right.

19 A. Part of the paperwork that he gave me  
20 was not just a seizure report and the -- not just  
21 the seizure receipt and the terms, but also he gave  
22 me a printout of a tax demand. I believe he showed  
23 a tax rate of \$13.00 and he had quoted \$5,000.00  
24 worth of gold coins.

25 77 Q. Right.

26 A. And, he decided 13 percent would be  
27 the tax I would be assessed, and had I reported them  
28 according to the currency -- excuse me, to the

1       Customs Act, that is the tax I would have been -- I  
2       would have had to pay in order to sail through  
3       without further questions.

4   78           Q.    Okay. So, then ---

5               A.    And then I left.

6   79           Q.    Then you left? Okay.

7               A.    I believe I returned one more to ask  
8       whether -- this is just recollection. I believe I  
9       returned one more to ask whether he would, or  
10      whether the CBSA would ship me the coins when the  
11      matter is finally sorted out, and I believe he  
12      replied that they don't do -- that they don't ship,  
13      that I would have to return in person to pick them  
14      up.

15   80           Q.    Okay. Do you recall what day of the  
16      week was October 21<sup>st</sup> offhand?

17               A.    I do not.

18   81           Q.    Was it a week day or weekend?

19               A.    I do not.

20   82           Q.    Was the border crossing busy? Do you  
21      remember?

22               A.    No, it was completely not busy at  
23      all.

24   83           Q.    All right. Were you the only person  
25      that you saw being detained in the secondary  
26      inspection area?

27               A.    I have no idea who else was detained.  
28      There were a few people inside.

1 84 Q. All right. How long, approximately,  
2 were you at the border crossing from the time you  
3 pulled up for primary inspections to when you  
4 ultimately pulled away again? Was it half an hour,  
5 two hours, 10 hours...?

6 A. I believe -- no, I believe it was in  
7 the order of two hours.

8 85 Q. Two hours. All right. So, prior to  
9 pulling up and not declaring these coins, you had  
10 did some research, you mentioned. Did you consult  
11 with a lawyer or legal counsel?

12 A. No.

13 86 Q. All right. Did you contact my client  
14 to ask for their preliminary opinion?

15 A. I did not.

16 87 Q. All right. Did you discuss whether  
17 these coins would be declarable or not with anybody  
18 in the coin collecting industry in Canada or the  
19 U.S.?

20 A. I had read forums, internet forums of  
21 other people that have imported coins from the U.S.  
22 and from other countries, and I familiarized --  
23 based on the forum conversations, I familiarized  
24 myself with the import/export rules of currency at  
25 borders ---

26 88 Q. Right.

27 A. --- at various borders. That's how I  
28 learned that these coins are specifically minted by

1       the government as currency, so they can be imported  
2       or exported freely within the confines, of course,  
3       of the -- not the confines, but with the  
4       requirements, with the reporting requirements of the  
5       *Proceeds of Crime and Terrorist Financing Act.*

6 89           Q.     All right.

7           A.     Am I going to fast?

8 90           Q.     No. Was this -- this was not your  
9       first time crossing from Canada -- from the U.S.  
10      into Canada by car; correct? You have crossed the  
11      border previously?

12           A.     I do not remember exactly, but I  
13      believe so.

14 91           Q.     Okay. Have you ever been detained  
15      for a secondary inspection before or was this your  
16      first time?

17           A.     I believe I've been -- not detained,  
18      but had to undergo the secondary inspection one time  
19      on a trip by airplane, and I was arriving at  
20      Pearson.

21 92           Q.     Okay.

22           A.     And, I had to open the luggage,  
23      and...

24 93           Q.     But, not at a land border?

25           A.     I don't believe so.

26 94           Q.     Okay. Was there anyone else that you  
27      dealt with at the border on October 21<sup>st</sup> other than  
28      Officer Debski that you are complaining about in

1       this lawsuit? Is he the only officer?

2           A. Well, I personally only dealt with  
3       the reception officer that I first encountered when  
4       I first went into the office, then with Officer  
5       Debski and the cashier.

6 95       Q. Right.

7           A. I only interacted with three people  
8       -- four people including the first response -- the  
9       first line officer.

10 96       Q. Right. But, the only person that you  
11      have a complaint with Officer Debski?

12       A. I don't know at this point.

13 97       Q. Okay. So, if that changes, you'll  
14      let me know, but at this point in time, you're only  
15      talking about Officer Debski?

16       A. If that changes, it will be in my  
17      amended Statement of Claim.

18 98       Q. All right. All right. I think those  
19      are all my questions. Thank you for coming.

20       A. You're welcome. May I ask what part  
21      of this could not have been done in writing?

22 99       Q. The follow-up is intense. You can't  
23       -- the rule states you have a right to examine  
24       orally, and then if it ---

25       A. Yes ---

26 100       Q. --- doesn't pan out, then, whatever,  
27       but there's no way I can judge what you're going to  
28       say, and then, you know? It has to be done orally.

26

It takes the place of an examination in court, in front of a judge.

3                           A. All right. You have told me a lot of  
4 things I don't believe so -- but, that's fine.

5 101 Q. Okay.

6 A. That's fine. You realize ---

7 102 Q. We're done. We're done.

8

9 --- Upon adjourning at 10:21 a.m.

10

**C E R T I F I C A T I O N**

12

13 I, Jeanette Duda, a legal transcriber in the Province  
14 of Ontario, hereby certify the foregoing pages to be  
15 an accurate transcription of recordings to the best of  
16 my skill and ability, and I so swear.

17

18

19

20 Jeanette Duda, Legal Transcriber

21

22

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28

# TAB 20

## **CBSA Customs Officer's Manual, PCMLTFA procedures.**

- includes Part 2, Chapter 2, para 121, re: CBSA filtering info disclosed to FINTRAC
- Includes Part 2, Chapter 2, para 128, re: Counterfeit currency

**EN Part 2 Chapter 2**

**Cross-Border Currency and Monetary Instruments Reporting**

114. The court receiving the request must hear the appeal within 30 days of receiving the application.
115. It is the responsibility of the third party making the claim to serve notice of an application and of a hearing to the President, or an officer designated by the President (Adjudications Division).
116. When civil litigation becomes necessary, third party cases will be turned over to the Justice Department and the Adjudications Division will oversee and instruct legal counsel on the proceedings and will have the final say in the position taken by the CBSA in contesting a third party application.

Note: The applicant must prove that their interest in the currency was acquired in good faith prior to the contravention; that the applicant is innocent of any complicity resulting in the contravention; and that they exercised reasonable care to ensure that the currency would be reported.

117. On final forfeiture of currency and in accordance with the court order, the Adjudications Division on behalf of the President will instruct the Minister of Public Works and Government Services to return to the applicant any seized currency or monetary instruments or an amount calculated on the basis of their interest as declared in the court order.
118. Either the CBSA or the third party making the application may appeal an order made by the court.

**Disclosure by the CBSA**

119. Information obtained under the PCMLTFA is not CBSA information and has to be used and disclosed only as provided for under the PCMLTFA.
120. The exception to the disclosure of information is the forwarding of reports presented by individuals and entities to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
121. Officers may disclose information to FINTRAC if they have reasonable grounds to suspect that the information would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing.
122. Information obtained under the PCMLTFA may be used internally when it is relevant to the administration and enforcement of that Act, the *Customs Act* or in determining whether a person is a person described in sections 34 to

## Counterfeit Currency/Monetary Instruments

128. Counterfeit currency and monetary instruments are not considered legal tender and are therefore outside of the realm of the PCMLTFA. They should be processed as described in the Customs R-Memorandum 17-1-5.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

129. CBSA officers are responsible for:

- a) facilitating the reporting of currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA;
- b) seizing non-reported currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA, when appropriate;
- c) adhering to the personal search policy and procedures;
- d) exercising diligence, due care and comply with the relevant financial control policies, guidelines and procedures; and
- e) updating the appropriate checklist.

### CBSA Managers and Superintendents

130. CBSA managers and superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring breaches of this policy or procedures are dealt with accordingly;
- d) evaluating the reasonable grounds to suspect that currency or monetary instruments are proceeds of crime as presented by a CBSA officer;
- e) ensuring that the policies and procedures related to personal searches are adhered to by CBSA officer; and
- f) ensuring that the appropriate checklist has been completed.

# TAB 21

CBSA Annual Report, 2014-2015

# **Canada Border Services Agency**

**2014–15**

**Report on Plans and Priorities**

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The Honourable Steven Blaney, P.C., M.P.  
Minister of Public Safety and Emergency  
Preparedness

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represented by the Minister of Public Safety and Emergency Preparedness, 2014

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website at <http://www.cbsa-asfc.gc.ca>

This document is available in alternative formats upon request.

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## 2014-15 ESTIMATES

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### PART III – Departmental Expenditure Plans: Reports on Plans and Priorities

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#### **Purpose**

Reports on Plans and Priorities (RPP) are individual expenditure plans for each department and agency. These reports provide increased levels of detail over a three-year period on an organization's main priorities by strategic outcome, program and planned/expected results, including links to related resource requirements presented in the Main Estimates. In conjunction with the Main Estimates, Reports on Plans and Priorities serve to inform members of Parliament on planned expenditures of departments and agencies, and support Parliament's consideration of supply bills. The RPPs are typically tabled soon after the Main Estimates by the President of the Treasury Board.

#### **Estimates Documents**

The Estimates are comprised of three parts:

Part I - Government Expenditure Plan - provides an overview of the Government's requirements and changes in estimated expenditures from previous fiscal years.

Part II - Main Estimates - supports the appropriation acts with detailed information on the estimated spending and authorities being sought by each federal organization requesting appropriations.

In accordance with Standing Orders of the House of Commons, Parts I and II must be tabled on or before March 1.

Part III - Departmental Expenditure Plans - consists of two components:

- Report on Plans and Priorities (RPP)
- Departmental Performance Report (DPR)

DPRs are individual department and agency accounts of results achieved against planned performance expectations as set out in respective RPPs.

The DPRs for the most recently completed fiscal year are tabled in the fall by the President of the Treasury Board.

Supplementary Estimates support Appropriation Acts presented later in the fiscal year. Supplementary Estimates present information on spending requirements that were either not sufficiently developed in time for inclusion in the Main Estimates or have subsequently been refined to account for developments in particular programs and services. Supplementary Estimates also provide information on changes to expenditure forecasts of major statutory items as well as on such items as: transfers of funds between votes; debt deletion; loan guarantees; and new or increased grants.

For more information on the Estimates, please consult the [Treasury Board Secretariat website](#).<sup>i</sup>

### **Links to the Estimates**

As shown above, RPPs make up part of the Part III of the Estimates documents. Whereas Part II emphasizes the financial aspect of the Estimates, Part III focuses on financial and non-financial performance information, both from a planning and priorities standpoint (RPP), and an achievements and results perspective (DPR).

The Management Resources and Results Structure (MRRS) establishes a structure for display of financial information in the Estimates and reporting to Parliament via RPPs and DPRs. When displaying planned spending, RPPs rely on the Estimates as a basic source of financial information.

Main Estimates expenditure figures are based on the Annual Reference Level Update which is prepared in the fall. In comparison, planned spending found in RPPs includes the Estimates as well as any other amounts that have been approved through a Treasury Board submission up to February 1<sup>st</sup> (See Definitions section). This readjusting of the financial figures allows for a more up-to-date portrait of planned spending by program.

### **Changes to the presentation of the Report on Plans and Priorities**

Several changes have been made to the presentation of the RPP partially to respond to a number of requests – from the House of Commons Standing Committees on Public Accounts (PAC - [Report 15](#)<sup>ii</sup>), in 2010; and on Government and Operations Estimates (OGGO - [Report 7](#)<sup>iii</sup>), in 2012 – to provide more detailed financial and non-financial performance information about programs within RPPs and DPRs, thus improving the ease of their study to support appropriations approval.

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<sup>ii</sup> Canada Border Services Agency

- In Section II, financial, human resources and performance information is now presented at the Program and Sub-program levels for more granularity.
- The report’s general format and terminology have been reviewed for clarity and consistency purposes.
- Other efforts aimed at making the report more intuitive and focused on Estimates information were made to strengthen alignment with the Main Estimates.

## **How to read this document**

RPPs are divided into four sections:

### Section I: Organizational Expenditure Overview

This Organizational Expenditure Overview allows the reader to get a general glance at the organization. It provides a description of the organization’s purpose, as well as basic financial and human resources information. This section opens with the new Organizational Profile, which displays general information about the department, including the names of the minister and the deputy head, the ministerial portfolio, the year the department was established, and the main legislative authorities. This subsection is followed by a new subsection entitled Organizational Context, which includes the *Raison d’être*, the Responsibilities, the Strategic Outcomes and Program Alignment Architecture, the Organizational Priorities and the Risk Analysis. This section ends with the Planned Expenditures, the Alignment to Government of Canada Outcomes, the Estimates by Votes and the Contribution to the Federal Sustainable Development Strategy. It should be noted that this section does not display any non-financial performance information related to programs (please see Section II).

### Section II: Analysis of Program(s) by Strategic Outcome(s)

This Section provides detailed financial and non-financial performance information for strategic outcomes, Programs and sub-programs. This section allows the reader to learn more about programs by reading their respective description and narrative entitled “Planning Highlights”. This narrative speaks to key services or initiatives which support the plans and priorities presented in Section I; it also describes how performance information supports the department’s strategic outcome or parent program.

### Section III: Supplementary Information

This section provides supporting information related to departmental plans and priorities. In this section, the reader will find future-oriented statement of operations and a link to supplementary information tables regarding transfer payments, as well as information related to the greening government operations, internal audits and evaluations, horizontal initiatives, user fees, major crown and transformational projects, and up-front multi-year funding, where applicable to individual organizations. The reader will also find a link to the *Tax Expenditures and Evaluations*, produced annually by the Minister of Finance, which provides estimates and projections of the revenue impacts of federal tax measures designed to support the economic and social priorities of the Government of Canada.

### Section IV: Organizational Contact Information

In this last section, the reader will have access to organizational contact information.

#### **Definitions**

##### *Appropriation*

Any authority of Parliament to pay money out of the Consolidated Revenue Fund.

##### *Budgetary Vs. Non-budgetary Expenditures*

Budgetary expenditures – operating and capital expenditures; transfer payments to other levels of government, organizations or individuals; and payments to crown corporations.

Non-budgetary expenditures – net outlays and receipts related to loans, investments and advances, which change the composition of the financial assets of the Government of Canada.

##### *Expected Result*

An outcome that a program is designed to achieve.

##### *Full-Time Equivalent (FTE)*

A measure of the extent to which an employee represents a full person-year charge against a departmental budget. FTEs are calculated as a ratio of assigned hours of work to scheduled hours of work. Scheduled hours of work are set out in collective agreements.

##### *Government of Canada Outcomes*

A set of high-level objectives defined for the government as a whole.

*Management Resources and Results Structure (MRRS)*

A common approach and structure to the collection, management and reporting of financial and non-financial performance information.

An MRRS provides detailed information on all departmental programs (e.g.: program costs, program expected results and their associated targets, how they align to the government's priorities and intended outcomes, etc.) and establishes the same structure for both internal decision making and external accountability.

*Planned Spending*

For the purpose of the RPP, planned spending refers to those amounts for which a Treasury Board (TB) submission approval has been received by no later than February 1, 2014. This cut-off date differs from the Main Estimates process. Therefore, planned spending may include amounts incremental to planned expenditure levels presented in the 2014-15 Main Estimates.

*Program*

A group of related resource inputs and activities that are managed to meet specific needs and to achieve intended results, and that are treated as a budgetary unit.

*Program Alignment Architecture*

A structured inventory of a department's programs, where programs are arranged in a hierarchical manner to depict the logical relationship between each program and the Strategic Outcome(s) to which they contribute.

*Spending Areas*

Government of Canada categories of expenditures. There are [four spending areas](#)<sup>iv</sup> (social affairs, economic affairs, international affairs and government affairs) each comprised of three to five Government of Canada outcomes.

*Strategic Outcome*

A long-term and enduring benefit to Canadians that is linked to the department's mandate, vision, and core functions.

*Sunset Program*

A time-limited program that does not have on-going funding or policy authority. When the program is set to expire, a decision must be made as to whether to continue the program. (In the case of a renewal, the decision specifies the scope, funding level and duration).

*Whole-of-Government Framework*

A map of the financial and non-financial contributions of federal organizations receiving appropriations that aligns their Programs to a set of high level outcome areas defined for the government as a whole.

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## Minister's Message



As Minister of Public Safety and Emergency Preparedness, it is my pleasure to present to Parliament the *2014–15 Report on Plans and Priorities* for the Canada Border Services Agency (CBSA).

Every day, CBSA officers help ensure that Canada's border is both safe and effective. They prevent guns, drugs, illegal immigrants and terrorists from entering the country. But they also work with business to ensure the smooth movement of travel and trade. CBSA officers deal daily with over 275,000 law-abiding travellers, and nearly \$1.5 billion of commercial goods.

For 10 years now, the CBSA has been on the front lines of Canada's fight for security and has helped ensure our prosperity. In that time, it has evolved into a fully integrated border services organization that strives for continuous improvement in all facets of border management.

As the Minister responsible for the CBSA, I am proud of the work done by the men and women of the CBSA and I look forward to another year of excellent service.

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The Honourable Steven Blaney, P.C., M.P.  
Minister of Public Safety and Emergency Preparedness



## Section I: Organizational Expenditure Overview

### Organizational Profile

**Minister:** The Honourable Steven Blaney, P.C., M.P.

**Deputy Head:** Mr. Luc Portelance

**Ministerial portfolio:** Public Safety and Emergency Preparedness

**Year established:** 2003

**Main legislative authorities:** *Canada Border Services Agency Act; Public Safety and Emergency Preparedness Act*

## Organizational Context

### Raison d'être

The CBSA provides integrated border services that support national security priorities and facilitate the flow of people and goods across the border.

### Responsibilities

The CBSA is an integral part of the Public Safety Portfolio, which is responsible for integrated national security, emergency management, law enforcement, corrections, crime prevention and border management operations. Specific responsibilities include the following:

- administering legislation that governs the admissibility of people and goods into and out of Canada;
- identifying, detaining, and removing people who are inadmissible to Canada;
- interdicting illegal goods at Canada's border;
- protecting food safety, plant and animal health, and Canada's resource base;
- administering trade legislation and agreements, including the enforcement of trade remedies that protect Canadian industry;
- administering a fair and impartial redress mechanism; and
- collecting duties and taxes on imported goods.

Examples of Acts Administered by the CBSA	CBSA Service Locations
<ul style="list-style-type: none"><li>▪ <i>Agriculture and Agri-Food Administrative Monetary Penalties Act</i></li><li>▪ <i>Canada Border Services Agency Act</i></li><li>▪ <i>Citizenship Act</i></li><li>▪ <i>Criminal Code</i></li><li>▪ <i>Customs Act</i></li><li>▪ <i>Customs Tariff</i></li><li>▪ <i>Excise Act</i></li><li>▪ <i>Excise Tax Act</i></li><li>▪ <i>Export and Import Permits Act</i></li><li>▪ <i>Food and Drugs Act</i></li><li>▪ <i>Health of Animals Act</i></li><li>▪ <i>Immigration and Refugee Protection Act</i></li><li>▪ <i>Plant Protection Act</i></li><li>▪ <i>Special Import Measures Act</i></li></ul>	<p>The CBSA provides services at multiple points across Canada and abroad, including the following:</p> <ul style="list-style-type: none"><li>▪ 117 land border crossings</li><li>▪ 73 sufferance warehouses</li><li>▪ 27 rail offices</li><li>▪ 225 airports</li><li>▪ 439 marine reporting sites</li><li>▪ 12 ferry terminals</li><li>▪ 10 cruise ship operations</li><li>▪ 218 commercial vessel clearance facilities</li><li>▪ 3 mail processing centres</li><li>▪ 48 international offices</li></ul>

## Strategic Outcome and Program Alignment Architecture (PAA)

**1 Strategic Outcome:** International trade and travel is facilitated across Canada's border and Canada's population is protected from border-related risks

**1.1 Program:** Risk Assessment

- 1.1.1 Sub-program:** Intelligence
- 1.1.2 Sub-program:** Targeting
- 1.1.3 Sub-program:** Security Screening

**1.2 Program:** Secure and Trusted Partnerships

- 1.2.1 Sub-program:** Trusted Traveller
- 1.2.2 Sub-program:** Trusted Trader

**1.3 Program:** Admissibility Determination

- 1.3.1 Sub-program:** Highway Mode
- 1.3.2 Sub-program:** Air Mode
- 1.3.3 Sub-program:** Rail Mode
- 1.3.4 Sub-program:** Marine Mode
- 1.3.5 Sub-program:** Postal
- 1.3.6 Sub-program:** Courier Low Value Shipment

**1.4 Program:** Criminal Investigations

**1.5 Program:** Immigration Enforcement

- 1.5.1 Sub-program:** Immigration Investigation
- 1.5.2 Sub-program:** Detentions
- 1.5.3 Sub-program:** Immigration Hearings
- 1.5.4 Sub-program:** Removals

**1.6 Program:** Recourse

**1.7 Program:** Revenue and Trade Management

- 1.7.1 Sub-program:** Anti-dumping and Countervailing
- 1.7.2 Sub-program:** Trade Policy
- 1.7.3 Sub-program:** Trade Compliance

### Internal Services

## Organizational Priorities

### Organizational Priorities

Priority	Type	Programs
<b>Secure the Border Strategically</b>	New	Risk Assessment Secure and Trusted Partnerships Admissibility Determination Criminal Investigations Immigration Enforcement
<b>Description</b>		
<p><b>Why is this a priority?</b></p> <p>The timely use of high-quality information coupled with fully implementing an integrated approach to the management of border-related risks to enable better enforcement results are key for the Agency's success in protecting Canada's population throughout the border continuum. This approach to border management has allowed the CBSA to effectively partner with its United States (U.S.) counterparts through Beyond the Border Action Plan initiatives to further strengthen border security, promote economic competitiveness and facilitate the movement of low-risk travellers and goods.</p> <p><b>What are the plans for meeting this priority?</b></p> <p>The CBSA will continue to enhance its ability to risk assess, determine admissibility, investigate criminal activities, and enforce immigration. To ensure that the border remains strategically secured for both the traveller and commercial streams, the CBSA will continue to implement the Beyond the Border Action Plan.</p> <p>Strengthening the Agency's ability to intercept inadmissible people by continuing to modernize the tasks it uses to manage risks away from the border will include the following highlights:</p> <ul style="list-style-type: none"> <li>• A common approach to screening travellers prior to their departure to Canada will be used and Advance Passenger Information/Passenger Name Record (API/PNR) compliance and data quality will be improved.</li> <li>• The integration of the CBSA's intelligence, criminal investigations, and inland enforcement responsibilities will be enhanced to leverage commonalities and improve decision making to achieve greater efficiency, effectiveness and results.</li> <li>• The CBSA will constantly monitor and assess the effectiveness and impact of <i>Protecting Canada's Immigration System Act</i>, including initiatives that support the Government of Canada's reform of the refugee determination system.</li> </ul> <p>Through the commercial business stream, the Agency will maintain its high operational standards while striving to build upon a solid commitment to improve facilitation without compromising security. In doing so, the CBSA will continue to capitalize on existing partnerships to improve the facilitation of goods across the border for Canadians and stakeholders while employing effective tools to determine admissibility.</p> <p>The complexity and broad scope of the Agency's mandate often require solutions that touch upon both commercial and traveller streams. In responding to this organizational reality, the Agency will:</p>		

- Continue the implementation of the National Targeting Business Model.
- Continue to support finalization of a new agreement with the U.S. to cover land, marine and rail pre-clearance.
- Continue to implement the Advance Commercial Information (ACI) requirements for cargo, conveyance, crew, and importer advance trade data to facilitate the risk assessment of shipments before arrival in Canada (eManifest).

Priority	Type	Programs
<b><i>Streamline and Simplify the Border Experience</i></b>	New	Risk Assessment Secure and Trusted Partnerships Admissibility Determination Recourse Revenue and Trade Management
Description		
<b>Why is this a priority?</b>		
<p>The CBSA remains committed to strengthening the Agency's ability to minimize delays for low-risk travellers and goods while optimizing measures to intercept inadmissible goods and people in all modes of travel. By leveraging modern technology and smart information processes, the CBSA will continue to efficiently manage increasing traveller and commercial volumes, as well as improve service for Canadians.</p>		
<b>What are the plans for meeting this priority?</b>		
<p>The CBSA will enhance the benefits of trusted programs that help trusted businesses and travellers move efficiently across the border.</p> <p>In addition, the CBSA will continue to strive for client service excellence through the following:</p> <ul style="list-style-type: none"> <li>• Jointly plan investments and enhance client service along the Canada–U.S. border under the Beyond the Border Action Plan.</li> <li>• Continue the expansion of Automated Border Clearance to facilitate the entry of returning Canadian Citizens.</li> <li>• Continue to modernize and optimize systems and processes that support the assessment and collection of importer revenues, and reporting on revenue information and trade data, under the CBSA Assessment and Revenue Management (CARM) project.</li> <li>• Ensure that Canadian importers have ready access to information about Canada's trade legislation, regulations and policies in order to promote self-compliance.</li> <li>• Implement the Recourse Modernization Initiative (RMI) to ensure the Agency's recourse functions are streamlined and have a focus on client service.</li> </ul> <p>Working internationally remains important in continuing the development and implementation of regulations and systems to meet World Customs Organization and the World Trade Organization standards as well as the commitments made under the Beyond the Border Action Plan for Low Value Shipments.</p>		

<b>Priority</b>	<b>Type</b>	<b>Programs</b>
<b><i>Advance Global Border Management</i></b>	New	Risk Assessment Secure and Trusted Partnerships Revenue and Trade Management
<b>Description</b>		
<p><b>Why is this a priority?</b></p> <p>International trade growth and global migration are best dealt with by leveraging solid relationships with key international partners. Through bilateral relations and engagement through multilateral fora, the CBSA will exchange information and intelligence, align processes to achieve greater efficiencies, mutual goals, objectives, and capitalize on opportunities to exchange and implement best practices, as well as conducting capacity-building projects with partner countries.</p> <p><b>What are the plans for meeting this priority?</b></p> <p>The CBSA will focus efforts beyond Canadian borders by:</p> <ul style="list-style-type: none"> <li>• Building and maintaining effective international partnerships through the CBSA's International Network.</li> <li>• Strengthening international relationships with border management agencies, administrations and organizations to promote facilitation and security for trade and travel.</li> <li>• Supporting the Government of Canada's free trade negotiations.</li> </ul>		

<b>Priority</b>	<b>Type</b>	<b>Program</b>
<b><i>Strengthen Organizational Resilience</i></b>	New	Internal Services
<b>Description</b>		

**Why is this a priority?**

A motivated, knowledgeable and innovative workforce is crucial at the CBSA to provide excellent frontline service delivery. The CBSA will continue to strengthen its organizational resilience in order to deliver on its mandate in a timely basis and maintain the confidence of Canadians and stakeholders.

**What are the plans for meeting this priority?**

The Agency will continue to strive for:

- Well-designed and agile business – Employing efficient and effective business models that align with strategic priorities and available resources to achieve Agency goals.
- Frontline service delivery – Entrenching service excellence across the spectrum of border services provided by the Agency.
- Modern, responsive and enabling infrastructure – Maintaining modern technologies, information systems and physical assets to increase productivity and improve decision making.
- Employee excellence – Ensuring a motivated, knowledgeable and innovative workforce that continually improves border integrity and security.

In 2013, the Agency successfully completed its Change Agenda Initiative: a four-year plan to modernize enterprise management and improve program delivery. Mindful of changing business requirements, the CBSA's senior management reset the Agency's strategic priorities. Ensuring alignment with Government of Canada priorities, an Agency-wide internal process was launched and a revised set of four strategic priorities was established:

- To secure the border strategically;
- To streamline and simplify the border experience;
- To advance global border management;
- To strengthen organizational resilience.

Building upon the three strategic priorities that have guided Agency business since fiscal year 2011-12: 1) Implement the Beyond the Border Agreement with the United States; 2) Modernize the Agency's business; and 3) Implement the Change Agenda, these strengthened strategic priorities will allow the Agency to maintain its high operational standards. The major initiatives that fell under the former strategic priorities such as eManifest, Entry-Exit, CBSA Assessment and Revenue Management (CARM), and Postal Modernization, will all continue under the new strategic priorities.

## Risk Analysis

### Key Risks

The Agency works to achieve its strategic outcome in a complex and dynamic operating environment, driven largely by factors beyond its control. Current global economic rebalancing, international trade, human migration, dynamic travel patterns, advancements in information technology, and changing workforce entail risks to which the CBSA will be responding in the coming years. Integrating risk management practices allow the CBSA to achieve its priorities to secure the border strategically, streamline and simplify the border experience, and advance global border management.

The CBSA faces various risks, many of which remain present from year to year, in pursuing its strategic outcome. However, variances in risk exposure levels can be observed due to changes in the nature of the risk drivers as well as efforts made to strengthen or add control. The table below identifies three of the Agency's top risks, as evaluated by senior management and found in the CBSA Enterprise Risk Profile: the Agency's overarching, enterprise-level risk document. The risk response strategies presented include activities that are ongoing or planned for 2014–15 to help mitigate these risks.

Risk	Risk Response Strategy	Link to PAA*
<p>Contraband</p> <p>The risk that commercial quantities of contraband will enter or transit Canada.</p>	<ul style="list-style-type: none"> <li>• Passenger information system enhancements and scenario-based targeting: A three-step phased approach to enhance targeting scenarios through system and program improvements.</li> <li>• Advance information compliance monitoring and data quality improvements: Multiple activities ongoing to systematically monitor Advance Commercial Information and Advance Passenger Information / Passenger Name Record to develop strategies to improve compliance.</li> <li>• Postal Modernization Initiative: The implementation of a postal risk assessment framework to allow for pre-arrival data to be risk assessed; improved process flows; and enhanced application of detection technology.</li> </ul>	<ul style="list-style-type: none"> <li>• Risk Assessment</li> <li>• Admissibility Determination</li> </ul>
<p>Terrorist Activities</p> <p>The risk that individuals/groups with links to terrorism, or materials to support terrorist activities, will</p>	<ul style="list-style-type: none"> <li>• Passenger information system enhancements and scenario-based targeting: A three-step phased approach to enhance targeting scenarios through system and program improvements.</li> <li>• Risk rules and indicators for commercial goods: Increased flexibility to input, refine or remove targeting indicators for commercial goods.</li> <li>• Advance information compliance monitoring and data</li> </ul>	<ul style="list-style-type: none"> <li>• Risk Assessment</li> <li>• Admissibility Determination</li> </ul>

enter, exit, or transit Canada.	quality improvements: Multiple activities ongoing to systematically monitor Advance Commercial Information and Advance Passenger Information / Passenger Name Record to develop strategies to improve compliance.	
IT Systems  The risk that IT systems will not enable current and future business activities.	<ul style="list-style-type: none"> <li>• Continue to support and implement Beyond the Border Action Plan technology projects.</li> <li>• Continue the decommissioning of aging and legacy business applications, including the replacement of aging revenue and cash management systems under CARM.</li> <li>• Leverage alternate forms of service delivery and third-party fully managed service delivery for services that can be better managed outside the Agency.</li> </ul>	• Internal Services

\* Some risks are linked to additional programs of the Program Alignment Architecture. This table identifies the programs with the greatest linkages to the risk.

### Descriptions of Key Risks:

Contraband: Over the past two decades, cross-border organized crime such as drug trafficking, currency trafficking and the illegal movement of firearms, tobacco and vehicles has become increasingly sophisticated and presents enforcement complexity as it reaches beyond national jurisdictions. Ongoing collaboration with law enforcement partners, the use of automated targeting systems, and the work accomplished by a variety of enforcement teams are examples of controls in place to help reduce the Contraband risk. However, the fact that the number and quantity of drug seizures has been climbing in recent years has led to the determination that the level of exposure to the contraband risk has increased from previous years.

Terrorist Activities: Terrorism is recognized as a national security threat to Canada. Canada has been identified as a target by certain extremist groups and it is home to sympathizers and affiliates of trans-national terrorist entities. The existence of 'insider threats' has been identified as an emerging national security trend. The overseas detection work of CBSA liaison officers, heightened screening of CBSA personnel, as well as improved targeting capacity as a result of the implementation of the National Targeting Centre are a few of the current controls that contribute to mitigating the Terrorist Activities risk. However, there is a need for continued vigilance as the occurrence of a terrorist act either in or associated with Canada would have major repercussions.

IT Systems: The CBSA's business is increasingly dependent on the use of various forms of technology. To keep pace with evolving business needs and technology, the Agency requires planned and ongoing investments in systems and tools. As such, the Agency continues to invest with its service provision partners to ensure current and future business activities are supported on a 24/7 basis.

## Planned Expenditures

### Budgetary Financial Resources (Planned Spending—dollars)

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
1,736,391,109	1,736,391,109	1,654,565,664	1,556,684,904

### Human Resources (Full-time equivalents—FTEs)

2014–15	2015–16	2016–17
13,751	13,600	13,421

**Budgetary Planning Summary for Strategic Outcome and Program(s) (dollars)**

<b>Strategic Outcome, Programs and Internal Services</b>	<b>2011–12 Expenditures</b>	<b>2012–13 Expenditures</b>	<b>2013–14 Forecast Spending</b>	<b>2014–15 Main Estimates</b>	<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
<b>Strategic Outcome: International trade and travel is facilitated across Canada's border and Canada's population is protected from border-related risks</b>							
Risk Assessment	117,258,228	121,511,557	118,505,011	155,301,134	155,301,134	140,296,656	140,608,297
Secure and Trusted Partnerships	33,246,592	31,564,355	37,789,844	42,062,245	42,062,245	41,432,038	40,635,411
Admissibility Determination	582,713,148	586,293,558	700,470,363	681,725,979	681,725,979	647,713,847	594,877,995
Criminal Investigations	27,184,823	26,441,935	30,818,340	23,391,775	23,391,775	23,391,775	23,391,775
Immigration Enforcement	150,516,396	150,469,520	166,982,682	164,911,279	164,911,279	158,549,531	138,751,772
Recourse	12,674,105	11,118,094	11,723,366	9,832,518	9,832,518	9,832,518	9,832,518
Revenue and Trade Management	75,965,178	73,463,331	82,036,107	73,918,165	73,918,165	69,117,374	66,928,881
<b>Strategic Outcome Subtotal</b>	<b>999,558,470</b>	<b>1,000,862,350</b>	<b>1,148,325,713</b>	<b>1,151,143,095</b>	<b>1,151,143,095</b>	<b>1,090,333,739</b>	<b>1,015,026,649</b>
<b>Internal Services Subtotal</b>	<b>835,738,480</b>	<b>706,493,658</b>	<b>769,401,557</b>	<b>585,248,014</b>	<b>585,248,014</b>	<b>564,231,925</b>	<b>541,658,255</b>
<b>Total</b>	<b>1,835,296,950</b>	<b>1,707,356,008</b>	<b>1,917,727,270</b>	<b>1,736,391,109</b>	<b>1,736,391,109</b>	<b>1,654,565,664</b>	<b>1,556,684,904</b>

The 2013–14 forecasted spending is higher than the 2013–14 Main Estimates of \$1,680 million due to additional funding received during the year through supplementary estimates for delivering the Beyond the Border Action Plan. The planned spending from 2014–15 to 2016–17 does not reflect any supplementary funding and carry forward adjustments.

The 2014–15 Main Estimates of \$1,736 million represents an increase of \$56 million or 3% from the 2013–14 Main Estimates, mainly as a result of new initiatives under the Beyond the Border Action Plan.

In 2015–16, the planned spending will decrease by \$81.8 million compared with the previous year. The major contributing factors for this decrease are the completion of the eManifest project

(\$31.3 million) and Postal Modernization (\$7.1 million). In addition, the project definition phase for the CARM project will be completed resulting in a reduction of funding in 2015–16 (\$12.7 million). The reduction is also attributable to the Agency delivering on core commitments set out in the Beyond the Border Action Plan. In particular, the Integrated Cargo Security Initiative (\$15.1 million) will have completed the marine container examination facility in Vancouver. The Entry/Exit Initiative (\$8.9 million) will have implemented the Entry/Exit information systems to facilitate the exchange of data between Canada and the U.S.

The planned spending in 2016–17 decreases by \$97.9 million compared to 2015–16. A large portion of the reduction is attributed to the following items: Arming of Border Services Officers (\$49.8 million), Refugee Reform (\$10.3 million), 2015 Pan and Parapan American Games (\$4.6 million), and activities associated with cessation and vacation of refugee claims related to *Protecting Canada's Immigration System Act* (\$4.5 million). The reduction is also attributable to the Agency delivering on core commitments set out in the Beyond the Border Action Plan by 2015–16. Efficiency gains due to the implementation of Postal Modernization will return \$5.2 million to the consolidated revenue fund.

The CBSA has completed a review of its FTE, budget allocation and expenditures for Internal services. The preliminary findings demonstrate that some expenditures reported under Internal services should be budgeted and charged to other program activities. Adjustments to Estimates documents will be made in the future to reflect the findings. Noticeable changes will be seen in the 2013–14 Departmental Performance Report, while the planned spending by Program will be updated as part of the 2015–16 Report on Plans and Priorities and 2015–16 Main Estimates.

## Alignment to Government of Canada Outcomes

### 2014–15 Planned Spending by Whole-of-Government-Framework Spending Area<sup>v</sup> (dollars)

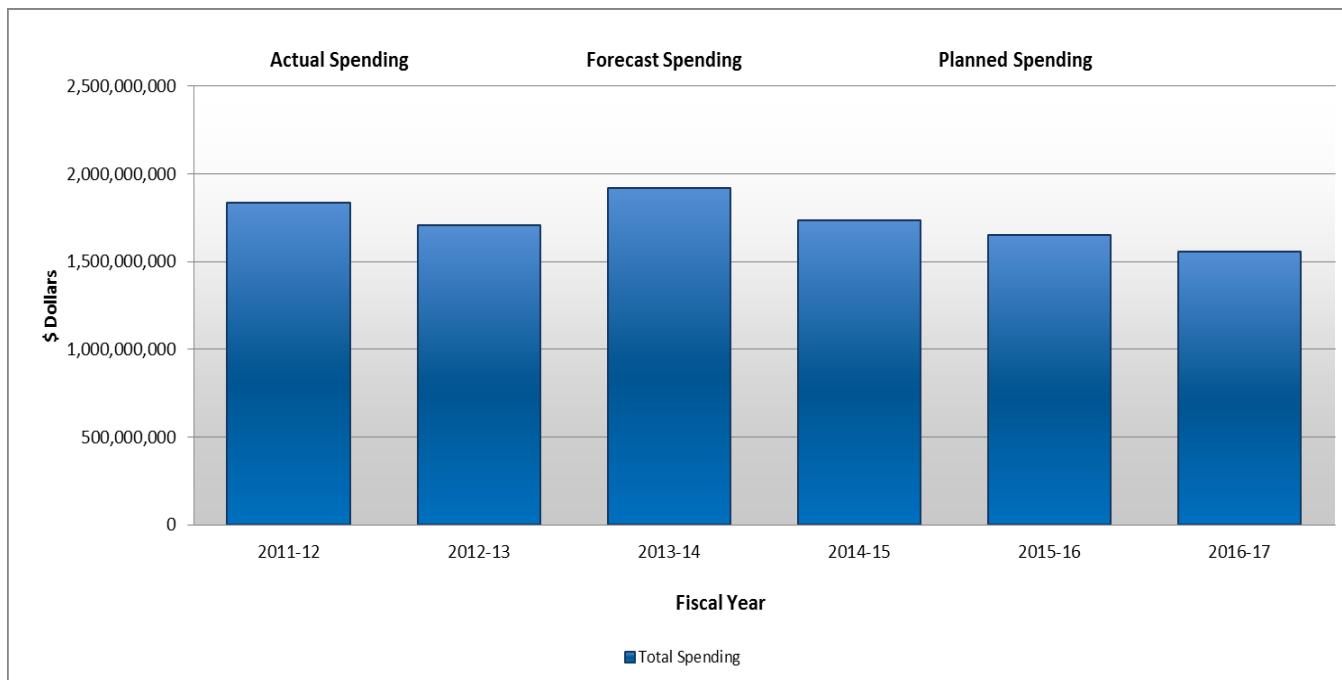
Strategic Outcome	Program	Spending Area	Government of Canada Outcome	2014–15 Planned Spending
International trade and travel is facilitated across Canada's border and Canada's population is protected from border-related risks	Risk Assessment	International Affairs	<a href="#">A safe and secure world through international engagement</a>	155,301,134
	Secure and Trusted Partnerships	International Affairs	<a href="#">A safe and secure world through international engagement</a>	42,062,245
	Admissibility Determination	Social Affairs	<a href="#">A safe and secure Canada</a>	681,725,979
	Criminal Investigations	Social Affairs	<a href="#">A safe and secure Canada</a>	23,391,775
	Immigration Enforcement	Social Affairs	<a href="#">A safe and secure Canada</a>	164,911,279
	Recourse	Economic Affairs	<a href="#">A fair and secure marketplace</a>	9,832,518
	Revenue and Trade Management	Economic Affairs	<a href="#">A fair and secure marketplace</a>	73,918,165

### Total Planned Spending by Spending Area (dollars)

Spending Area	Total Planned Spending
Economic Affairs	83,750,683
Social Affairs	870,029,033
International Affairs	197,363,379
Government Affairs	-

## Departmental Spending Trend

### Departmental Spending Trend Graph



The CBSA total actual spending has decreased from \$1,835 million in 2011–2012 to \$1,707 million in 2012–13. This decrease is mainly attributed to the CBSA’s contribution to the Government of Canada’s commitment in Budget 2011 to deliver a balanced budget, as well as reduced spending as a result of the creation of Shared Services Canada.

The CBSA increase in spending from 2012–13 to 2013–14 is mainly due to the delivery on core commitments set out in the Beyond the Border Action Plan. This Plan establishes a new long-term partnership built upon a perimeter approach to security and economic competitiveness with the U.S. The CBSA has also increased its forecasted spending to account for collective agreement impacts for the tentative agreement signed between Treasury Board and the Public Service Alliance of Canada for the Border Services Group.

The CBSA planned spending will decrease beginning in 2014–15 and following years mainly due to the planned reduction in funding requirements for initiatives included in the Beyond the Border Action Plan. The CBSA will continue to undertake its transformation agenda and focus on improving effectiveness and funding efficiencies to be more agile in responding to the changing economic climate.

## Estimates by Vote

For information on the CBSA's organizational appropriations, please see the [2014–15 Main Estimates publication](#).<sup>vi</sup>

## Contribution to the Federal Sustainable Development Strategy (FSDS)

The [2013-16 Federal Sustainable Development Strategy \(FSDS\)](#)<sup>vii</sup>, tabled on November 4, 2013, guides the Government of Canada's 2013–16 sustainable development activities. The FSDS articulates Canada's federal sustainable development priorities for a period of three years, as required by the *Federal Sustainable Development Act*.

The CBSA contributes to Theme III - Protecting Nature and Canadians, and Theme IV - Shrinking the Environmental Footprint – Beginning with Government as denoted by the visual identifiers below. These contributions are components of the following programs and sub-programs and are further explained in Section II:

SUSTAINABLE DEVELOPMENT THEME	PROGRAM ACTIVITY	SUB-PROGRAM ACTIVITIES
 <b>Theme III</b> Protecting Nature	Admissibility Determination	<ul style="list-style-type: none"> <li>• Highway Mode</li> <li>• Air Mode</li> <li>• Rail Mode</li> <li>• Marine Mode</li> </ul>
 <b>Theme IV</b> Shrinking the Environmental Footprint - Beginning with Government	Internal Services	<ul style="list-style-type: none"> <li>• Resource Management Services</li> <li>• Asset Management Services</li> </ul>

The CBSA also ensures that its decision-making process includes a consideration of the FSDS goals and targets through the strategic environmental assessment (SEA). An SEA for policy, plan or program proposals includes an analysis of the impacts of the proposal on the environment, including on the FSDS goals and targets. The results of SEAs are made public when an initiative is announced or approved, demonstrating that environmental factors were integrated into the decision-making process.

For additional details on the CBSA's activities to support sustainable development, please see Section II of this RPP and the Agency's [Sustainable Development Strategy 2014–2017](#)<sup>viii</sup>. For complete details on the federal strategy, please see Environment Canada's [sustainable development](#)<sup>ix</sup> website.



## **Section II: Analysis of Programs by Strategic Outcome**

Strategic Outcome:

*International trade and travel is facilitated across Canada's border and Canada's population is protected from border-related risks.*

## Program 1.1: Risk Assessment

### Description:

The Risk Assessment Program “pushes the border out” by seeking to identify high-risk people, goods and conveyances as early as possible in the travel and trade continuum to prevent inadmissible people and goods from entering Canada. This benefits the travelling public and the trade community by enabling the Agency to focus its examination and interdiction activities on high-risk people and goods, thereby facilitating the entry of low-risk travellers and goods. The Agency uses automated risk assessment systems and intelligence to identify potential risks to the security and safety of people and goods.

### Budgetary Financial Resources (dollars)

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
155,301,134	155,301,134	140,296,656	140,608,297

### Human Resources (FTEs)

2014–15	2015–16	2016–17
1,084	1,073	1,076

### Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Potential threats to the safety and security of Canada, such as inadmissible goods and people, are identified, assessed and intercepted prior to arrival	Percentage of threats that led to an enforcement action or admissibility recommendation	18%	03/2015

## Planning Highlights

### **Key Commitment: Continue to modernize the tools it uses to manage risks away from the border**

Related Organizational Priority: Secure the Border Strategically

The Agency will continue to prioritize intelligence and targeting activities that prevent high-risk goods and people from gaining access to Canada. Key initiatives such as Interactive Advance Passenger Information under the Beyond the Border Action Plan and the risk assessment of shipments under the eManifest initiative will be progressing in 2014–15. In addition, renewal of intelligence tools available to frontline decision makers will be undertaken as part of the continued improvement of the lookouts system.

## Sub-program 1.1.1: Intelligence

### **Description:**

The Intelligence Program collects, analyzes and distributes actionable intelligence regarding people, goods, shipments or conveyances bound for or leaving Canada to help the CBSA and other law enforcement partners identify people, goods, shipments or conveyances that may be inadmissible or pose a threat to the security of Canada. CBSA officers located within Canada, at ports of embarkation or at posts abroad assess information collected from a wide range of sources. In addition, the CBSA provides timely, accurate, strategic, operational and tactical intelligence advice to government authorities, like-minded counterpart nations and stakeholders related to threats to national security, including information on terrorism, weapons proliferation, war crimes, organized crime, smuggling, immigration fraud and irregular migration, fraudulent documentation, and border enforcement. Intelligence products such as lookouts, alerts, scientific reports, and threat and risk assessments inform, support and enhance the Agency's screening and targeting capabilities and other CBSA programs (such as Admissibility Determination, Criminal Investigations and Immigration Enforcement). A lookout is reliable, accurate and actionable intelligence on actual or suspected infractions or criminal activities that may result in the interception of inadmissible people. A lookout takes the form of an electronic file record. A lookout "hit" will "flag" or identify particular individuals, including corporations, and specific goods, conveyances or shipments. A lookout "hit" requires a mandatory referral to a secondary examination.

**Budgetary Financial Resources (dollars)**

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
47,192,754	47,412,160	46,694,383

**Human Resources (FTEs)**

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
480	483	475

**Performance Measurement**

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Date to be Achieved</b>
Reliable, accurate and actionable intelligence resulting in the interception of inadmissible people	Interception Rate (number of CBSA liaison officer interceptions of improperly documented travellers prior to their arrival by air to Canada, measured against improperly documented arrivals to Canada)	70%	03/2015
Reliable, accurate and actionable intelligence resulting in the interception of inadmissible goods, shipments and/or conveyances	The percentage increase in value of intelligence-led seizures compared to non-intelligence-led seizures	400%	03/2015

**Planning Highlights**

**Key Commitment: Continue to support CBSA decision making through closer collaboration with Criminal Investigations and Immigration Enforcement in order to produce timely intelligence that enables the Agency to secure the border strategically**

Related Organizational Priority: Secure the Border Strategically

In 2014–15, the Agency will continue to address process and systems challenges that may be impeding the effective and timely dissemination of intelligence internally, and to external client stakeholders, such as Citizenship and Immigration Canada (CIC), the Royal Canadian Mounted Police (RCMP) and other law enforcement agencies.

In parallel, the CBSA will continue to improve its performance measurement framework for the intelligence program in order to better monitor intelligence-led enforcement outcomes and ensure that intelligence activities are measurable and aligned to address the Agency's key border enforcement priorities.

**Key Commitment: Build and maintain effective international partnerships through the CBSA's International Network**

Related Organizational Priority: Advance Global Border Management

The Agency must engage extensively with the international community, both at the bilateral and multilateral levels. A productive relationship with international counterparts allows the Agency to address shared issues, exchange information and best practices, and accomplish mutual goals and objectives. A key component of the CBSA's international engagement strategy is the International Network. The CBSA International Network has a significant presence worldwide with officers and executive-level counsellors serving in missions strategically located around the world. The CBSA liaison officers' role has been expanded to better reflect the Agency's full mandate as it relates to border-related threats, national security, human smuggling prevention, contraband detection, supply chain security and food, plant and animal safety. Maintaining an effective international operational capacity is essential to the Agency's border management approach based on threat mitigation, and implementation of guiding principles of the Agency's Border Modernization agenda of Pushing the Border Out and Facilitating Low Risk.

To continue to build and maintain effective international partnerships, the Agency will, in 2014–15, undertake a number of activities. The Agency will strengthen the logistical support for the International Network and use the Network to address border threats early through engagement with foreign partners, airlines and commercial shippers. The Agency will evolve the liaison officers network to better reflect the Agency's full mandate and use the executive-level counsellors to advance the Agency's strategic goals with key international partners. The Agency will also undertake a review of the Liaison Officers Management Framework with CIC. Finally, the CBSA will ensure that resources, plans and procedures are in place to respond to international crisis situations.

## Sub-program 1.1.2: Targeting

### Description:

The Targeting Program identifies people and goods bound for Canada that may pose a threat to the security and safety of the country. The CBSA uses a number of automated advance information sources from carriers and importers to identify people, goods and conveyances that may pose a threat to Canada. Advance Passenger Information and Advance Commercial Information provide the CBSA with electronic pre-arrival information on people and goods that can be used to perform risk assessments in advance of their arrival in Canada. Known threats are identified when there is a match against an enforcement database entry. People and goods that are identified as posing a threat to Canada are referred for verification and examination upon their arrival at a port of entry.

### Budgetary Financial Resources (dollars)\*

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
86,772,458	73,617,825	74,649,652

\*The decrease in planned spending from 2014–15 to 2015–16 is mainly due to the completion of the eManifest project.

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
409	416	427

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Air passengers that pose a threat to the security and safety of Canada are identified prior to their arrival	Average percentage of air passengers targeted for examination that led to a result	25%	03/2015
Marine containers and contents that pose a threat to the security and safety of Canada are identified prior to their arrival	Percentage of marine containers targeted for contraband and Food, Plant and Animal (FPA) examination that yielded a result	1%	03/2015

## Planning Highlights

**Key Commitment: Enhance the screening of travellers prior to their departure for Canada by using a common approach**

Related Organizational Priority: Secure the Border Strategically

In 2014–15, the CBSA will continue to enhance its traveller targeting program. The coming into force of the Agreement Between Canada and the European Union on the Transfer and Processing of Passenger Name Record Data means Canada will now receive advance information prior to a flight's departure for Canada. This supports the Interactive Advance Passenger Information (IAPI) project, a key Beyond the Border Action Plan initiative. IAPI will expand the existing API/PNR program by collecting passenger information earlier in the traveller continuum. This will allow the CBSA to effectively screen and issue board/no-board messages for all travellers and crew members flying to Canada prior to departure.

In 2014–15, the Agency will continue to enhance advance passenger information systems including the development and implementation of an enhanced scenario-based passenger targeting methodology to more effectively identify high-risk travellers prior to their arrival in Canada. This methodology will be consistent with that of the U.S. and with existing bilateral information-sharing agreements. These activities are also part of the risk response strategies linked to the Contraband and Terrorist Activities risks and align with the CBSA Enterprise Risk Profile.

In addition, as part of the Beyond the Border Action Plan, the Entry/Exit Initiative will incorporate advance exit information as part of a multi-phased approach to improve information sharing with other federal departments on travellers leaving Canada, including expanding the sharing of passage history information with the U.S. for the specific purposes of immigration, law enforcement, and national security.

Finally, in 2014–15, the Agency's Passenger Information System (PAXIS) will be redesigned to better enable targeting officers to review the risk of travellers using API/PNR data prior to arriving at one of Canada's international airports. The CBSA will also support the new targeting service delivery model, enhance the targeting reporting functionality, and improve its enforcement systems.

**Key Commitment: Continue to implement Advance Commercial Information (ACI) requirements for cargo, conveyance, crew, and importer advance trade data to facilitate the risk assessment of shipments before arrival in Canada (eManifest)**

Related Organizational Priority: Secure the Border Strategically

eManifest is a transformational initiative that aims to modernize and improve cross-border commercial processes by supporting the CBSA's ability to improve the security of supply chains and reduce barriers to trade. The eManifest initiative entails the collection and risk assessment of ACI to allow the Agency to target high risks as early as possible in the supply chain continuum; offer expedited border processing for commercial goods determined to be low risk; and improve the consistency and predictability of service delivery to traders and stakeholders.

In 2014–15, regulations are expected to come into force, making it mandatory for highway and rail carriers to transmit ACI prior to the conveyances arriving in Canada.

In 2014–15, regulations are also expected to come into force, which build upon existing ACI program requirements by making it mandatory for marine carriers to submit additional information pertaining to containerized cargo to the CBSA through eManifest. This will strengthen the targeting of marine containers and contents that pose a threat to the security and safety of Canada prior to their arrival. A multiplicity of data sources from carriers, freight forwarders, and importers will serve to both enable security screening for commercial goods, as well as exposing any containers which have not been reported.

In 2014–15, the CBSA will continue to gradually upgrade and modernize its electronic systems, which enable importers to transmit advance trade data, and carriers in all modes of transport to transmit multi-modal pre-load/pre-arrival cargo data. The CBSA will implement a new risk assessment methodology to improve the secure flow of trade.

**Key Commitment: Continue the implementation of the Targeting Business Model**

Related Organizational Priority: Secure the Border Strategically

The CBSA significantly advanced the implementation of its Targeting Business Model by fully transitioning air cargo, air passenger and marine cargo targeting activities to the National Targeting Centre in 2012–13. In addition, the National Targeting Program was established, the National Targeting Policy was finalized and a national standardized training framework was designed and implemented. The Agency enhanced its reporting and performance measurement framework to strengthen management of the targeting program as a result.

In 2014–15, the Agency will complete the implementation of its Targeting Business Model by centralizing the remaining targeting activities to the National Targeting Centre including marine (cruise ship) passenger targeting.

### **Key Commitment: Improve API/PNR Compliance and Data Quality**

Related Organizational Priority: Secure the Border Strategically

To strengthen the CBSA's ability to undertake pre-arrival risk assessment (targeting) of travellers, the Agency is currently implementing a comprehensive action plan to improve the quality of Advance Passenger Information and Passenger Name Record data being provided by international carriers. This plan will be fully implemented by June 2014. It will provide strengthened direction to airlines on collecting and providing API and PNR data, and will provide airlines with a regular report on their performance in terms of compliance and data quality. In addition, as part of the Beyond the Border Action Plan, the CBSA will implement an automated monitoring system enabling it to quickly identify issues with the quality of all incoming data. The requirement for this work was identified in the Auditor General's Report of Fall 2013.

## Sub-program 1.1.3: Security Screening

### Description:

The Security Screening Program is responsible for the security screening of foreign nationals who have been referred to the CBSA by a CIC visa officer abroad or in Canada, and who are seeking to come to Canada as a permanent resident, temporary resident (e.g., visitor) or refugee, or are already in Canada and seeking to remain as a temporary or permanent resident.

The CBSA is responsible for ensuring that there are no security concerns related to the individual seeking entry to Canada (e.g., counter-terrorism, counter-espionage, war crimes, crimes against humanity and organized crime) and, based on a thorough screening exercise (including the review of information and intelligence from a wide variety of internal and external sources), makes a recommendation to CIC on the admissibility of the individual. This program is also responsible for determining the admissibility of senior diplomats being posted to Ottawa to ensure that they meet the admissibility requirements of the *Immigration and Refugee Protection Act*.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
21,335,922	19,266,671	19,264,262

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
195	174	174

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Persons who may be a national security concern are found to be inadmissible to Canada  *National Security Screening includes cases pertaining to sections 34, 35 and/or 37 of the Immigration and Refugee Protection Act	Percentage of all negative CBSA recommendations to Citizenship and Immigration relating to Permanent Residents that result in a finding of inadmissibility  *Includes refusals under other sections of the Act and remedies to overcome inadmissibilities	95%	03/2015
	Percentage of all negative CBSA recommendations to Citizenship and Immigration relating to Temporary Residents that result in a finding of inadmissibility  *Includes refusals under other sections of the Act and remedies to overcome inadmissibilities	95%	03/2015

## Planning Highlights

**Key Commitment: Continue to improve the performance measurement capability of the CBSA's Immigration Security Screening Program**

Related Organizational Priority: Secure the Border Strategically

In 2014–15 the Agency will continue to improve the performance measurement for the National Security Screening Program to ensure the CBSA is providing effective security screening advice to CIC, and to ensure continued support of the CBSA's commitment to the safety and security of Canadians. The CBSA will also develop a reporting tool to evaluate CIC's satisfaction with the CBSA's security screening work and to ensure the program is achieving optimal outcomes.

Under the National Security Screening Program (NSSP), the CBSA provides CIC with recommendations that assess the admissibility of refugee claimants as well as temporary and permanent resident applicants pursuant to sections 34 (Security); 35 (War Crimes); and 37 (Organized Crime) of the *Immigration and Refugee Protection Act* (IRPA). The

CBSA recommendations are provided to CIC decision makers to inform admissibility decisions under IRPA. The NSSP ensures that individuals who may pose a threat to the safety and security of Canada are denied entry, while facilitating the travel of low-risk individuals to Canada.

## Program 1.2: Secure and Trusted Partnerships

### Description:

Through the Secure and Trusted Partnerships Program, the CBSA works closely with clients, other government departments and international border management partners to enhance trade chain and traveller security while providing pre-approved, low-risk travellers and traders with streamlined and efficient border processes. The CBSA develops and administers programs and cooperative agreements with its partners to ensure alignment with international standards (e.g. World Customs Organization SAFE Framework of Standards) and promote best practices in global border management. By increasing membership in trusted traveller and trader programs, the CBSA is able to improve its capacity to mitigate risk in advance and focus examination efforts on identifying travellers and traders of unknown or higher risk.

### Budgetary Financial Resources (dollars)

<b>2014–15 Main Estimates</b>	<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
42,062,245	42,062,245	41,432,038	40,635,411

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
483	474	476

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Capacity to focus on high-risk people and goods at ports of entry is increased	Percentage increase in trusted traveller programs membership from previous fiscal year  <i>*An increase in trusted travellers will result in a decrease of unknown or high risk travellers, thereby allowing border services officers to focus more on the latter group of travellers</i>	12%	03/2015

## Planning Highlights

**Key Commitment: Continue to enhance the benefits of programs that help trusted businesses and travellers move efficiently across the border**

Related Organizational Priority: Streamline and Simplify the Border Experience

The Secure and Trusted Partnership Programs facilitate the passage of low-risk travellers and goods into Canada, enhancing the safety and security of Canadians and allowing the CBSA to focus on goods and people of unknown or high risk. Increasing the efficiency and availability of these programs enhances the benefits for traders, travellers and the CBSA. It also keeps Canada aligned with our trading partners who operate similar programs.

With respect to commercial trade, the CBSA will continue working with the U.S. to align both countries' trusted trader programs while continuing to upgrade technology and enhance member benefits.

**Key Commitment: Strengthen international relationships with border management agencies, administrations and organizations to promote facilitation and security for trade and travel**

Related Organizational Priority: Advance Global Border Management

The CBSA will continue to leverage international relationships with partner border management agencies, administrations and organizations to mitigate threats to Canada and promote trade and travel. The Agency's continued collaboration with key partners and engagement through multilateral fora (such as the World Customs Organization, Five Country Conference (FCC), and Border Five (B5) will support the advancement of

Government of Canada priorities.

In 2014–15 the CBSA will lead the development of a multiyear strategy that will guide the collaborative efforts of the B5 group (Australia, Canada, New Zealand, the United Kingdom and the U.S.) to the year 2020. Canada will assume the chair of the B5 beginning in July 2014. Similarly, in 2014 the Agency will co-chair with CIC the FCC, which brings together immigration authorities of the same five nations. This will include hosting the annual plenary session and the advancement of an FCC-wide traveller facilitation scheme. Furthermore, the CBSA will continue to assert its leadership in the WCO as a member of the June 2014 Policy Commission and the Finance Committee, as well as provide regional leadership in the Americas under the auspices of the Regional Conference of Customs Directors General of the Americas and Caribbean. Particular emphasis will be placed on advancing of the WCO Economic Competitiveness Package, the authorized economic operator concept, air cargo security, capacity building, and on developing international standards for the improvement of customs data quality.

## Sub-program 1.2.1: Trusted Traveller

### Description:

The Trusted Traveller Programs are designed to simplify the border clearance process for pre-approved, low-risk travellers entering Canada. The CBSA offers two programs for travellers, NEXUS and CANPASS. These programs streamline (expedite and simplify) border clearance. NEXUS is a joint initiative with the U.S. Customs and Border Protection in the air, land and marine modes of transportation, while CANPASS is a Canadian suite of programs for clients entering Canada by plane, corporate and private aircrafts, and private boats. Both programs are available to citizens or permanent residents of Canada and/or the U.S. and enable members to cross the border faster when travelling to Canada and, in the case of NEXUS, when travelling to the U.S.

Applicants to the programs must pass various assessments (e.g., security checks, interviews and risk assessments) specific to the program before being granted membership. NEXUS and CANPASS Air members can use iris recognition technology for passage processing at designated airports, and NEXUS members use Radio Frequency Identification technology for processing at designated highway ports of entry. Members of NEXUS or the CANPASS Private Boat, CANPASS Corporate Aircraft or CANPASS Private Aircraft programs entering Canada by private aircraft, corporate aircraft or private boat must report their arrival in advance and make their declarations to the CBSA Telephone Reporting Centre.

**Budgetary Financial Resources (dollars)**

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
32,041,289	31,502,056	31,691,431

**Human Resources (FTEs)**

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
366	357	359

**Performance Measurement**

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Date to be Achieved</b>
Border clearance is streamlined and expedited	Percentage of random referrals of NEXUS members  <i>*NEXUS random referral rate is to be lower than conventional</i>	≤1%	03/2015
Trusted travellers are low-risk	Percentage of Trusted Traveller members examined who are found to be in compliance with border legislation, regulations and program criteria	97%	03/2015

## Planning Highlights

**Key Commitment: Enhance benefits and streamline processing of Trusted Traveller Programs (TTPs), including replacement of NEXUS kiosk technology and expansion of trusted traveller programs to third countries**

Related Organizational Priority: Streamline and Simplify the Border Experience

In 2014–15, the CBSA will continue to enhance the benefits of TTPs and streamline the processing of members at ports of entry. For example, the CBSA will replace aging TTP kiosks technology with modern kiosks that are more stable and provide scalable and enhanced functionality. In addition, the CBSA will continue to advance the Beyond the Border Action Plan commitments related to enhancing NEXUS benefits by advancing work toward third-country trusted traveller programs. Under this initiative, Canadian citizens would be able to apply to third-country trusted traveller programs and vice versa, thereby receiving benefits such as expedited border clearance.

## Sub-program 1.2.2: Trusted Trader

### Description:

The Trusted Trader Program simplifies many of the border requirements for pre-approved, low-risk participants so that shipments can be processed more quickly and efficiently at the border. Importers approved under the Customs Self Assessment (CSA) benefit from a streamlined accounting and payment process as well as an expedited clearance option for qualified goods. Members of the Partners in Protection program benefit from enhanced supply chain security as well as lowered examination rates. In addition, members of these Trusted Trader Programs have the option of utilizing the Free and Secure Trade (FAST) lanes to transport eligible imported goods into Canada. FAST is a joint initiative between the CBSA and U.S. Customs and Border Protection.

To become a member of the Trusted Trader Programs, applicants must undergo an in-depth risk assessment. Once granted membership, CSA importers can use their own business systems and processes to forward trade data to the CBSA and remit payment of duties and taxes through their own financial institutions. In addition, CSA importers can also apply for trade compliance benefits which allow approved importers the flexibility to completely self-assess and audit their revenue reporting and trade requirements.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
10,020,956	9,929,982	8,943,980

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
117	117	117

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Impact of border processing on trusted programs members is minimized	Percentage of Trusted Trader shipments examined at border	1%	03/2015

## Planning Highlights

**Key Commitment: Enhance benefits to participants of Trusted Trader Programs that help businesses move efficiently across the border**

Related Organizational Priority: Streamline and Simplify the Border Experience

In 2014–15, the CBSA will continue to enhance benefits to participants of Trusted Trader Programs that help businesses move efficiently across the border. The CBSA will continue harmonizing the Canadian Partners In Protection Program with the U.S. Customs-Trade Partnership Against Terrorism Program to enhance benefits and expand membership. The CBSA will also continue the implementation of the Trusted Trader eApplication.

## Program 1.3: Admissibility Determination

### Description:

Through the Admissibility Determination Program, the CBSA develops, maintains and administers the policies, regulations, procedures and partnerships that enable border services officers to intercept people and goods that are inadmissible to Canada, and to process admissible people and goods within established service standards. In addition, the Agency develops, maintains and administers the policies, regulations, procedures and partnerships to control the export of goods from Canada.

In the traveller stream, border services officers question people upon arrival to determine if they and their personal goods meet the requirements of applicable legislation and regulations to enter Canada. Border services officers will then make a decision to grant entry or refer a person for further processing (e.g. payment of duties and taxes, issuance of a document), and/or for a physical examination.

In the commercial stream, carriers and importers are required to provide information to the CBSA at or prior to arrival in Canada. Border services officers review the status of pre-arrival decisions and/or the provided accompanying documentation to determine whether the goods meet the requirements of applicable legislation and regulations to enter Canada. Based on this determination, a border services officer may refer the goods for further processing, examination and/or scientific/engineering analysis. Upon further examination goods may be seized or penalties imposed.

With some exceptions, all goods being exported from Canada must be reported “in writing” to the CBSA.

### Budgetary Financial Resources (dollars)

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
681,725,979	681,725,979	647,713,847	594,877,995

### Human Resources (FTEs)

2014–15	2015–16	2016–17
6,548	6,461	6,455

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
People and goods who are inadmissible to Canada are intercepted at ports of entry	Percentage of people examined who are found inadmissible	3.20%	03/2015
Travellers entering Canada at a land port of entry are processed within established service standards	Percentage of people reaching the primary inspection booth within the service standard	95%	03/2015

## Planning Highlights

The CBSA contributes to the FSDS 2013–2016, Theme III – *Protecting Nature and Canadians* by preventing the harmful intentional and unintentional introduction of invasive alien species into Canada, detecting and identifying new species, and responding rapidly upon detection. The Agency's Traveller Border Programs Division implements practices such as inspecting and intercepting shipments, checking customs documents, applying proper quarantine regulations and enforcing international and national legislation, to mitigate threats posed by invasive species and disease to ecosystems, economies, and societies. For more information, refer to the CBSA's [Sustainable Development Strategy 2014–2017<sup>x</sup>](#).



### Key Commitment: Strengthen the Agency's ability to minimize delays for low-risk travellers and goods while optimizing measures to intercept inadmissible goods and people

Related Organizational Priority: Secure the Border Strategically

Upholding professionalism while processing goods and travellers without compromising the CBSA's high security standards remains the core business for the Admissibility Determination Program. To ensure this formula is employed operationally, the CBSA works closely with U.S. and other international counterparts through a shared commitment to improve cross-border facilitation and to enhance security at Canadian ports of entry, including leveraging new technologies such as biometrics.

In 2014–15, the CBSA will undertake a number of initiatives designed to modernize

border services, many of them in consultation with the U.S., under the Beyond the Border Action Plan. The Admissibility Determination Program will be improving its risk mitigation capacity, increasing the efficiency of program delivery, and increasing the effectiveness of programs. The program will also focus on leveraging its strong foundation of stakeholder and partner engagement moving forward.

In 2014–15, the Agency will also continue to implement kiosk technology upgrades as part of Automated Border Clearance (ABC). This program is designed to process increased volumes of travellers and offer a secure and viable alternative for border processing through the use of self-service kiosk technology for eligible passengers travelling on valid Canadian passports or permanent resident cards. Expansion of the use of self-service kiosks in Tier 1 airports will continue through to 2015–16.



## Sub-program 1.3.1: Highway Mode

### Description:

The Highway Program identifies and intercepts people and goods that are inadmissible to Canada seeking entry at 117 designated land ports of entry while ensuring that admissible people and goods are processed within established service standards. Border services officers conduct interviews of persons and drivers of commercial carriers and then make a decision to allow the entry of a person or shipment or refer them for further processing (e.g., payment of duties and taxes, issuance of a document) and/or examination (e.g., physical search of a vehicle, further investigation of admissibility).

In the commercial stream, importers are required to account for their goods, and carriers and exporters are required to report their goods.

Examinations may be performed with the use of specialized tools (e.g., gamma ray imaging Vehicle and Cargo Inspection System, ion scanners and detector dogs) and may include a full or partial offload of the goods to detect the presence of prohibited or restricted goods (e.g., narcotics or weapons). People and/or goods found to be in violation of the applicable legislation and/or regulations may be subject to a monetary penalty, seizure or denied entry to Canada.

### Budgetary Financial Resources (dollars)\*

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
399,594,011	374,603,732	330,945,569

\*The decrease in planned spending from 2014–15 to 2015–16 is mainly due to the completion of the eManifest project, sunsetting program integrity funding for frontline officers, as well as the delivery on core commitments set out in the Beyond the Border Action Plan.

### Human Resources (FTEs)

2014–15	2015–16	2016–17
3,662	3,575	3,584

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
People who are inadmissible to Canada are intercepted at land ports of entry	Percentage of people examined who are found inadmissible at highway ports	4%	03/2015
Goods that are non-compliant with legislation administered by the CBSA are intercepted at a highway port of entry	Percentage of people examined at a highway port of entry who are found to be in possession of goods that are non-compliant with legislation administered by the CBSA	1%	03/2015

## Planning Highlights

**Key Commitment: Under the Beyond the Border Action Plan, Canada and the U.S. have committed to jointly plan investments and enhance client service along the Canada–U.S. border**

Related Organizational Priority: Streamline and Simplify the Border Experience

Sustaining client service excellence for the Highway Mode in a constantly evolving operational environment requires investments in border management technology. In 2014–15, the Agency will develop a pilot of remote traveller processing, which is expected to be implemented at two small and remote ports of entry during the following fiscal year. The pilot will enable the CBSA to assess the viability of using technology to process travellers remotely. The Agency will also continue to support investment in infrastructure improvements designed to increase facilitation in the highway mode (e.g., Radio Frequency Identification (RFID) technology, Truck Cargo Pre-inspection Pilot Project (Phase 2)). These initiatives are aligned with the Agency's commitments in the Beyond the Border Action Plan, which directs both countries to jointly plan investments and support the facilitation of trade and travel across the Canada–U.S. border.

## Sub-program 1.3.2: Air Mode

### Description:

The Air Program identifies and intercepts people and goods that are inadmissible to Canada seeking entry at designated airports while ensuring that admissible people and goods are processed within established service standards.

Upon arrival, border services officers conduct interviews of persons seeking entry into Canada, aided by electronic pre-arrival risk-assessment information submitted by the airlines. CBSA officers make a decision to admit the person or refer them for further processing (e.g., payment of duties and taxes, issuance of a document) or examination.

For private and corporate aircraft and general aviation traffic reporting through the Telephone Reporting Centre, various checks are conducted by means of the telephone reporting system. Border services officers make a decision to admit people or refer them for further processing or examination.

In the commercial stream, importers are required to account for their goods, and carriers and exporters are required to report their goods. More specifically, air carriers are required to submit electronic pre-arrival information related to their goods for import. Those goods meeting the requirements of border-related legislation are released at the airport or at a designated sufferance warehouse, while those goods identified as being potentially inadmissible are held for an examination.

To assist border services officers in their examinations, detection tools such as detector dogs and ion scanners may be used. People and goods found to be in violation of the applicable legislation and/or regulations may be subject to a monetary penalty, seizure or denied entry to Canada.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
181,958,499	183,803,872	180,815,165

## Human Resources (FTEs)

2014–15	2015–16	2016–17
1,976	1,980	1,971

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
People and their goods that are inadmissible to Canada are intercepted at air ports of entry	Percentage of people examined who are found inadmissible at air ports of entry	3.54%	03/2015
Goods that are non-compliant with legislation administered by the CBSA are intercepted at airports of entry	Percentage of people examined at air ports of entry who are found to be in possession of goods that are non-compliant with legislation administered by the CBSA	1.3%	03/2015

## Planning Highlights

**Key Commitment: Continue to remain diligent in mitigating risks posed through the air mode, while ensuring the facilitation of low-risk travellers**

Related Organizational Priority: Secure the Border Strategically

Considering the increasing volume of air travellers crossing Canada's border, it is a priority for the CBSA to identify individuals of interest before they board an aircraft and to facilitate the travel experience of low-risk individuals by working with industry and other external clients. A major modernization effort is underway, as previously outlined in the Entry/Exit and Interactive Advance Passenger Information initiatives under the Risk Assessment Program. The CBSA will continue to engage and work collaboratively with air industry stakeholders and other federal government departments to ensure effective development and integration of procedures and processes to meet the Agency's commitment to border security and traveller facilitation. Additionally, in 2014–15, the Agency will finalize a plan to implement its vision for air traveller processing, including further automation of traveller processing.

## Sub-program 1.3.3: Rail Mode

### Description:

The Rail Program identifies and intercepts people and goods that are inadmissible to Canada seeking entry at a rail port of entry or rail yard, while ensuring that admissible people and goods are processed within established service standards.

Rail operators are required to report train, passenger and/or cargo information to the CBSA at or prior to arrival in Canada. Border services officers may conduct onboard interviews of travellers seeking entry into Canada upon arrival at the border to determine their admissibility or whether further processing (e.g., payment of duties and taxes, issuance of a document) or examination (e.g., physical search of baggage, further investigation of admissibility) is required.

In the commercial stream, border services officers review the electronic information submitted by the rail carrier and the importer/exporter, and make a decision to release the cargo or refer it for an examination at the rail yard.

### Budgetary Financial Resources (dollars)

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
18,861,342	18,860,420	18,860,129

### Human Resources (FTEs)

2014–15	2015–16	2016–17
143	143	143

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Goods that are non-compliant with legislation administered by the CBSA are intercepted at rail ports of entry	Percentage of people examined at rail ports of entry who are found to be in possession of goods that are non-compliant with legislation administered by the CBSA	0.01%	03/2015

## Planning Highlights

**Key Commitment: Continue to support finalization of a new agreement to cover land, marine and rail pre-clearance**

Related Organizational Priority: Secure the Border Strategically

Under the Beyond the Border Action Plan, a new agreement to cover land, marine and rail pre-clearance is currently being negotiated between Canada and the U.S. It is anticipated that this new pre-clearance agreement will provide an enabling framework for pre-clearance initiatives to be jointly deployed with the U.S., when and where appropriate, including in the rail mode.

## Sub-program 1.3.4: Marine Mode

### Description:

The Marine Program identifies and intercepts people and goods that are inadmissible to Canada seeking entry at a marine port of entry, while ensuring that admissible people and goods are processed within established service standards.

Prior to arrival in the traveller stream, border services officers receive information regarding the passengers and crew aboard cruise ships, ferries, tour boats, private small vessels in the Trusted Traveller Program and commercial vessels. At large cruise ship offices and certain ferry terminals, passengers are processed using Integrated Primary Inspection Line. For those private vessels reporting through the Telephone Reporting Centre, various checks are conducted by means of the telephone reporting system. Border services officers make decisions to admit people or refer them for further processing or examination.

In the commercial stream, importers are required to account for their goods. Carriers and exporters are required to report their goods; marine carriers are required to submit advance electronic information for imports and have the option for exports. To assist officers in their examinations, detection tools such as Remote Operated Vehicles and the Vehicle and Cargo Inspection System are used. In major ports, 100 percent of marine containers are scanned for the presence of radiological material using radiation portals. People and goods that are found to be in violation of the applicable legislation and/or regulations may be subject to enforcement action which may include a monetary penalty, seizure, or being denied entry to Canada.

### Budgetary Financial Resources (dollars)

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
49,204,277	49,041,951	49,028,208

### Human Resources (FTEs)

2014–15	2015–16	2016–17
523	523	523

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
People who are inadmissible to Canada are intercepted at marine ports of entry	Percentage of people examined who are found inadmissible at a marine port of entry	2.60%	03/2015
Goods that are non-compliant with legislation administered by the CBSA are intercepted at marine ports of entry	Percentage of people examined at a marine port of entry who are found to be in possession of goods that are non-compliant with legislation administered by the CBSA	1.3%	03/2015

## Planning Highlights

**Key Commitment: Two new marine container examination facilities will be built by the Port Authority in Vancouver, in collaboration with the CBSA, to be able to meet the examination requirements**

Related Organizational Priority: Secure the Border Strategically

Under the Beyond the Border Action Plan (Integrated Cargo Security Strategy initiative), the CBSA has identified addressing risks and vulnerabilities in the commercial marine mode as a priority in 2014–15. Specifically, the Agency will address container examination capacity challenges in order to improve its ability to intercept goods that are non-compliant with legislation administered by the CBSA at marine ports of entry. The CBSA will work with industry to build, outfit and staff two new marine container examination facilities, including deployment of new detection technology and procedures, to increase its examination capacity and directly mitigate related risks in the marine mode.

## Sub-program 1.3.5: Postal

### Description:

The Postal Program identifies and intercepts international mail items valued at less than CAD\$2,500 that are inadmissible to Canada while ensuring that admissible mail items are processed within established service standards, and applicable duties and taxes are assessed and collected. Mail items valued at CAD\$2,500 or higher are processed in the regular commercial import stream.

The Postal Program operates at three CBSA Mail Centres in Canada. Border services officers conduct an inspection of international mail items to determine whether further processing (e.g., assessment and payment of duties and/or taxes) and/or a physical examination is required. Mail items that do not require CBSA intervention are released to Canada Post for delivery.

To assist officers in their examinations, detection tools such as X-ray and detector dogs may be used. Mail items found to be in violation of the applicable legislation and/or regulations may be seized on behalf of other government departments. Importers are advised of their appeal rights, and Canada Post is advised that the item has been taken from the mail stream. All other items that are deemed admissible, after examination, are released to Canada Post for delivery.

### Budgetary Financial Resources (dollars)\*

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
28,981,892	18,278,122	12,103,239

\*The decrease in planned spending from 2014–15 to 2015–16 and 2015–16 to 2016–17 is due to the completion of the Postal Modernization project and the return of efficiency gains to the consolidated revenue fund.

### Human Resources (FTEs)

2014–15	2015–16	2016–17
196	192	186

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Mail that is non-compliant with legislation administered by the CBSA is intercepted at a Postal centre	Percentage of examined international mail items that are seized	2.50%	03/2015
	Percentage of opened and examined international mail items that are seized	5%	03/2015

## Planning Highlights

**Key Commitment: The CBSA will continue to partner with Canada Post Corporation to improve the facilitation of mail for Canadians and stakeholders**

Related Organizational Priority: Secure the Border Strategically

The CBSA will remain diligent in mitigating risks posed through the postal mode, while ensuring timely delivery across the supply chain and the safety and prosperity of Canadians. Working closely with the Canada Post Corporation, the CBSA will continue to improve facilitation of mail. A major postal modernization effort is underway to strengthen the secure and efficient movement of international mail through integration of new and improved procedures and processes. This modernization effort is also part of the CBSA risk response strategy linked to the Contraband risk and the CBSA Enterprise Risk Profile.

## Sub-program 1.3.6: Courier Low Value Shipment

### Description:

The Courier Low Value Shipment (LVS) Program identifies and intercepts courier importations that are inadmissible to Canada. The importations, conducted by approved courier participants, enter at designated sufferance warehouses. This provides a streamlined reporting, release and accounting process for most courier importations valued at less than CAD\$2,500. Mail items valued at CAD\$2,500 or higher are removed from the Program and processed in the regular commercial process.

To participate in the Courier LVS Program, a courier company must be pre-approved by the CBSA. Prior to the arrival of a courier shipment, the CBSA reviews the electronic information submitted by the courier to determine whether the goods meet the requirements of the Program and applicable legislation and/or if a physical examination is required. If a physical examination is required, the item is presented to a border services officer upon arrival. To assist officers in their examinations, detection tools such as targets and detector dogs may be used. Goods found to be in violation of the applicable legislation and/or regulations may be subject to a monetary penalty or seizure.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
3,125,958	3,125,750	3,125,685

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
48	48	48

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Courier shipments that are non-compliant with legislation administered by the CBSA are intercepted	Percentage of courier shipments examined that are removed from the Courier Low Value Shipment Program and transferred to the regular import stream because the goods were prohibited, restricted, controlled or non-compliant	9%	03/2015

## Planning Highlights

**Key Commitment: The CBSA will continue to develop and implement regulations and systems to meet the standards of the World Customs Organization and the World Trade Organization and commitments made under the Beyond the Border Action Plan for Low Value Shipments**

Related Organizational Priority: Streamline and Simplify the Border Experience

Facilitating the processing of low-value import shipments, without compromising the CBSA's high security standards remains the core business of the Courier Low Value Shipments Program. As part of the delivery of this program, the CBSA is committed to developing and implementing regulations and systems to meet the standards of the World Customs Organization and the World Trade Organization, as well as to become more aligned with U.S. standards.

Under Courier LVS Program modernization, the Agency will take a balanced approach to national security and trade facilitation. Specifically, in 2014–15 the CBSA will continue to augment the number of participants' proprietary systems that are used to electronically report their shipments. This will improve the efficiency of the program by allowing the CBSA to electronically review shipments reported for release by the program's participants. In addition, the CBSA will complete a feasibility study to determine the best option to incorporate the program's imports into the CBSA's pre-arrival risk assessment model.

## Program 1.4: Criminal Investigations

### Description:

Under the Criminal Investigations Program, the CBSA protects the integrity of border-related legislation and contributes to public safety and Canada's economic security by investigating and pursuing the prosecution of persons who commit criminal offences in contravention of Canada's border-related legislation.

CBSA investigators review potential border legislation violations and gather evidence using a variety of investigative techniques, including search warrants and production orders. These violations include criminal offences under the *Customs Act, Immigration and Refugee Protection Act*, various food/plant and animal legislation, and other border-related legislation. In conjunction with the Public Prosecution Service of Canada, the CBSA pursues the prosecution of individuals or business entities who violate Canada's border-related legislation.

### Budgetary Financial Resources (dollars)

<b>2014–15 Main Estimates</b>	<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
23,391,775	23,391,775	23,391,775	23,391,775

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
279	279	279

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Crown counsel accepts referrals for prosecution prepared by CBSA	Percentage of referrals for prosecution accepted by Crown	95%	03/2015
CBSA Program (Intelligence, Port of Entry, Inland, Compliance Verification, etc.) referrals to Investigations that result in an opened case	Percentage of the CBSA Program (Intelligence, Port of Entry, Inland, Compliance Verification, etc.) referrals to criminal investigations that result in an opened case	55%	03/2015

## Planning Highlights

### Key Commitment: Strengthen the Criminal Investigations Program

Related Organizational Priority: Secure the Border Strategically

In 2014–15, the Agency will continue to concentrate efforts on investigating an increased number of complex immigration and import/export cases. In addition, efforts aimed at intercepting and enforcing the laws pertaining to the illegal importation/exportation of high-risk commodities at ports of entry, such as firearms smuggling, will be strengthened alongside improving computer forensic and intelligence analysis support capability. The Agency will continue to target high-risk criminal non-compliance and the organizers or facilitators of fraud; to increase the role of intelligence in the investigation of crimes; to renew the training program for criminal investigators; and, to advance investigatory IT systems and tools.

### Key Commitment: Enhance the integration of the CBSA's intelligence, criminal investigations, and inland enforcement responsibilities to achieve greater efficiency and effectiveness

Related Organizational Priority: Secure the Border Strategically

In 2014–15, the Agency will further integrate policy development for the CBSA intelligence and enforcement programs, improve intelligence support and linkages with the CBSA criminal investigations program, enhance core training and officer career paths, identify system requirements, and improve program outcomes. This commitment

allows the Agency to fully implement an integrated approach to the management of border risks to better focus enforcement activities against the Agency's enforcement priorities and mandate. The Agency will also strengthen the investigation referral process by creating one point of contact per region for referrals to criminal investigations, intelligence or inland enforcement to enhance the CBSA's capacity to better manage referrals and cases and monitor program performance.

## Program 1.5: Immigration Enforcement

### Description:

The Immigration Enforcement Program determines whether foreign nationals and permanent residents who are or may be inadmissible to Canada are identified and investigated, detained, monitored and/or removed from Canada.

Foreign nationals and permanent residents of Canada believed to be inadmissible are investigated and may have a report written against them by a CBSA inland enforcement officer. Depending on the type of inadmissibility, the merits of the report are reviewed by either a Minister's delegate or an independent decision maker at the Immigration and Refugee Board of Canada (IRB) where a CBSA hearings officer represents the Minister of Public Safety and Emergency Preparedness. Subsequent to this review, a removal order may be issued against the foreign national or permanent resident in question. Removal orders issued against refugee claimants are conditional and do not come into force until the claim is abandoned, withdrawn or denied by the IRB.

### Budgetary Financial Resources (dollars)\*

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
164,911,279	164,911,279	158,549,531	138,751,772

\*The decrease in planned spending from 2014–15 to 2015–16 and 2015–16 to 2016–17 is mainly due to the completion of the Refugee Reform project, the Arming of Border Services Officers, sunsetting of funding for the cessation and vacation refugee claims activities related to the *Protecting Canada's Immigration System Act*, as well as the delivery on core commitments set out in the Beyond the Border Action Plan.

### Human Resources (FTEs)

2014–15	2015–16	2016–17
1,198	1,203	1,096

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Immigration enforcement actions are focused on high priority foreign nationals and permanent residents who may pose a safety and/or security risk to Canada	Percentage of high-priority foreign nationals removed from Canada compared to the high-priority population in the removals inventory  *Based on annual average	100%	03/2015
Timely removal of failed refugee claimants who are inadmissible to Canada	Percentage of failed refugee claimants removed from Canada within 12 months of a negative decision from the Refugee Protection Division or Refugee Appeal Division	80%	03/2015

## Planning Highlights

**Key Commitment: To monitor and assess the effectiveness and impact of the *Protecting Canada's Immigration System Act***

Related Organizational Priority: Secure the Border Strategically

The *Protecting Canada's Immigration System Act* introduced major reforms to Canada's immigration system, including:

- changes to the refugee status determination system that are intended to deliver faster decisions, deter abuse and quickly remove failed refugee claimants;
- measures to strengthen the immigration system by reducing identity fraud through the use of biometric data, such as fingerprints and photos in the Temporary Resident Program; and,
- measures to address human smuggling and irregular arrivals.

The Agency will draft regulatory amendments to support these legislative changes. The Agency will also monitor how trends in the new system are evolving and impacting on other CBSA and partner agency activities. This will assist the Agency in identifying and assessing further efficiencies in business processes that support the immigration system.

## Sub-program 1.5.1: Immigration Investigation

### Description:

The Immigration Investigations Program investigates reports and arrests foreign nationals and permanent residents already in Canada who are or may be inadmissible to Canada as defined by the *Immigration and Refugee Protection Act*.

Investigation techniques can include data analysis of information collected regarding an individual's immigration application, physical surveillance to locate fugitive inadmissible persons, and field searches of residences and belongings for evidence. Depending on the type of inadmissibility and the status of the person in question, inadmissibility reports are reviewed by either a Minister's Delegate or the IRB. When a person fails to appear for an immigration proceeding such as an examination, admissibility hearing or removal interview, a warrant for their arrest may be issued. Warrants may also be issued against a foreign national or permanent resident where a CBSA inland enforcement officer has reasonable grounds to believe that they are inadmissible to Canada.

### Budgetary Financial Resources (dollars)\*

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
74,270,252	69,478,048	53,482,888

\*The decrease in planned spending from 2014–15 to 2015–16 and 2015–16 to 2016–17 is mainly due to the completion of the Refugee Reform project, the Arming of Border Services Officers, as well as the delivery on core commitments set out in the Beyond the Border Action Plan.

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
631	648	570

## Performance Measurement

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Date to be Achieved</b>
Immigration investigations are conducted against foreign nationals and permanent residents who are or may be inadmissible to Canada	Percentage of immigration investigations initiated that result in a person being identified as inadmissible to Canada	55%	03/2015
Timely investigation of foreign nationals and permanent residents who are or may be inadmissible to Canada	Percentage of immigration investigations finalized within one year of being initiated	95%	03/2015

## Planning Highlights

**Key Commitment: Support the Government's reform of the refugee determination system through initiatives that facilitate the timely removal of failed refugee claimants and enhance the Agency's capacity to investigate and locate foreign nationals and permanent residents in contravention of the *Immigration and Refugee Protection Act***

Related Organizational Priority: Secure the Border Strategically

The CBSA is responsible for investigating, detaining, and removing foreign nationals and permanent residents found to be inadmissible to Canada, or who pose a threat to Canada, including persons involved in terrorism, organized crime, war crimes and crimes against humanity. By strengthening immigration investigations, the capacity and ability of the CBSA to investigate and locate inadmissible foreign nationals for enforcement proceedings, including removal, as soon as possible, will be enhanced.

In 2014–15, the CBSA will continue to support the Government of Canada's reform of the refugee determination system through initiatives that facilitate the timely removal of failed refugee claimants. The Agency will focus its efforts on removing inadmissible persons and will continue to build its capacity in 2014–15, to investigate and locate foreign nationals and permanent residents in contravention of the *Immigration and Refugee Protection Act*. Continued emphasis will be placed on cases of marriages of convenience.

To support these efforts, the Agency will negotiate information sharing arrangements to assist in identifying and locating foreign nationals who are wanted for immigration enforcement with partner agencies and departments, both domestically and internationally. Particular emphasis will be placed on increasing immigration information sharing with the U.S. in 2014–15 under the Beyond the Border Action Plan. Additional efforts will also be made to identify immigration consultants who operate in a manner that abuses the immigration process (consultant fraud).

## Sub-program 1.5.2: Detentions

### Description:

The Detentions Program detains and/or monitors the conditions of release of foreign nationals or permanent residents where there are reasonable grounds to believe the individual is inadmissible to Canada and where the individual is a danger to the public, poses a flight risk or where their identity is not established. Foreign nationals and permanent residents may also be detained upon entry into Canada for an examination or where the individual is suspected of being inadmissible for security reasons. They are entitled to an IRB hearing after being detained for 48 hours, 7 days and 30 days. The CBSA has three immigration holding centres in Canada located at Vancouver, Toronto and Montréal.

### Budgetary Financial Resources (dollars)

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
42,233,748	42,233,610	42,231,066

### Human Resources (FTEs)

2014–15	2015–16	2016–17
140	140	140

### Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Foreign nationals and permanent residents that may pose a risk to the safety and security of Canada are detained	Percentage of foreign nationals and permanent residents who may be inadmissible to Canada or who may be ready for removal who are detained according to their assessed level of risk	85%	03/2015

## Planning Highlights

**Key Commitment: Pursue the establishment and maintenance of detention agreements with provinces that assist the Agency in detaining higher risk individuals pursuant to the *Immigration and Refugee Protection Act* (IRPA)**

Related Organizational Priority: Secure the Border Strategically

The Detentions Program is responsible for ensuring that the treatment of the Agency's detainee population is being carried out under the CBSA's National Detention Standards as well as the obligations set out in various international instruments to which Canada is signatory. Persons detained under IRPA are held in either a CBSA-run immigration holding centre or a provincial correctional facility under a fee-for-service arrangement.

The Agency relies on provincial jails to hold immigration detainees who represent a higher risk (e.g. significant criminal records, serious criminality, member of an organized crime or street gang, war crimes or crimes against humanity), and to house lower-risk immigration detainees in areas where the CBSA does not have a holding centre. In 2014–15, the Agency will aim to implement Detention Agreements with Ontario and Quebec and commence Detention Agreement negotiations with other provinces.

## Sub-program 1.5.3: Immigration Hearings

### Description:

The Immigration Hearings Program ensures that the Government of Canada's interests are represented at immigration proceedings before the IRB of Canada which determines the immigration and detention status of foreign nationals and permanent residents already in Canada, in accordance with the *Immigration and Refugee Protection Act*. CBSA hearings officers are responsible for representing the Minister of Public Safety and Emergency Preparedness and/or the Minister of CIC at immigration proceedings before the IRB. This function ensures that foreign nationals and permanent residents who are inadmissible to Canada are denied status, and removal orders are issued where appropriate.

**Budgetary Financial Resources (dollars)\***

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
19,716,635	19,715,539	15,919,941

\*The decrease in planned spending from 2015–16 to 2016–17 is mainly attributed to the sunsetting of funding for the cessation and vacation refugee claims activities related to the *Protecting Canada's Immigration System Act*.

**Human Resources (FTEs)**

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
199	199	170

**Performance Measurement**

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Date to be Achieved</b>
The position of the Minister of Public Safety and Emergency Preparedness and/or the Minister of CIC with respect to immigration status is represented and upheld at administrative proceedings before the IRB	Percentage of decisions rendered by Members of the IRB and outcomes that align with the priorities of the Minister of Public Safety and Emergency Preparedness and/or the Minister of CIC	70%	03/2015

**Planning Highlights**

**Key Commitment: The CBSA will investigate and refer an increased volume of cessation and vacation hearings to the Refugee Protection Division of the Immigration and Refugee Board**

Related Organizational Priority: Secure the Border Strategically

In 2014–15, the CBSA is committed to increasing the number of cessation or vacation cases referrals to the IRB, while ensuring that in successful cessation or vacation cases, the removal orders are enforced as soon as possible. The Agency will also establish specialized processes to manage tips and referrals, as well as analyze trends, and provide information, guidance and training to CBSA staff and partners regarding roles, responsibilities and relevant procedures.

## Sub-program 1.5.4: Removals

### Description:

The Removals Program ensures that foreign nationals and permanent residents with an enforceable removal order are removed from Canada. Once a person is removal-ready, an interview is conducted to ensure that a travel document is available and that a pre-removal risk assessment is offered by a CBSA inland enforcement officer. Where a valid travel document is not available, CBSA inland enforcement officers liaise with foreign embassies to secure the required travel documents. The CBSA may have to make further arrangements for removal, which could include arranging for travel (e.g., purchasing an airline ticket or chartering a plane for high-risk individuals in exceptional cases), providing escorts (e.g., to respond to airline and transit country requirements), and liaising with CBSA staff abroad (migration integrity officers) to ensure smooth passage from Canada to the final destination.

### Budgetary Financial Resources (dollars)

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
28,690,644	27,122,334	27,117,877

### Human Resources (FTEs)

2014–15	2015–16	2016–17
228	216	216

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Timely removal of foreign nationals subject to an enforceable removal order	<p>Average number of days to facilitate a removal of a failed claimant from Canada pre-<i>Protecting Canada's Immigration System Act</i> (PCISA)</p> <p>* PCISA came into force December 15, 2012</p>	550	03/2015
	<p>Average number of days to facilitate a removal of a failed claimant from Canada post-<i>Protecting Canada's Immigration System Act</i> (PCISA)</p>	365	03/2015

## Planning Highlights

**Key Commitment: Enhance the capacity and ability of the Agency to remove foreign national criminals, failed refugee claimants and other inadmissible foreign nationals from Canada in a timely manner**

Related Organizational Priority: Secure the Border Strategically

In 2014–15 and beyond, the CBSA will continue negotiations on removal arrangements with problematic countries to ensure the timely issuance of travel documents. The Agency will also continue to deliver the Assisted Voluntary Returns and Reintegration Pilot in cooperation with the International Organization for Migration with a view to encourage cost-effective and efficient voluntary returns of failed refugee claimants. In 2014–15 the Agency will continue to strengthen the results, effectiveness and efficiency of the Removals Program through the implementation of the *Faster Removal of Foreign Criminals Act* and related regulations, and by considering a pilot project for escorted removals.

## Program 1.6: Recourse

### Description:

The Recourse Program provides the business community and individuals with an accessible mechanism to seek an impartial review of service-related complaints, program decisions and enforcement actions taken by the CBSA. This program ensures that its decisions are fair, transparent and accurately reflect the Agency's policies and the Acts administered by the CBSA.

Individuals can complete a written submission if they disagree with an enforcement action or a program decision made by the CBSA or wish to submit a complaint or compliment about services. Clients are provided with a timely acknowledgement of their correspondence, before CBSA officials conduct a thorough review, taking into consideration the legislation administered by the Agency, CBSA policies, the client's point of view and, where necessary, technical opinions from CBSA experts or legal advice from the Department of Justice. Individuals who are not satisfied with the CBSA's review can appeal to the appropriate court, tribunal or external review body.

The Recourse Program also facilitates the review of external complaints of discrimination filed with the Canadian Human Rights Commission and assists the Department of Justice representing the Agency on appeals to the Federal Court, various tribunals and other external bodies.

### Budgetary Financial Resources (dollars)

<b>2014–15 Main Estimates</b>	<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
9,832,518	9,832,518	9,832,518	9,832,518

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
102	102	102

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Initial contact with the appellant is timely	Percentage of Trade and Enforcement appeals acknowledged in 10 days	85%	03/2015
Timely decisions made in support of border services legislation	Percentage of Enforcement Appeals decided in 180 days	75%	03/2015
	Percentage of Trade Appeals decided in 180 days	70%	03/2015

## Planning Highlights

**Key Commitment: Implement the Recourse Modernization Initiative to ensure the Agency's recourse functions are streamlined and have a focus on client service**

Related Organizational Priority: Streamline and Simplify the Border Experience

The goal of continuous program improvement will define business for the 2014–15 fiscal year. Key activities include: the piloting of an issue-based process for reviewing trade appeals; enhancing the Recourse Content Management System; and the monitoring of, and reporting on, performance against service standards.

Conducting recourse activities effectively means capitalizing on extensive cooperation between the Agency's programs and frontline operations. In furthering the CBSA's commitment to client service, the Recourse Program will provide feedback on appeal decisions and complaint responses to its internal Agency partners to ensure continuous improvement.

## Program 1.7: Revenue and Trade Management

### Description:

The Revenue and Trade Management Program ensures that duties and taxes owed to the Government of Canada are collected in compliance with Canadian trade and imports reporting requirements. For the purposes of this program description, “duties” means any duties or taxes levied or imposed on imported goods under certain Acts that the CBSA is responsible for administering. The program administers international and regional trade agreements and domestic legislation and regulations governing trade in commercial goods. Through its work on free trade negotiations, the program helps to strengthen international rules related to trade and open new markets for Canadians.

### Budgetary Financial Resources (dollars)

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
73,918,165	73,918,165	69,117,374	66,928,881

### Human Resources (FTEs)

2014–15	2015–16	2016–17
814	816	801

### Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Duties and taxes owed to the Government of Canada are collected in accordance with trade policies	<p>Percentage of compliance* of importers with Canada's trade laws and importing requirements</p> <p>* This compliance rate is determined through a random verification process. Compliance is defined as a verification that results in less than \$1000 owed to the Government of Canada</p>	75%	03/2015

## Planning Highlights

### **Key Commitment: Support the Government of Canada's free trade negotiations**

Related Organizational Priority: Advance Global Border Management

Ready access to a broad range of imported goods, and to foreign markets for exported domestic products, ensures Canada's continued economic prosperity and drives the business of the CBSA's Revenue and Trade Management Program. Through its work on free trade agreement (FTA) negotiations, the Agency helps to strengthen international rules related to trade and to open new markets for Canadians by increasing the opportunities for, and the predictability of, export sales. This work contributes to the creation of jobs and boosts Canadian profits which, in turn, stimulate the economy. The CBSA supports various aspects of the FTA negotiations, specifically related to the customs procedures, trade facilitation, and intellectual property rights chapters. Once FTAs are entered into force, the CBSA manages the implementation of these border-related chapters.

In 2014–15, the CBSA will continue to participate in ongoing free trade negotiations involving international and multinational partners: in particular India, Japan, South Korea, the Trans-Pacific Partnership and the Caribbean Community; as well as negotiations to expand and modernize the Canada-Israel Free Trade Agreement. The Agency remains committed to supporting any new free trade negotiations undertaken by the Government of Canada and to implementing the provisions of those agreements that are finalized and entered into force in 2014–15. In particular, if finalized and entered into force in 2014–15, the Agency will implement the provisions of the Canada-European Union Comprehensive Economic and Trade Agreement, agreed to in principle in October 2013.

Working with the Department of Foreign Affairs, Trade and Development and the World Customs Organization, in 2014–15 the CBSA will support the Government of Canada's efforts to ratify and implement the World Trade Organization's Trade Facilitation Agreement, concluded in December 2013.

### **Key Commitment: Continue to modernize and optimize systems and processes that support the assessment and collection of revenue from importers**

Related Organizational Priority: Streamline and Simplify the Border Experience

The CBSA will continue its efforts to improve compliance with Canada's trade legislation and regulations by concluding a comprehensive review of its trade-related policies and by introducing new web content for importers. In 2014–15, through the CBSA Assessment and Revenue Management (CARM) initiative, work will continue with the planning and phased delivery of new systems and procedures to simplify the

assessment process and introduce new payment options for importers. In this fiscal year, the program will also begin to introduce a revised trade compliance strategy that will ensure the collection of accurate program data while increasing the CBSA's return on investment. Finally, the program is developing a more efficient means of measuring trade compliance that will continue to produce statistically valid data while allowing for more resources to be allocated to targeted verifications that typically result in larger assessments.

## Sub-program 1.7.1: Anti-Dumping and Countervailing

### Description:

The Anti-Dumping and Countervailing Program is responsible for the administration of the *Special Import Measures Act* (SIMA). Its role is to provide assistance to Canadian producers who face unfair foreign competition from dumped or subsidized goods in the Canadian marketplace. SIMA provides measures of redress against such goods when they have caused injury to the Canadian industry, and is in keeping with Canada's international obligations as a signatory to the World Trade Organization. Protecting Canadian industry against the injury from dumped or subsidized imports requires a two-track approach, with the CBSA responsible for determining whether imports are being dumped or subsidized, and the Canadian International Trade Tribunal making the decision of whether these imports have caused injury to Canadian production.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
3,970,560	3,970,560	3,973,414

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
114	114	114

## Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Canadian industry is protected from economic injury caused by the subsidizing and dumping of imported goods	Value of Canadian production protected as the result of applying the <i>Special Import Measures Act</i>	\$7 billion	03/2015

## Planning Highlights

### **Key Commitment: Enhancing investigative and policy capacity to improve the effectiveness and efficiency of Canada's anti-dumping and countervailing process**

Related Organizational Priority: Streamline and Simplify the Border Experience

Along with the Canadian International Trade Tribunal, the Agency is responsible for the administration of the *Special Import Measures Act* (SIMA). This Act represents the legislative framework in Canada to implement certain rights and obligations established under the auspices of the World Trade Organization (WTO).

In administering SIMA, the CBSA is currently protecting more than \$7 billion in Canadian production. To continuously perform this function well, the Agency requires a highly specialized workforce, trained in conducting complex dumping and subsidy investigations, while respecting SIMA and Canada's rights and obligations under the relevant WTO agreements.

Given the recent increases in the number of subsidy investigations, in 2014–15, the Agency will enhance the investigative and policy analysis capacity of its officers by developing and delivering advanced training on the administration of the SIMA and specifically on conducting subsidy investigations.

## Sub-program 1.7.2: Trade Policy

### Description:

The Trade Policy Program is responsible for interpreting the legislation and regulations that govern the tariff classification, origin and value of imported goods, and the related assessment of duties and taxes, so as to ensure that persons engaged in the importation of goods into Canada fully understand all of the trade-related requirements in order to promote self-compliance. The Program also administers Canada's trade incentive initiatives (e.g., duties deferral, customs warehouses, remissions, and drawbacks) which assist Canadian businesses in remaining competitive in international markets. Further, the Program is responsible for the negotiation of the origin procedures that are included in all of Canada's free trade agreements, which serve to strengthen international trade rules and open new markets for Canadians. Finally, the program is responsible for representing the views of Canadian businesses in international trade fora, such as the World Customs Organization and the World Trade Organization, in order to ensure a fair and accessible global trading environment.

### Budgetary Financial Resources (dollars)

<b>2014–15 Planned Spending</b>	<b>2015–16 Planned Spending</b>	<b>2016–17 Planned Spending</b>
6,171,968	6,171,968	6,171,968

### Human Resources (FTEs)

<b>2014–15</b>	<b>2015–16</b>	<b>2016–17</b>
59	59	59

### Performance Measurement

<b>Expected Results</b>	<b>Performance Indicators</b>	<b>Targets</b>	<b>Date to be Achieved</b>
Importers have access to interpretations, rulings, advice and guidance on trade-related issues	Percentage of advance rulings released within 120 calendar days of receipt of full information	95%	03/2015

## Planning Highlights

**Key Commitment: To ensure that Canadian importers have ready access to information about Canada's trade legislation, regulations and policies in order to promote self-compliance**

Related Organizational Priority: Streamline and Simplify the Border Experience

In today's global trade environment, Canadian businesses face complex legislative and regulatory requirements and ongoing foreign competition. To help importers gain a competitive edge by minimizing their risk, optimizing their trade operations, and improving their bottom line, the CBSA is currently working to develop and implement more efficient self-service options that will allow importers to better understand and comply with Canada's trade requirements.

In 2014–15, the CBSA will complete a comprehensive review of its trade policies. Further, the Agency will offer importers access to a redesigned website that ensures that the most up-to-date, trade-related information is readily available in one, easily identifiable place. In 2014–15, the Agency will also continue, through its CARM initiative, to implement a system that will allow for the majority of the Agency's advance rulings and national customs rulings to be published on its website. Finally, to further enhance the communication of trade-related information to Canadian importers, the CBSA is committed to engaging with its clients in at least three significant public forums during the course of this fiscal year.

## Sub-program 1.7.3: Trade Compliance

### Description:

The Trade Compliance Program works to ensure that Canadian importers accurately account for the commercial goods that they bring into Canada and pay all of the duties and taxes owing. Compliance activities include random verifications, selected using a statistical model, that are used to measure the rate of compliance by product type and/or industry. The results also provide valuable information that often lead to more focused, risk-based verifications in instances where non-compliance is suspected. These trade compliance activities are supported by robust monitoring and administrative penalty programs that are aimed at maintaining a level playing field for all Canadian importers by making certain that the rules apply equally to everyone and that the appropriate duties and taxes are paid in full.

### Budgetary Financial Resources (dollars)\*

2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
63,775,637	58,974,846	56,783,499

\*The decrease in planned spending from 2014–15 to 2015–16 is mainly due to the completion of the project definition phase of the CARM project. In addition, the decrease in planned spending from 2014–15 to 2015–16 and 2015–16 to 2016–17 is due to the delivery on core commitments set out in the Beyond the Border Action Plan.

### Human Resources (FTEs)

2014–15	2015–16	2016–17
641	643	628

### Performance Measurement

Expected Results	Performance Indicators	Targets	Date to be Achieved
Importers are in compliance with Canadian trade laws	Percentage of revenue-based, targeted compliance verifications that yield a positive result for the CBSA (i.e., \$1000 or more owing to the Government of Canada)	85%	03/2015

## Planning Highlights

**Key Commitment: To ensure that Canadian importers are in compliance with Canada's trade laws and that all of the duties and taxes owed to the Government of Canada are properly assessed**

Related Organizational Priority: Streamline and Simplify the Border Experience

Each year, the CBSA assesses approximately \$25 billion in total import revenue. While that amount of revenue is influenced by the economy and fluctuating trade volumes, vulnerabilities related to importer non-compliance increase the risk that the Government of Canada will not collect the full amount of duties and taxes owing.

In 2014–15, the Agency is exploring options to distribute its measurement workload over multiple years to allow for more resources to be allocated to targeted verifications, which typically result in larger assessments.

Further, the Agency will continue to assist Canadian importers in improving and sustaining their compliance with import requirements by publishing both the *Trade Verification Manual* and the *Trade Incentives Manual* on the CBSA's website. In this fiscal year, the Agency will also implement a process through which importers can submit blanket adjustments, whereby amendments are matched to original entries to properly verify the amount of duty and taxes owed.

## Internal Services

### Description:

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of an organization. These groups are: Management and Oversight Services; Communications Services; Legal Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Real Property Services; Materiel Services; Acquisition Services; and Other Administrative Services. Internal Services include only those activities and resources that apply across an organization and not to those provided specifically to a program.

### Budgetary Financial Resources (dollars)

2014–15 Main Estimates	2014–15 Planned Spending	2015–16 Planned Spending	2016–17 Planned Spending
585,248,014	585,248,014	564,231,925	541,658,255

### Human Resources (FTEs)

2014–15	2015–16	2016–17
3,243	3,192	3,136

### Planning Highlights

The CBSA's Internal Services play a significant role in the implementation of sustainable development and ensure that its commitments to Theme IV of the FSDS 2013–2016 – *Shrinking the Environmental Footprint – Beginning with Government* – are achieved. The Agency is responsible for targets in the following areas: greenhouse gas emissions reduction, real property environmental performance, green procurement, sustainable workplace operations, greening services to clients, and water management. For details on the Agency's activities related to these target areas, refer to the [Greening Government Operations Supplementary Information Table<sup>xi</sup>](#).



**Key Commitment: Well-designed and agile business – Employing efficient and effective business models that align with strategic priorities and available resources to achieve Agency goals**

#### Related Organizational Priority: Strengthen Organizational Resilience

Employing efficient and effective business models requires focused efforts on strengthening strategic planning and improving the tools and resources to support better management and decision making. In 2014–15, the CBSA will continue to strengthen its planning, design, and implementation of Agency-wide business processes, policies, tools and solutions needed for sound stewardship and decision making on resources. This will ensure resources continue to be aligned with strategic priorities, and are informed by a robust risk-management regime.

#### **Key Commitment: Frontline Service Delivery – Entrenching service excellence across the spectrum of border services provided by the Agency**

##### Related Organizational Priority: Strengthen Organizational Resilience

In providing frontline services to Canadians and stakeholders, high standards of client service excellence are essential. In support of this ongoing commitment, in 2014–15 the Agency will continue implementing service excellence initiatives and monitoring satisfaction in the delivery of border services, including the development of a strategy to address an increase in requests for services in remote locations in northern Canada. The Agency will also promote the CBSA brand, identity, mandate and culture. In delivering a unified image, one built upon professional standards and a collective sense of purpose, the CBSA will help increase the public’s recognition of and trust in the effective and efficient delivery of trade and travel, and strengthened security.

In pursuing service excellence, and by contributing to the Government of Canada Open Data Initiative, the CBSA will ensure that its public information, whether provided through the CBSA website, the Canada.ca website, traditional media, social media, or other communications means, is more accessible and streamlined to provide up-to-date, accurate and timely information for Canadians and stakeholders. By enhancing communication with the public, confidence in the Agency’s ability to administer its programs and services will be increased.

Finally, in 2014–15, the CBSA will continue to modernize its emergency management practices to allow the Agency to better predict, monitor, react and recover from significant events that can impact border travel and service delivery. To that end the Agency will develop a policy framework for the effective management of significant events which will set the foundation for an incident command system.

#### **Key Commitment: Modern, Responsive and Enabling Infrastructure – Maintaining modern technologies, information systems and physical assets to increase productivity and improve decision making**

##### Related Organizational Priority: Strengthen Organizational Resilience

Strengthening information management to support business needs; using science and engineering to support a modern border services agency; and implementing an infrastructure plan for critical systems

and facilities, all remain enabling priorities for 2014–15. Mitigating significant disruptions to frontline services and the resulting impact on the strength of the Canadian economy and the security of Canadians has the CBSA constantly employing intelligence, science, sophisticated analytics and information systems to ensure the most effective management of border-related risks throughout the continuum. In 2014–15, the CBSA will continue to strengthen its science and engineering services in the area of detection technology, forensics, analytics, and radio telecommunications. The CBSA will also continue to develop and implement a plan to decommission aging and legacy business applications, and assure the availability of information technology and information management business systems to optimize border operations. This activity is also part of the risk response strategy linked to the IT Systems risk and aligns with the CBSA Enterprise Risk Profile.

Improving critical facilities with related technology systems will also provide border services officers with refined physical assets at ports of entry, resulting in a better border experience for the Agency's clients. High standards of frontline service delivery will be enhanced through the development and gradual implementation of a long-term plan for a cost-effective and sustainable infrastructure program with a short-term focus on critical facilities and addressing risks.

**Key Commitment: Employee Excellence – Ensuring a motivated, knowledgeable and innovative workforce that continually improves border integrity and security**

Related Organizational Priority: Strengthen Organizational Resilience

In 2014–15, the CBSA will continue to renew its workforce in order to deliver the Agency's Border Modernization agenda in support of a high-performing, bilingual and mobile frontline workforce. The primary initiative in this renewal is our three-part Officer Induction Model which includes: a national recruitment program focused on candidates that meet evolving operational needs; the Officer Induction Training Program at the CBSA College which provides intensive training including firearm certification of recruits; and the Officer Induction Development Program which supports and assesses trainees in their transition to the field operations. Continued enhancement of the model will remain a priority for the Agency.

In 2014–15, the CBSA will further its transition to an armed law enforcement agency and deliver on its commitment to arm the majority of CBSA officers by the end of fiscal year 2015–16. The Agency will continue to work with public safety partners on areas of mutual interest including training development and the use of specialized training infrastructure. Finally, the CBSA will develop a strategy for ongoing delivery of Arming and Use of Force training to ensure that CBSA officers are equipped with the necessary tools and skills to perform their duties in a safe and effective manner.

## Section III: Supplementary Information

### Future-Oriented Statement of Operations

The future-oriented condensed statement of operations presented in this subsection is intended to serve as a general overview of the CBSA's operations. The forecasted financial information on expenses and revenues are prepared on an accrual accounting basis to strengthen accountability and to improve transparency and financial management.

Because the future-oriented statement of operations is prepared on an accrual accounting basis and the forecast and planned spending amounts presented in other sections of this report are prepared on an expenditure basis, amounts will differ.

A more detailed future-oriented statement of operations and associated notes, including a reconciliation of the net costs of operations to the requested authorities, can be found on the CBSA's [website<sup>xii</sup>](#).

#### Future-Oriented Condensed Statement of Operations For the Year Ended March 31 (dollars)

Financial information	Estimated Results 2013–14	Planned Results 2014–15	Change
Total expenses	1,970,001,000	1,897,828,000	(72,173,000)
Total revenues	16,430,000	16,430,000	-
Net cost of operations	1,953,571,000	1,881,398,000	(72,173,000)

Total expenses for the 2014–15 year are estimated to be \$1.898 billion. This is a decrease of approximately \$72 million or 3.7% compared to the 2013–14 year where total expenses were estimated to be \$1.970 billion.

Total revenues are estimated to be \$16.43 million in both years.

## List of Supplementary Information Tables

The supplementary information tables listed in the *2014–15 Report on Plans and Priorities* can be found on the CBSA’s [website](#)<sup>xiii</sup>:

- Greening Government Operations;
- Upcoming Internal Audits and Evaluations over the next three fiscal years;
- Status Report on Transformational and Major Crown Projects; and
- User Fees.

## Tax Expenditures and Evaluations

The tax system can be used to achieve public policy objectives through the application of special measures such as low tax rates, exemptions, deductions, deferrals and credits. The Department of Finance publishes cost estimates and projections for these measures annually in the *Tax Expenditures and Evaluations*<sup>xiv</sup> publication. The tax measures presented in the *Tax Expenditures and Evaluations* publication are the sole responsibility of the Minister of Finance.



## Section IV: Organizational Contact Information

For more information on the CBSA and its activities, please visit the CBSA's website at <http://www.cbsa-asfc.gc.ca>.

### Contact Information for General Inquiries

By Telephone:

Within Canada: 1-800-461-9999

Outside Canada (long distance charges apply): 1-204-983-3500 or 1-506-636-5064

TTY within Canada (For those with hearing or speech impairments): 1-866-335-3237

By Email:

[Contact@cbsa.gc.ca](mailto:Contact@cbsa.gc.ca)

By Mail:

Canada Border Services Agency  
Ottawa, ON  
Canada  
K1A 0L8

## Endnotes

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- i. *Treasury Board Secretariat Estimates Publications and Appropriation Acts*, <http://www.tbs-sct.gc.ca/ems-sgd/esp-pbc/esp-pbc-eng.asp>.
- ii. *Selected Departmental Performance Reports for 2008–2009 – Department of Industry, Department of Transport. Report of the Standing Committee on Public Accounts*, September 2010, <http://www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&Parl=40&Ses=3&Language=E&DocId=4653561&File=0>.
- iii. *Strengthening Parliamentary Scrutiny of Estimates and Supply. Report of the Standing Committee on Government and Operations Estimates*, June 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5690996&Language=E&Mode=1&Parl=41&Ses=1>.
- iv. *Whole-of-government framework*, <http://www.tbs-sct.gc.ca/ppg-cpr/frame-cadre-eng.aspx>.
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- vi. *2014–15 Main Estimates*, <http://www.tbs-sct.gc.ca/ems-sgd/esp-pbc/esp-pbc-eng.asp>.
- vii. *2013–16 Federal Sustainable Development Strategy*, <http://www.ec.gc.ca/dd-sd/default.asp?lang=En&n=A22718BA-1>.
- viii. *2014–17 CBSA Sustainable Development Strategy*, <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/sds-sdd/sds-sdd-14-17-eng.html>.
- ix. *Federal Sustainable Development Strategy*, <http://www.ec.gc.ca/dd-sd/>.
- x. *2014–17 CBSA Sustainable Development Strategy*, <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/sds-sdd/sds-sdd-14-17-eng.html>.
- xi. *Greening Government Operations Supplementary Table and the Policy on Green Procurement*, <http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2014-2015/index-eng.html>.
- xii. *Future-Oriented Statement of Operations*, <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/fs-ef/2014/fofs-efp-eng.html>.
- xiii. *List of Supplementary Information Tables*, <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2014-2015/index-eng.html>.
- xiv. *Government of Canada Tax Expenditures*, <http://www.fin.gc.ca/purl/taxexp-eng.asp>.

# TAB 22

CBSA Memo 17-1-5



Ottawa, March 13, 2013

# MEMORANDUM D17-1-5

## REGISTRATION, ACCOUNTING AND PAYMENT FOR COMMERCIAL GOODS

This memorandum outlines the policies and procedures of the Canada Border Services Agency (CBSA) requirements for client registration, to account for, and for payment of duties and taxes on imported commercial goods. This memorandum does not include procedures for goods cleared under the Customs Self Assessment (CSA) program. For procedures related to goods cleared under the Customs Self Assessment Program, please consult D17-1-7, *Customs Self Assessment Program for Importers*. A glossary of CBSA terminology is included at the end of Section 4.

**Note:** Amounts are in Canadian dollars unless otherwise specified.

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## GUIDELINES AND GENERAL INFORMATION

### **Using a Customs Broker**

1. Importers may choose to transact business directly with the Canada Border Services Agency (CBSA) or they may authorize a licensed customs broker to conduct business on their behalf such as;
  - (a) Register for a Business Number (BN), importer/exporter account;
  - (b) Prepare release (interim accounting) documentation;
  - (c) Prepare final accounting documentation;
  - (d) Remit payment of duties and taxes to the Receiver General; and
  - (e) Request corrections and refunds to accounting documents.
2. The importer is required to provide the customs broker with written authority to act as their agent along with all the information needed to complete customs documentation. For more information on acceptable written authority refer to D1-6-1, *Authority to Act as Agent*.
3. Fees imposed by customs brokers are not regulated by the CBSA. Although importers may use a customs broker to transact business with the CBSA, they are ultimately responsible for accounting documentation, payment of duties and taxes, and subsequent corrections.

### **BUSINESS NUMBER REGISTRATION**

#### **Business Number**

4. To transact business with the CBSA, a commercial importer requires a business number with an import/export account (RM). All release, interim and final accounting documents for commercial importations must show a valid BN. The correct BN account number must be indicated on both release and accounting documents.
5. To ensure that goods are released quickly, importers or customs brokers should arrange for an importer/exporter account with customs before a shipment arrives at the border or point of entry. If the Business Number (BN) indicated on interim release or final accounting documentation is rejected by the customs system as "invalid," the documentation will be returned to the importer or customs broker and the goods will not be allowed to enter Canada.

6. The name used on all release and accounting documents must correspond with the name under which the company registered for its customs program account. Clients with only one RM account who provide hard copy documents do not have to specify the account identifier on

release and accounting documents. Clients with more than one RM account must enter all 15 characters of their BN on all documents.

7. The letters RM should not be included as part of the account number on accounting documents. The number should appear as below:

1234567890001

8. If an importer or customs broker has more than one RM account but has not specified which one, the CBSA will release the shipment and issue Form Y50, *Reject Document Control*, to the importer or customs broker. Final accounting documents will not be accepted until the required corrections have been completed.

**Note:** Accounting time limits are not protected.

#### **Format**

9. The BN consists of 15 digits made up of a nine digit registration number and a six character alphanumeric account identifier. The nine digit registration number identifies the business and remains the same regardless of the number or types of accounts. The account identifier includes a two character program identifier and a four digit reference number identifying the account in each program. Companies can have one or more account numbers in each program.

#### **Program Account Identifiers**

10. The four program identifiers are:

- (a) RC – Corporate Income Tax
- (b) RM – Import/Export
- (c) RP – Payroll Deductions
- (d) RT – Goods and Services Tax (GST)

11. An importer or exporter may have more than one RM account identifier. For example, a company with branches or divisions will have one nine digit registration number but may have separate RM account identifiers for each branch or division.

12. Example BN: 123456789 RM 0003

In this example, 12345 6789 is the company's registration number. RM identifies the program (in this case the Import/Export program). The last four digits (0003) identify the account number, a third Import/Export account.

#### **Registration Forms**

13. An importer or customs broker registering with one of the BN programs for the first time, or adding an RM account to an existing BN, must use specific forms when faxing the registration request to the Winnipeg Tax Centre (WTC) at **1-800-959-8302**.

14. The following forms and pamphlets are available at most CBSA and Canada Revenue Agency (CRA) offices and on the CRA website at [www.cra.gc.ca](http://www.cra.gc.ca).
15. Form RC1, *Request for a Business Number (BN)*, for businesses, in all the provinces except Quebec, with no accounts in the BN program. The pamphlet RC2, *The Business Number and Your Canada Revenue Agency Accounts*, provides information about the BN.
16. For businesses in Québec, please consult the CRA website at [www.cra.gc.ca](http://www.cra.gc.ca) and select business account registration.
17. Form RC1C, *Business Number (BN) – Import/Export Account Information*, for clients who have a BN but need an RM account. A sample of Form RC1C can be found on the CRA website at [www.cra.gc.ca](http://www.cra.gc.ca).
18. In the event an urgent registration is required, a customs broker can contact the Customs Business Number Registration (CBNR) unit of the WTC from 7 a.m. to 6 p.m. (Central Daylight Time). Customs brokers/agents who are registering their clients by telephone must be prepared to provide the WTC with all of the information required on the appropriate form.
- Note:** Before contacting the WTC to request a new BN or an RM account for a business, the customs broker/agent should make every effort to verify with the client that the business does not have an existing BN or RM account.
19. To register, or for more information, contact the nearest CRA tax services office. Telephone numbers are listed in the blue pages of the local telephone book in the Government of Canada section. Registration may be obtained by telephone, fax, or mail. Local CBSA offices also provide forms and forward completed applications to a tax services office for processing. Tax services offices are open Monday to Friday, except statutory holidays, from 8:15 a.m. to 4:30 p.m. The Tax Services Offices' addresses, office hours, and fax numbers can be found on the CRA website at [www.cra.gc.ca](http://www.cra.gc.ca).

## Required Information

20. The following information must be provided to register for a BN:
- (a) Legal entity name – the legal name of the company for which all invoices and/or refunds will be issued;
  - (b) Physical location – the address of the legal entity;
  - (c) Mailing address – if different from the legal entity (i.e., clients may request that their lawyer or accountant receive mail);
  - (d) Account name – the name of the account identifier clients use for their books and records; and
  - (e) Account address – the account address if different from the legal entity.

## Example

Legal entity name:	123 Ont. Inc.
Operating or trade name:	Blues Brothers Steel Company
Physical location:	987 Rockshore Drive Toronto ON T4K 8L8
Mailing address:	c/o John Smith Attorney at Law 879 Bloor Street Toronto ON T8J 3N7
Account name:	123 Ont. Inc. – Vancouver Office
Account address:	c/o ABC Customs Brokers 789 Stanley Drive Vancouver BC V3K 7S1

## Exceptions

21. Circumstances when customs brokers will use their BN RM account:

- (a) **High and Low Value Shipments (HVS and LVS)** – Customs brokers representing one time importers of commercial goods or non-commercial casual goods who are not entitled to obtain their own Business Number, can process the shipments using the RM account number under their own broker's BN. The broker's importer/exporter account number must be identified as "HVS one-time importer" or "LVS one time importer" as applicable.
- (b) **Courier/LVS Program** – Customs brokers accounting for shipments released under the courier/LVS program may process consolidated entries using an RM account number under their own BN. This account should be identified as "Courier/LVS Program."
- (c) **Importation of High Value Non Commercial (Casual) Goods** – High value non-commercial or casual goods imported under the commercial process (via a B3) should be accounted for under an RM account assigned to the customs broker's BN. This account should be identified as "High Value, Casual Importations."
- (d) **Temporary Importation** – Importers who temporarily import commercial goods into Canada on Form E29B, *Temporary Admission Permit*, and export the goods, do not need a BN. However, if the goods are temporarily imported but subsequently remain in Canada, the goods must be accounted for using the importer's BN and RM account; if they do not have an existing BN, they must obtain a BN with an RM account to account for the duties and taxes owing. For more information, refer to Memorandum D17-1-4, *Release of Commercial Goods*.
- (e) **Convention and Trade Shows** – Customs brokers may register a convention or trade show under their BN, using the name of the convention or trade show as the RM account name. However, importers of

commercial goods for display or sale at a convention or trade show should register for a BN.

### **Change in BN Information**

22. A request to change BN identification information, such as business name or address or to have an importer/exporter account reactivated should be forwarded to a CRA business window.

### **Change in Legal Entity**

23. If the legal basis under which business is conducted changes, such as when an unincorporated business becomes a corporation, or a corporation merges with one or more corporations to form a new corporation, a new BN may be obtained from a CRA business window if required.

### **Account Inquiries**

24. Importers should provide customs brokers or agents with up-to-date import/export account data on a regular basis.

25. Only the importer and those authorized by the importer will be given access to client account information. Customs brokers or agents requesting confirmation of a client's BN account information will be directed to contact the client.

## **ACCOUNTING**

### **General**

26. The CBSA needs information to verify the value, classification, country of origin, tariff treatment, and exchange rate on imported goods. This data, as well as a breakdown of the duties and taxes owing must be shown on Form B3, *Canada Customs Coding Form*. Most of this information can be found on the commercial invoice provided when the goods were purchased. It may be conveyed either via hard copy (paper) or electronically.

### **Coding of Documents**

27. The CBSA monitors all release and accounting documents for quality. Requirements for the completion of the various release documents can be found in Memorandum D17-1-10, *Coding of Customs Accounting Documents*. Importers and customs brokers must comply with the statutory or regulatory provisions on release documents (interim accounting) to the same extent as at final accounting.

28. The coding and format of Form B3, *Canada Customs Coding Form*, used to account for commercial goods, must be in accordance with Memorandum D17-1-10, *Coding of Customs Accounting Documents*. Accounting data transmitted electronically must comply with these requirements in the format set out in the CADEX participants requirements document. The information shown

on Form B3 must agree with the information on the release documentation.

29. If the importer or customs broker has posted security with the CBSA for release of goods prior to payment, the account security number appears as the first five digits of the transaction number on all accounting documentation. The transaction number is a 14 digit number that must be provided in bar code format. Information on the transaction number and coding instructions for the B3 are available in Memorandum D17-1-10, *Coding of Customs Accounting Documents*.

**Note:** The CBSA will apply the 14-digit bar-coded transaction number to accounting documents submitted by clients who do not have security.

### **Hard Copy Accounting Documents**

30. The hard copy B3 must be given to the CBSA office where the goods are released. It may be either typed or handwritten. Copies of the form are available at CBSA offices, or it may be privately printed. Specifications are found in Memorandum D17-1-11, *Private Printing Policy and Procedures*. A copy of the form may also be obtained through the CBSA website at [www.cbsa.gc.ca](http://www.cbsa.gc.ca). A sample is also contained in Appendix A.

### **Customs Cash Entry Processing System (CCEPS)**

31. CCEPS is a self-serve automated system for individuals or small businesses who import commercial goods. Clients can use CCEPS at a computer station in certain CBSA offices to complete Form B3. The system helps clients complete the form through a series of prompts, calculates applicable duties and taxes, and generates a printed accounting form. A list of offices that provide CCEPS is contained in Appendix B.

### **Electronic Accounting Information**

32. Accounting data may be transmitted by way of EDI from a company's office to the CBSA's Customs Automated Data Exchange (CADEX) system. For more information on how to participate in electronic commerce accounting, contact the Electronic Commerce Unit (ECU) Help Desk at **1-888-957-7224** or go to the web link at [www.cbsa.gc.ca](http://www.cbsa.gc.ca) under services.

**Note:** An importer or customs broker must have security for release prior to payment in order to transact business electronically with the CBSA.

### **Invoice/Billing Documents**

33. Form B3 is the official invoice for both cash clients and account security holders and represents an obligation for the duties and taxes owing on the goods. All corrections, audits, and appeals are based on the data submitted on this document.

34. The B3 is the only document that cash clients use for payment of duties and taxes. However, form K84 is issued by the CBSA on a daily and monthly basis for those clients with account security.

### **Time Limits**

35. Final accounting documentation for goods released on the basis of interim accounting documents must be presented to and accepted by the CBSA's automated system within the prescribed time limit or a \$100.00 late accounting penalty will be applied to each overdue transaction.

36. The CBSA makes a distinction between "high value" and "low value" shipments for the purpose of establishing time limits for submitting this information.

### **High Value Shipments (exceeding \$2,500.00)**

37. The calculation of the time limit for high value shipments is based on regular business days and does not include Saturdays, Sundays and federal and provincial holidays.

38. Final accounting documentation must be presented or transmitted and accepted by the CBSA's automated system within five business days of the date the CBSA releases the goods. The day of release is considered day zero. When goods are released on a Saturday, Sunday, or holiday, the accounting period begins on the first business day after release.

39. Importers or customs brokers have until one half hour before the end of the day shift, on the fifth day to submit their accounting data. If the data is transmitted electronically, CBSA must receive and validate the data prior to 9:00 p.m. E.S.T. on the fifth day. For an example of a time limit for a high-value shipment, please see Appendix C.

### **Low Value Shipments (not exceeding \$2,500.00)**

40. Accounting information must be presented or transmitted and accepted by the CBSA's automated system by the 24th day of each month following the month in which the goods were released. Accounting documents must be presented or transmitted for each shipment released in the previous month. If the 24th day falls on a weekend or statutory/civic holiday, goods must be accounted for on the previous business day. Importers or customs brokers have until one half hour before the end of the day shift on the 24th to present their accounting data. If the data is transmitted electronically, CBSA must receive and validate the data prior to 9:00 p.m. E.S.T. For an example of a time limit for a low value shipment, please see Appendix D.

### **Provincial Civic Holidays**

41. CBSA's automated system will not generate the daily K84, *Importer/Customs Broker Account Statement*, on a provincial civic holiday.

42. If the importer or customs broker accounts or transmits accounting documentation on a civic holiday, the CBSA will assume the intent was to account without the benefit of the holiday and process the transaction normally (i.e., it will appear on the current monthly Form K84). For examples please see Appendix E.

### **Extensions**

43. An application may be made for an extension of the time limit of up to three business days where a CBSA error or delay may have contributed to a failure to account on time. Some examples might be:

- (a) The CBSA supplied erroneous information to the importer or customs broker;
- (b) The CBSA did not supply essential information to the importer or customs broker;
- (c) an error or delay occurred in the manual processing by the CBSA; or
- (d) a serious error or delay occurred in the CBSA's automated processing.

44. The application should be made in a letter containing sufficient information to process the request. This letter must be submitted to the CBSA office where the goods were released.

### **Cash Clients**

45. Data from the accounting document is entered into the CBSA automated system which generates a Form B3-1, *Canada Customs – Detailed Coding Statement* (DCS). The DCS notifies of errors and serves as a receipt when the data is accurate. A sample of this form is contained in Appendix F.

46. If corrections are required, the CBSA cashier returns the complete accounting package and the DCS to the importer or customs broker.

47. If the system accepts the accounting document, the cashier will collect the duties and taxes owing, stamp the copy of the DCS and Form B3 "duty paid," and return the DCS as receipt of payment. The CBSA will then release the goods.

### **Late Accounting Penalty**

48. Final accounting documentation must be presented and accepted by the CBSA's automated system within the prescribed time limit or a \$100.00 late accounting penalty will be applied to each overdue transaction.

49. Penalties assessed against high value shipments (exceeding \$2,500.00) released at an automated office will appear on the K84. Penalties assessed against low value shipments, and high value shipments released at non-automated offices will be assessed manually and issued on Form K23A, *Invoice*. A sample of the Form K23A is contained in Appendix G.

## **Release Notification Report**

50. This report is printed at automated CBSA offices each business day, and distributed to all account security holders. EDI participants have access to an electronic version. The report contains information concerning all shipments released the previous business day or earlier which were not entered into the CBSA's automated system.

**Note:** Transaction queried on an electronic release notification will not be produced on the hard copy release notification report.

## **Overdue Release Report**

51. This report lists all transactions released by the CBSA for which no accounting data was received within the prescribed time limits. It includes transactions that were rejected when no revised accounting information was received. A penalty of \$100.00 for each overdue transaction is identified on the daily notice once final accounting is provided.

## **Late Transaction Payment Interest**

52. If accounting information is presented late and transactions move from one deferred payment period to the next, late transaction payment interest is charged from the first calendar day following the date the duties and taxes should have been paid (the last business day of the previous month). Interest ends when the total outstanding duties and taxes have been paid. For an example please see Appendix H.

## **Waiver or Cancellation of Late Accounting Penalties and Interest**

53. A client may seek waiver of a late accounting penalty identified on a K84 daily notice prior to assessment on a K84 monthly statement. Late accounting penalties and late transaction payment interest assessed on Form K84 monthly statement and Form K23A invoice may also be cancelled under the interest and penalty relief provisions. These discretionary provisions permit the CBSA to help clients resolve problems that arise from situations beyond their control, for example:

- (a) CBSA errors such as CBSA systems programming or keying errors;
- (b) CBSA delays such as manual or automated processing delays;

- (c) natural or human-made disasters such as floods, ice storms or fire;
- (d) death or incapacity of a key employee responsible for reporting to the CBSA such as serious illness or emotional stress caused by a death in their immediate family;
- (e) unanticipated civil disturbances or disruptions in services such as demonstrations, terrorism when alternative means of compliance are not readily available; or
- (f) extraordinary circumstances not covered above such as a client's automated system being down for extended periods of time.

54. An application for waiver or cancellation is unlikely to be approved in a case where the late accounting or late transaction payment resulted from neglect or lack of awareness on the part of the importer or customs broker. An example of client neglect is a failure to adhere to transmission requirements specified in the ECCRD.

55. Applications for cancellation are also unlikely to be approved when the importer or broker had sufficient time to apply for waiver, but chose not, or neglected, to do so. Application for penalty cancellation will be denied if not received by CBSA within 90 days of the penalty being assessed unless an extension of time is granted under s. 129.1 of the *Customs Act*. [For information about extensions, see the CBSA website at <http://www.cbsa-asfc.gc.ca/recourse-recours/et-pd-eng.html> (Accountability/Appeals/Extension).]

56. A Form E571 or a letter containing the same information is used to apply for a waiver or cancellation of late accounting penalties and associated late transaction payment interest, when applicable. A waiver application should be submitted immediately after the prospective penalty is identified on the daily notice, rather than waiting until the monthly statement is generated. This will ensure, whenever possible, that the penalty will not be assessed on the monthly statement if it is eligible to be waived.

57. Applications for waiver involving transactions released from a single releasing office should be sent to the CBSA office where the goods were released, preferably 5 or more business days before the monthly statement will be issued.

58. Applications for waiver or cancellation that involve transactions from more than one releasing office, accounting dates within 5 days prior to the monthly statement date, and/or automated systems problems may be forwarded to the

Manager, Recourse Policy  
Recourse Directorate, CBSA  
1686 Woodward Drive  
Ottawa ON K1A 0L8  
Fax: 613-960-5112

or  
 Manager, Recourse Division  
 GTA Region (Toronto), CBSA  
 1 Front St. W. 3rd floor  
 Toronto ON M5J 2X6  
 Fax: 416-954-6740

59. If the monthly statement has already been generated, the importer or customs broker should pay the penalty amount on the due date and submit an application for cancellation to the Recourse manager at the address noted above. The cancellation application should include proof of payment. If the application is approved, a cheque will be issued for that amount.

60. When clients are not satisfied with the outcome of their application for waiver, they can apply for cancellation within 90 days from the date the penalty was assessed on the monthly K84 statement or K23A invoice. This application for cancellation must include a copy of the first decision and an explanation of why the client thinks the decision should have been different. The application should be sent to the recourse manager at the address noted above.

61. The assigned recourse officer will contact the client about any cancellation application he recommends be denied and give the reasons for same. This letter will provide the clients with a short opportunity to respond. The delegated recourse official will review the recommendation and all client information and, for any cancellation application he denies, issue a decision letter and reasons. It will include reasons and identify any further recourse avenues that may exist.

62. CBSA may proactively waive late accounting penalties arising from a national CBSA system outage lasting more than four hours or from other CBSA systems problems, such as provincial holidays without a client application. Electronic commerce clients will be notified through a CADEX broadcast message the day after the system problem.

63. Due to the volume of penalties, the CBSA may sometimes not have time to proactively waive a penalty and it will appear on the monthly statement. A copy of the daily notice on which the prospective penalty is identified should be provided to the client's central payment office with a copy of the notice referred to in paragraph 61. The payment office will verify whether the penalty should have been waived and, if so, will cancel the penalty prior to payment.

64. All cancellation applications approved by CBSA Recourse that result in a refund of late accounting penalties and associated late transaction payment interest, when applicable, will be assigned a bar code number. This bar code number will appear on Form E571, *Late Accounting Penalties – Application for Waiver, Cancellation*, in the "Mail cheque to" field. A copy of the bar-coded Form E571 is sent to the client to confirm the status of his or her application.

65. The bar code number will be used by the CBSA regional office that issues refunds to issue the cheque and it will also appear on the cheque stub. This should allow the importer or customs broker to cross-reference their refund to the original application for cancellation.

### **Account Security**

66. The daily and monthly importer/customs broker account statements (K84) are generated by the CBSA office where the Form B3 was received. K84s will be redirected to CBSA central payment offices. The K84s may be picked up at the payment office on a daily basis. Samples of a daily and monthly K84 are contained in Appendices J and K.

67. The CBSA's automated system generates a K84 daily notice for each account security number, identifying the accounting documents accepted by the system the previous business day by transaction number, sorted by office of release. The transactions on a customs broker's daily notice are also sorted by importer.

68. Customs brokers may obtain a separate page of the K84 daily notice for clients under the Importer Direct Security Option, if an "I" is indicated in payment mode code, Field No. 6 on Form B3. A separate page is not provided for clients under the GST Direct Payment Option. For more information on security and options refer to D17-1-8, *Release Prior to Payment Privilege*.

69. On the second-last business day of the month, the system generates a K84 monthly statement, which provides a summary of all K84 daily notices processed during the deferred payment period. The deferred payment period is from the 25th day of the previous month to the 24th day of the current month inclusive. This statement shows the total amount of duties and taxes owed, including any late accounting penalties, late transaction payment interest, and interim payments made during that period.

70. The K84 monthly statement is provided to the account security holder for whom the statement was generated. A customs broker is responsible for determining amounts owed by their clients and advising them accordingly.

71. Importers or customs brokers who submit accounting documents electronically receive an electronic copy of the K84 daily notice and monthly statement in addition to the hard copy. If a discrepancy exists between the electronic and hard copy versions, the hard copy version will take precedence.

### **Statutory Holiday**

72. Accounting data electronically transmitted to the CBSA on a statutory holiday is not loaded into the automated system until the next working day. Accounting data transmitted on the holiday and on the following business day will appear on a daily notice dated the second business day following the holiday.

73. Separate K84 daily notices are generated, since the entry data was transmitted to the CBSA on two separate accounting dates. The first notice shows the transactions transmitted on the holiday and the second notice the transactions transmitted on the following working day. The first notice ends with an accounting day total and account total but no grand total. The second notice ends with an account total and the grand total. The grand total shown on the second notice includes the account total from the first and second notices, combining the two amounts.

**Note:** A daily notice without a grand total is not complete.

74. Transactions from both days for clients receiving accounting information electronically will be displayed on a single daily notice with the same statement date.

75. Clients making interim payments on a K84 daily notice should pay the grand total amount shown on the second notice.

## Corrections

76. Corrections by the CBSA to K84 daily notices and monthly statements are referred to as accounting overrides. This type of correction will update the total duties and taxes owing for statement purposes only and does not update the actual accounting information (B3). Accounting overrides are performed at the payment office.

77. The original accounting information must be corrected to support any subsequent adjustments or as proof of the changes in the case of an audit.

**Note:** All corrections must be presented to CBSA using Form B2, *Canada Customs – Adjustment Request* before the monthly statement is generated on the second last business day of the month.

## Accounting Override Procedures

78. Accounting overrides will be accepted only in the case of clerical or typographical errors or CBSA keying errors. Accounting overrides will not be accepted for changes in the tariff classification, origin, value for duty or tax status. The normal procedures to submit Form B2, *Canada Customs – Adjustment Request*, for re-determination by an officer in a regional Trade Compliance Division should be followed for requests involving changes in tariff classification, origin, value for duty or tax status for refunds under section 74 or corrections under section 32.2 of the *Customs Act*.

## Revenue Adjustment Procedures for K84 Monthly Account Statement

79. If the importer/customs broker discovers a typographical or clerical error or a CBSA keying error between the time the B3 data is submitted and before the monthly statement is generated, the error can be corrected

through the Customs Commercial System (CCS) K84 override procedures prior to payment. The correction process is intended to address only those situations in which a calculation or transposition error has occurred or the CBSA has keyed the B3 incorrectly.

80. The correction process is not, under any circumstances, to be used to circumvent the legislated process for re-determination of tariff classification, origin, or value for duty, and therefore, cannot be used to change information such as the tariff treatment, tariff classification, or taxable status of imported goods. Changes required for tariff classification, origin, value for duty, or tax status must be submitted to CBSA on Form B2.

81. With the exceptions of:

(a) B2 requests that result from a compliance verification (multi-program or single program) from another region. These claims should be directed to the Senior Officer Trade Compliance (SOTC) who conducted the verification;

(b) Blanket claims;

(c) Section 60 B2 claims for recourse;

B2s pertaining to goods released from Atlantic and Northern Ontario Regions should be submitted directly to the following address for processing:

CBSA  
Trade Services Division  
c/o B2 Processing  
400 Youville Square, 5th floor  
Montréal QC H2C 2C2

B2s pertaining to goods released from Pacific should be submitted directly to the following address for processing:

CBSA  
CV & S, Client Services  
c/o B2 Processing  
55 Bay St. North, 6th floor  
Hamilton ON L8R 3P7

B2s pertaining to goods released from the Prairie region should be submitted to the following address for processing:

CBSA  
CV & S, Client Services  
c/o B2 Processing  
55 Town Centre Court, Suite 718  
Scarborough ON M1P 4X4

**Note:** The SOTC will make a decision on the request. Form B2-1, *Canada Customs – Detailed Adjustment Statement*, will be issued to notify if the claim is accepted or rejected.

82. If Form B2 is rejected by the SOTC, interest will be assessed. Refer to Memorandum D17-2-1, *Coding of Adjustment Request Forms*, for the legislative reference code to be used on the adjustment request. Samples of Form B2 and Form B2-1 are contained in Appendices L and M.

83. Importers/customs brokers must verify their Form K84 daily notices and bring in correction packages as early as possible. Normally, requests for corrections to a daily notice or a corresponding Form B3, *Canada Customs Coding Form*, will be accepted by the CBSA up to 12:00 hours (noon) on the third last business day of the month. This will ensure that the correction can be made before the monthly statement is issued on the second last business day of the month.

84. The CBSA will only correct B3 data using override procedures if a written explanation in the form of a letter of the clerical, typographical, or CBSA keying error is submitted with the request and all of the following conditions are met:

- (a) any monetary change is greater than \$2.00;
- (b) the error is evident from the original invoice submitted;
- (c) the decision is not one that has to be made by an officer in a Regional Trade Compliance Unit (i.e., no tariff classification, origin, tax status or valuation decisions);
- (d) there is no change to the classification number, tariff treatment, rate of GST, or special authority field;
- (e) requests for quantity changes can be substantiated by the original invoice submitted;
- (f) requests for correction of the value for currency conversion can be substantiated from the original invoice submitted and no decision regarding discounts or methods of valuation is required;
- (g) an error in the extension calculations, currency code, or rate of exchange is obvious;
- (h) the name of the importer or the business number or RM account information needs amending, and the request is accompanied by an authorization letter as per Memorandum D17-2-3, *Importer Name/Account Number or Business Number Changes*. The cash supervisor must indicate the new name/number in the override remarks field. Although there is no monetary change, the original amounts must be rekeyed; otherwise, nil amounts will appear on Form K84;
- (i) it is obvious that the B3 data submitted does not correspond with the original invoice submitted (i.e. mishandled paperwork);

(j) one Form B3 is an obvious duplicate of another that has already been paid or is payable. Proof of payment or billing is required; and

(k) it is a CBSA keying error.

**Note:** The performance of an override is not to be construed as a determination or a re-determination under section 32.2, 58, 59, 60, or 74 of the *Customs Act*.

## Corrections at Automated Offices Before K84 Monthly Account Statement Issued

85. All errors must be reported to the client's accounting office where Form K84 is generated. For CBSA keying error corrections, the importer/customs broker must present the following documentation:

- (a) a copy of the Form K84 daily notice; and
- (b) the corresponding Form B3.

86. For importer/customs broker errors, the importer/customs broker must present the following documentation:

- (a) a copy of the K84 daily notice;
- (b) an explanation of the error, including the appropriate letter of authorization as per Memorandum D17-2-3 in the case of an importer name/number change;
- (c) a corrected Form B3 with the same transaction number as the original incorrect B3; and
- (d) a copy of the original B3 accounting package, including the release-stamped copy of the release on minimum documentation (RMD) package.

**Note:** CADEX participants must provide a hard copy of Form B3 when requesting a correction. If the change is approved by the CBSA, the cash supervisor will perform an accounting override in CCS. The reason for the override must be clearly identified in the explanation field. The override will update the monthly statement with the new corrected totals. A copy of the override screen will be given to the importer/customs broker as confirmation of the correction. When the importer/customs broker's Form K84 monthly statement is generated, a section will appear listing each approved override transaction and reflecting the corrected duties and taxes payable.

## Corrections at Non-automated Offices Before K84 Monthly Account Statement Issued

87. The importer/customs broker must present the following documentation to the CBSA office where the duties and taxes are to be paid:

- (a) a copy of the Form K84 daily notice;
- (b) an explanation of the error, including the appropriate letter of authorization as per Memorandum D17-2-3 in the case of an importer name/number change;
- (c) two copies of the corrected Form B3 with the same transaction number as the incorrect Form B3; and
- (d) a copy of the original Form B3 accounting package, including the release-stamped copy of the RMD package.

88. If the change is approved, the B3 line on the importer/customs broker's copy of the K84 daily notice will be changed, stamped with the CBSA office stamp, signed by the cash supervisor, and returned to the importer/customs broker. Because it is a non-automated office, corrections made by this office to Form B3 and K84 daily notices cannot be reflected on the monthly K84 statement. Therefore, copies of the corrected daily notices and Form B3 must be part of the customs broker/importer's reconciliation process.

### **Corrections After the K84 Monthly Account Statement Issued**

89. Requests for changes as a result of typographical or clerical errors after the monthly Form K84 statement has been generated must be submitted to the appropriate Trade Compliance office on Form B2.

90. Procedures for the presentation of Form B2 are outlined in Memorandum D17-2-2, *Processing of Adjustment Request Forms*. Importers/customs brokers will be expected to pay the amount in question pending the outcome of the Form B2 review by the Regional Trade Compliance Unit.

91. In exceptional circumstances only, the CBSA will allow a client to submit a completed Form B2 to the cashier at the payment office and to "short remit" by the correction amount in the case of an obvious typographical or clerical error when the error can impose a financial hardship on the importer/customs broker (e.g., duties of \$100,000.00 showing when the correct amount is \$100.00) and the importer/customs broker can adequately justify the delay in submitting the request for correction. A written explanation of the change must accompany the request; the change requested must match the information shown on Form B2, and the cash supervisor must be readily able to identify the required change. Requests of this nature will be reviewed on a case-by-case basis in consultation with the Assessment Unit, Assessment and Licensing Division, in Headquarters. This policy will be monitored to ensure that it is not abused by the importer/customs broker. The accounting override will not be performed unless Form B2 is also presented.

92. The legislative authority to be cited by the importer/customs broker in the "Justification for Request" field of Form B2 is paragraph 74(1)(d) of the *Customs Act*.

In the "Explanation" field of Form B2, the statement "Request for K84 Accounting Override" should be shown.

93. If the change is approved, the B3 line on the importer/customs broker's copy of the K84 daily notice will be changed, and Form K84 will be stamped with the CBSA office stamp, signed by the cash supervisor, and returned to the importer/customs broker.

94. In any other circumstances, if an importer/customs broker short remits on Form K84, Form K23A, *Invoice*, will be prepared in the name of the importer and daily late payment interest will apply on the outstanding balance from the first calendar day following the due date. This amount will be subject to action by the collections area of the Canada Revenue Agency (CRA). The collections area may apply a lien under section 97.25 of the *Customs Act*, thereby preventing any further release of goods for that importer, place a hold on any federal refunds until the debt is fully paid, or make a claim against the security posted by the importer/ customs broker is paid. The importer/customs broker will also be subject to a late payment penalty under AMP C336.

95. Clients should verify each daily notice to ensure that corrections are made in time to change the monthly statement. Corrections made after the third-last business day of the month will not affect the monthly statement and must be administered manually.

### **PAYMENT**

96. There are two methods of accounting for commercial goods and paying the duties and taxes on them:

- (a) Cash Clients (payment to obtain release)
- (b) Account Security (release prior to payment)

### **Cash Clients**

97. Importers who have not posted security will have their goods released when they:

- (a) Register with the Canada Revenue Agency (CRA) for a Business Number (BN) and an importer/exporter account;
- (b) Provide a completed accounting document; and
- (c) Pay duties and taxes owing.

### **Account Security Clients**

98. Importers or customs brokers who wish to obtain release of goods before accounting and paying duties and taxes must:

- (a) Register for a BN and an importer/exporter account;
- (b) Post security with the CBSA for release prior to payment;

- (c) Account for shipments within the prescribed time limits; and
- (d) Pay duties and taxes owing in full by the due date.

99. Account Security holders are entitled to:

- (a) Release of goods from customs before paying duties and taxes;
- (b) Deferred accounting; and
- (c) Deferred payment.

100. For more information, refer to D17-1-8, *Release Prior to Payment Privilege* and Memorandum D1-7-1, *Posting Security for Transacting Bonded Operations*.

### **Central Payment Office**

101. When goods are imported at various locations across Canada, each office where goods are released will issue a separate K84 account statement for duties and taxes. However, importers or customs brokers who have posted national security can designate the automated payment office(s) where they wish to have their statement generated for all shipments, regardless of where the goods were released. More than one payment office may be selected.

102. A written request should be submitted to Commercial Registration Unit fax: 613-946-0242. The account security number and telephone number of a contact person is to be indicated on the letter, as well as the CBSA office(s) to be used for presentation of accounting forms and the office(s) designated for central payment.

103. Central payment processing relates to payment only, not presentation of release or accounting documents. For each central payment office requested, offices where accounting information will be presented should also be indicated in the letter. A list with additional locations may be attached. Importers or customs brokers should indicate if they want only one central payment office for all releasing offices.

104. An automated CBSA office must be used for central payment for paper (hard copy) accounting documents. Importers and customs brokers may make special arrangements with the local non automated office to submit electronic accounting documents. For a listing of all office numbers and locations, please refer to our website under "CBSA offices" or see Appendix N.

105. Companies under this option should use these procedures for all transactions. To exclude specific transactions from a K84 monthly statement, a Form B3, type C, without the company's barcodes must be submitted to the CBSA and payment made prior to release.

### **Acceptable Methods of Payment**

106. Payments may be made in:

- (a) Cash – Canadian or U.S. currency (no other foreign currency shall be accepted);
- (b) Certified cheque (up to \$25 million) or money order (payable to the Receiver General for Canada);
- (c) Travellers cheque;
- (d) Debit card at locations equipped with point of sale (POS) terminals;
- (e) Visa, MasterCard or American Express (AMEX) credit cards (or their associated international credit card for commercial goods for amounts up to \$500.00). Account Security Holders may not pay by credit card. Payment for non-commercial goods shall be accepted up to the client's approved personal limit on the card; and
- (f) Uncertified cheques up to \$2,500.00 payable to the Receiver General for Canada for payment of duties and taxes if the following conditions are met:
  - (i) The company's Business Number or a major credit card number appears on the cheque. If a credit card number is provided, the CBSA may charge the amount to the card if the cheque is not honored by the financial institution. If the company's BN is on the cheque, the CBSA may collect payment by offsetting a refund pending for a GST, Source Deduction, or Corporate Tax claim, if the cheque is not honored.
  - (ii) A client has not had more than one cheque returned due to non-sufficient funds (NSF) over a one year period.
  - (iii) The payment is not for a penalty or made under the terms of release for seized goods; however, uncertified cheques will be accepted for the release of a seized conveyance.
  - (iv) The cheque is not written by or payable to a third party.

107. The CBSA will only accept U.S. uncertified cheques if the above noted conditions are met and if they are drawn on a Canadian financial institution and are imprinted or stamped with the notation U.S. Dollar account. Uncertified cheques written in Canadian currency to be drawn on U.S. financial institutions will not be accepted by the CBSA. If any of these conditions are not met, the CBSA may accept uncertified cheques for up to \$500.00.

108. Duties and taxes paid in cash, certified cheque, money order, or travellers cheque in U.S dollar amounts will be adjusted with the applicable exchange rate.

109. Clients with release prior to payment privileges monthly payments must be received at CBSA payment offices by 16:30 local time on the last business day of the month. This includes offices that are open seven days a week, 24 hours a day, for release of goods. Failure to meet this deadline will result in late payment interest at the specified rate and a late payment penalty (AMP C336).

### **Financial Institution Remittance – Non CSA Clients**

110. All payments in excess of \$25 million (only) are to be made at your financial institution. CBSA offices will only accept paper-based cheques for payments in excess of \$25 million if the client banks with the same financial institution as the CBSA office. The CBSA will not accept multiple cheques for one payment.

111. The CBSA payment office will provide a copy of the RC165 (pre-stamped with the office's G11 work location) to clients needing to make a payment in excess of \$25 million. These are MICR encoded forms, therefore photocopies will not be accepted.

112. The client will complete the RC165 form, providing the necessary payment information including their account security and business number and their business name and address, which the CBSA requires for reconciliation purposes.

113. The client will present this form to the financial institution when making their payment. The financial institution will stamp the RC165 as proof of payment, and will provide the stamped receipt portion of the form to the client. The client must then report to their usual CBSA payment office with a copy of the document they have paid (e.g. DAS or K84), a copy of the bank stamped receipt for the payment and a copy of the reconciliation control sheet if applicable.

114. If such payments are not received on payment due date at the financial institution, late payment interest will apply on the outstanding balance. The interest is calculated at the specified rate for the period beginning on the first day after the day the payment was due and ending on the day the amount is paid in full. The client will also be subject to a late payment penalty (AMP C336). A RC165 stamped "paid" must be delivered to the CBSA payment office by 4:30 PM local time on the payment due date.

115. CSA clients please refer to D17-1-7, *Customs Self Assessment Program for Importers*.

### **Importer Direct Security Option – Payment**

116. Importers who have their own security and who transact business under the customs broker's account security number must provide full payment of their portion of the K84, importer/customs broker account statement, with:

(a) A cheque made payable to the Receiver General for Canada at a CBSA office;

(b) A cheque made payable to the Receiver General for Canada given to their customs broker for submission to the CBSA.

(c) Cash at a CBSA office

**Note:** If a customs broker defaults or does not pay the CBSA, the importer is liable to the CBSA, even if payment was already provided to the customs broker.

117. Customs brokers may short remit their cheque amount by the total amount due by clients who have their own security and who do not provide payment to the customs broker. The customs broker must provide a Reconciliation Control Sheet to the CBSA payment office to support this; a sample of this sheet is contained in Appendix O.

118. If an importer/customs broker short remits on Form K84, a Form K23A, *Invoice*, will be prepared and daily late payment interest will apply on the outstanding balance from the first calendar day following the due date.

119. A late payment penalty will also be issued. The amount will also be subject to action by the collections area of the Canada Revenue Agency (CRA) and a claim may be filed against the security posted.

### **GST Direct Payment Option – Payment**

120. Importers under this option agree to provide payment for the full amount of GST for all transactions processed during a billing period, with a cheque payable to the Receiver General for Canada. The cheque must be given to a CBSA office or to their customs broker for remittance to CBSA. The payment must be provided by the last business day of the month in a billing period. Importers should advise their customs broker when they submit payment directly to a CBSA office. Customs brokers may short remit their cheque amount by the total amount of GST owed by GST direct payment option clients. The customs broker must provide a Reconciliation Control Sheet to the CBSA payment office to itemize what his cheque does not cover.

**Note:** If a customs broker submits full payment of a monthly statement with several cheques provided by importers under either the importer direct security option or the GST direct payment option, a calculator tape with the total amount must accompany the payment. A reconciliation control sheet is not required when full payment is submitted.

### **Interim Payments**

121. Payments may be made against an account at any time during the statement period. In order for interim payments to appear on the monthly statement, they must be made before it is generated. The payment should be the same as one or more daily notices or transactions to be entered in the

CBSA's automated system. The daily notice must be given to the cashier who will initial it or a specific transaction and stamp it "Duty Paid" as receipt for payment.

122. The CBSA's automated system cannot be updated to reflect an interim payment that is not the same amount as a daily notice or transaction; for example, a lump sum payment. In such cases, importers or customs brokers should identify the account to be credited and the statement period to which the payment applies. The CBSA will issue Form K21, *Cash Receipt*, for the lump sum interim payment which must form part of the reconciliation control sheet when full payment is submitted at the end of the month.

123. An importer or customs broker must reconcile with the monthly statement. If interim payments are not reflected on the statement, the importer or customs broker must provide copies of each Form K21 along with the rest of the payment.

124. This document must list all outstanding amounts, specifying the importer's name, BN, telephone numbers, account security number (if applicable), and balances outstanding by revenue category, for example, duties and GST, when presenting payment to the CBSA. The statement must also indicate any payments made during the month not reflected on the monthly statement. A copy of the receipt(s) issued for the payment(s) must be attached to the statement.

125. The following information must accompany interim payments:

- (a) Importer's legal name and BN,
- (b) Customs broker's name,
- (c) Account security number,
- (d) Central payment office number,
- (e) Telephone number,
- (f) Statement date, and
- (g) Amount paid.

## **Partial Payment**

126. A payment is considered partial when only a portion of the amount owing on the monthly statement is paid. A receipt will be issued for each partial payment made. Daily late payment interest will apply on the outstanding balance from the first calendar date following the due date. If the balance of payment is not received by the due date a penalty under AMPS may also be issued for failure to pay (in full) duties on goods accounted for under subsections 32(2) and 32(3) of the *Customs Act*.

## **Late Payment**

127. Late payment interest applies to an outstanding balance. Daily interest is calculated at the Treasury Bill rate plus 6% for each day (specified rate), on the total

outstanding amount. The calculation of interest owing will start on the calendar day immediately following the due date for the statement, and continue up to and including the date the balance is paid in full.

128. Interest is calculated daily for each day in which a balance remains outstanding. The total amount payable is based on the total tax, penalties, and interest outstanding. Prescribed interest rates are adjusted every calendar quarter (March 31, June 30, September 30, and December 31). To calculate interest, divide the annualized rate by 365 and compound it daily.

129. Failure to pay the amount of duties and taxes owing by the due date will result in a late payment penalty under AMPS. Clients who continually submit payment after the due date may lose their monthly payment privilege and/or be removed from the direct security option or GST option. For more information, please refer D17-1-8.

## **Non-payment**

130. When no payment is received by the due date, Form K23A, *Invoice*, will be issued for the outstanding amount. The collections area of the CRA may apply a lien under section 97.25 of the *Customs Act*, preventing any further release of goods for that importer; place a hold on any other federal refunds until the debt is fully paid. Daily late payment interest will apply at the specified rate on the outstanding amount and AMP C336 will be issued for failure to pay duties on goods accounted for under subsections 32(2) and 32(3) of the *Customs Act*. For account security holders, non-payment could result in a claim against their security posted for release of goods prior to payment of duties.

## **Non-sufficient Funds (NSF) Cheques**

131. When the bank returns a cheque for non-sufficient funds (NSF), the CBSA will issue Form K23A, *Invoice*, for the outstanding amount as well as a \$15.00 administration charge. The payment is due immediately and must be made by certified cheque, cash, or money order. If a credit card number has been provided as identification, the amount owing including the \$15.00 administration fee will be charged to the credit card.

## **Administrative Monetary Penalty System – Penalties**

132. A penalty assessed under the AMPS becomes payable on the day the Notice of Penalty Assessment (NPA) is served on the person. An NPA may either be served to the person by hand or sent by registered mail.

133. If payment is not received within 30 days from the date of your NPA, the amount of the penalty itself will be subject to interest at the prescribed rate, beginning the date following the date of this notice. However, if the penalty is

paid within 30 days after the date of the NPA, no interest on the penalty will apply.

134. For more information regarding AMPS, please refer to D22-1-1, *Administrative Monetary Penalty System*.

### **Location**

135. Cash clients must pay at the CBSA office where the goods are released.

136. Account security clients may pay at any CBSA office if supporting documentation accompanies the payment. If the total amount is being paid, the cashier will stamp the invoice/ statement "Paid" and return it as a receipt. If only part of the amount is paid, the cashier will provide Form K21, *Cash Receipt*, for the amount paid. A sample of this form is contained in Appendix P.

### **Contact Information**

137. For further information, contact your nearest local CBSA offices. Telephone numbers may be found in the blue pages of your telephone book or the Border Information Service Line

**Calls within Canada**, please call:

Toll-free

Service in English: **1-800-461-9999**

Service in French: **1-800-959-2036**

### **TTY within Canada**

For those with hearing or speech impairments:

**1-866-335-3237**

**Calls outside of Canada** – Long distance charges apply

Service in English: 204-983-3500  
506-636-5064

Service in French: 204-983-3700  
506-636-5067

## GLOSSARY

### A

**Account security** An amount of money or a bond posted to ensure the payment of applicable duties and taxes on imported goods. For example, security may be posted with the CBSA to obtain the release of goods prior to the payment of duties and taxes.

Security must also be posted for the operation of a bonded warehouse or a sufferance warehouse, for the in-bond transport of goods, for the temporary importation of certain types of goods, or for the privilege of paying by uncertified cheques.

**Account security number** A 5-digit number assigned by the CBSA to an importer or a customs broker who has posted security.

**Accounting office** The CBSA office location code where accounting documents are presented.

### B

**B2, Canada Customs – Adjustment Request** Form used to request an adjustment to a document used to account for commercial goods.

**B3, Canada Customs Coding Form** Form used to account for commercial goods of any value imported to Canada.

**B3-1, Canada Customs Detailed Coding Statement** Document used by the CBSA in automated offices to inform the importer or customs broker of errors on Form B3 (e.g., non-existent classification numbers or calculation errors) which can serve as a receipt in the case of a Type “C” B3 cash form.

**Business Number (BN)** A number used to identify importers and exporters of commercial goods.

### C

“Cancellation” and “cancellation or reduction” of a penalty A decision by the CBSA to cancel or reduce a penalty amount after it has been assessed, even though a contravention has occurred.

**Commercial goods** Goods imported to Canada for resale or for commercial, industrial, professional, co-operative, or other similar use.

**Customs broker** A customs broker is an individual, partnership, or corporation that acts as an agent to transact business with the CBSA on behalf of the owner or importer of goods. While for most purposes, any agent may represent a client when transacting business with the CBSA, only a licensed customs broker may account for goods and pay duties under section 32 of the *Customs Act* as the agent of the owner or importer of the goods.

**Customs Commercial System (CCS)** CCS is a system, used by the CBSA, primarily to record the presentation, accounting and adjustment of the B3 coding forms or their electronic equivalent.

**Customs office** Any office designated under section 5 of the *Customs Act*. Includes the place where goods are accounted for and applicable duties and taxes are paid, as well as the office to which individuals or carriers report to carry out procedures for entry to Canada.

### D

**D120, Customs Bond** The general customs bond covers the majority of situations requiring security. Memorandum D1-7-1 contains a detailed list of these activities, as well as a sample bond form and completion instructions.

**Duties** Under the *Customs Act*, duties include duties and taxes on imported goods under the *Customs Tariff*, the *Excise Tax Act*, the *Special Importation Measures Act*, and any other Act of Parliament. However, for the purposes of some sections articles of the *Customs Act*, the term “duties” does not include taxes applied under Part IX of the *Excise Tax Act* (i.e., the GST). This means that in the case of a request for a refund of duty, GST is not refunded.

Under the *Customs Tariff*, duties include duties and taxes levied on imported or exported goods, except for the duties and taxes provided for in sections 53, 55, 60, 63, 68, or 78, or the temporary duties levied under any of sections 69 to 76.

**F**

Final accounting

Form (B3 – Type “AB” or “AD”) used to account for commercial goods, when release has been granted on an interim accounting. For high value shipments, the final accounting must be presented or transmitted within five business days of interim accounting. For low value shipments, final accounting information must be presented or transmitted and accepted by the customs system by the 24th day of each month following the month in which the goods were released.

**G**

Goods and Services Tax (GST)

A federal tax levied on all products and services imported into Canada and/or supplied in Canada, except for those expressly exempted by the *Excise Tax Act* (Appendix VII). This Act replaced the Federal Sales Tax (FST) on January 1, 1991.

Goods

Any item or part thereof subject to the control of customs, without excluding modes of transport and animals.

**H**

High-value shipment

A shipment of commercial goods, except for a postal shipment, with an estimated value for duty exceeding \$2,500.00.

**I**

Importer

The person or entity who causes the goods to be imported and is responsible for accounting for the goods and paying applicable duties and taxes.

Interim accounting

A method of accounting for goods that includes the release of goods. Subsection 32(2) of the *Customs Act* makes it possible to grant the release of goods before the final accounting. Release is granted on condition that certain requirements are met, that a final accounting will be presented and that duties and taxes will be paid. Security must be posted in order to utilize the interim accounting process. Duties and taxes must be paid no later than the last working day of the month of the final accounting.

**K**

K84, *Importer/Broker Account Statement*

A daily (notice) or monthly statement of account for the importer or the customs broker showing outstanding duties and taxes.

**L**

Low-Value Shipment (LVS)

A shipment of commercial goods, except for a postal shipment, with an estimated value for duty not exceeding \$2,500.00.

**M**

Money

This includes money, cheques, promissory notes, letters of credit, drafts, traveller’s cheques, bills of exchange, postal draft, money orders, postal installment, and any other effect, Canadian or foreign, of the same nature. It excludes money for which the fair market value exceeds the nominal value in the country of origin, and money provided or obtained for its numismatic value.

**N**

Notice of Penalty Assessment (NPA)

A prescribed form given to the client containing detailed information on the contravention and penalty assessment.

**P**

Payment office

The CBSA office location where payments are submitted.

Presentation office

The CBSA office location where accounting documents are presented.

**R**

Release

The authorized removal of goods from a CBSA office, a sufferance or bonded warehouse, or a duty-free shop (in the case of exports) for use in Canada.

Release office	The CBSA office location where goods are released.
Release on Minimum Documentation (RMD)	A system that permits importers and customs brokers with valid account security to obtain release of goods based on minimal documentation.
<b>S</b>	
Seizure	A means by which goods become the property of the state (e.g., confiscated goods).
Special services	Services provided by a CBSA officer which are rendered: – outside the sector served by a CBSA office; or – outside the normal duties of the agent.
<b>T</b>	
<i>Temporary Admission Permit</i> , E29B	Document used by the CBSA to ensure compliance with conditions for temporary entry of goods and to register security posted, if applicable.
Transaction number	A 14-digit number appearing on the CCD, on Form B3, and on other supporting documents used for the accounting and release of goods. The transaction number is used for identification and control purposes. It has three parts: an account security number, a number assigned to the importer or customs broker, and a control number.
<b>W</b>	
“Waiver” of a penalty	A decision by the CBSA not to assess a penalty even though a contravention has occurred.

## APPENDIX A

## FORM B3, CANADA CUSTOMS CODING FORM

 Canada Border Services Agency Agence des services frontaliers du Canada		<b>CANADA CUSTOMS CODING FORM</b> <b>DOUANES CANADA - FORMULE DE CODAGE</b>										<b>PROTECTED (WHEN COMPLETED)</b> <b>PROTÉGÉ (UNE FOIS REMPLI)</b>							
1 IMPORTER NAME AND ADDRESS NOM ET ADRESSE DE L'IMPORTATEUR		NO. - N°    		2 TRANSACTION NO. - N° DE TRANSACTION      3 TYPE    4 OFFICE NO. N° DE BUREAU    5 GST REGISTRATION NO. N° DE TPS    6 PAYMENT CODE / CODE DE PAYER    7 MODE OF TRANSP.    8 PORT OF UNLOADING PORT DE DEBARQ.  9 TOTAL VFD - TOTAL DE LA VD															
10 SUB HDR NO. N° DE SOUSS- EN-TETE	11 VENDOR NAME - NOM DU VENDEUR    		NO. - N°    		12 COUNTRY OF ORIGIN PAYS D'ORIGINE    13 PLACE OF EXPORT LIEU D'EXPORTATION    14 TARIFF TREATMENT TRAITEMENT TARIFIQUE    15 U.S. PORT OF EXIT BUREAU DE SORTIE DES E.-U.														
						16 DIRECT SHIPMENT DATE DATE D'EXPÉDITION DIRECTE M    17 CURRENCY CODE DEVISE    18 TIME LIMIT - DÉLAI    19 FREIGHT - FRET  20 RELEASE DATE - DATE DE LA MAINLEVÉE													
<small>RESERVED FOR CBSA USE  RÉSERVÉ À L'USAGE DE LASFC</small>																			
21 LINE LIGNE		22 DESCRIPTION DÉSIGNATION				23 WEIGHT / KGM POIDS / KGM		PREVIOUS TRANSACTION - TRANSACTION ANTERIEURE 24 NUMBER - NUMÉRO		25 LINE-LIGNE		26 SPECIAL AUTHORITY AUTORISATION SPÉCIALE							
27 CLASSIFICATION NO. N° DE CLASSEMENT		28 TARIFF CODE TARIFIQUE		29 QUANTITY QUANTITÉ		30 U - M		31 VFD CODE CODE VD		32 SIMA CODE CODE DE LMSI		33 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE		34 E.T. RATE TAUX T.A.		35 RATE OF GST TAUX DE TPS		36 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGE	
37 VALUE FOR DUTY VALEUR EN DOUANE		38 CUSTOMS DUTIES DROITS DE DOUANE		39 SIMA ASSESSMENT COTISATION DE LMSI		40 EXCISE TAX TAXE D'ACCISE		41 VALUE FOR TAX VALEUR POUR TAXE		42 GST TPS									
21 LINE LIGNE		22 DESCRIPTION DÉSIGNATION				23 WEIGHT / KGM POIDS / KGM		PREVIOUS TRANSACTION - TRANSACTION ANTERIEURE 24 NUMBER - NUMÉRO		25 LINE-LIGNE		26 SPECIAL AUTHORITY AUTORISATION SPÉCIALE							
27 CLASSIFICATION NO. N° DE CLASSEMENT		28 TARIFF CODE TARIFIQUE		29 QUANTITY QUANTITÉ		30 U - M		31 VFD CODE CODE VD		32 SIMA CODE CODE DE LMSI		33 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE		34 E.T. RATE TAUX T.A.		35 RATE OF GST TAUX DE TPS		36 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGE	
37 VALUE FOR DUTY VALEUR EN DOUANE		38 CUSTOMS DUTIES DROITS DE DOUANE		39 SIMA ASSESSMENT COTISATION DE LMSI		40 EXCISE TAX TAXE D'ACCISE		41 VALUE FOR TAX VALEUR POUR TAXE		42 GST TPS									
21 LINE LIGNE		22 DESCRIPTION DÉSIGNATION				23 WEIGHT / KGM POIDS / KGM		PREVIOUS TRANSACTION - TRANSACTION ANTERIEURE 24 NUMBER - NUMÉRO		25 LINE-LIGNE		26 SPECIAL AUTHORITY AUTORISATION SPÉCIALE							
27 CLASSIFICATION NO. N° DE CLASSEMENT		28 TARIFF CODE TARIFIQUE		29 QUANTITY QUANTITÉ		30 U - M		31 VFD CODE CODE VD		32 SIMA CODE CODE DE LMSI		33 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE		34 E.T. RATE TAUX T.A.		35 RATE OF GST TAUX DE TPS		36 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGE	
37 VALUE FOR DUTY VALEUR EN DOUANE		38 CUSTOMS DUTIES DROITS DE DOUANE		39 SIMA ASSESSMENT COTISATION DE LMSI		40 EXCISE TAX TAXE D'ACCISE		41 VALUE FOR TAX VALEUR POUR TAXE		42 GST TPS									
21 LINE LIGNE		22 DESCRIPTION DÉSIGNATION				23 WEIGHT / KGM POIDS / KGM		PREVIOUS TRANSACTION - TRANSACTION ANTERIEURE 24 NUMBER - NUMÉRO		25 LINE-LIGNE		26 SPECIAL AUTHORITY AUTORISATION SPÉCIALE							
27 CLASSIFICATION NO. N° DE CLASSEMENT		28 TARIFF CODE TARIFIQUE		29 QUANTITY QUANTITÉ		30 U - M		31 VFD CODE CODE VD		32 SIMA CODE CODE DE LMSI		33 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE		34 E.T. RATE TAUX T.A.		35 RATE OF GST TAUX DE TPS		36 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGE	
37 VALUE FOR DUTY VALEUR EN DOUANE		38 CUSTOMS DUTIES DROITS DE DOUANE		39 SIMA ASSESSMENT COTISATION DE LMSI		40 EXCISE TAX TAXE D'ACCISE		41 VALUE FOR TAX VALEUR POUR TAXE		42 GST TPS									
<small>43 DEPOSIT - DÉPÔT</small>												47 CUSTOMS DUTIES DROITS DE DOUANE							
<small>44 WAREHOUSE NO. - N° D'ENTREPÔT</small>												48 SIMA ASSESSMENT COTISATION DE LMSI							
<small>45 CARGO CONTROL NO. - N° DE CONTRÔLE DU FRET</small>												49 EXCISE TAX TAXE D'ACCISE							
<small>46 CARRIER CODE AT IMPORTATION CODE DE TRANSPORTEUR À L'IMPORTATION</small>												50 GST TPS							
<small>51 TOTAL</small>																			
<small>DECLARATION - DÉCLARATION I JE _____ PLEASE PRINT NAME - LETTRES MOUILLÉES S.V.P. OF DE IMPORTER / AGENT - IMPORTATEUR / AGENT DECLARE THE PARTICULARS OF THIS DOCUMENT TO BE TRUE, ACCURATE AND COMPLETE. DÉCLARA QUE LES RENSEIGNEMENTS CI-DESSUS SONT VRAIS ET COMPLETS. DATE _____ SIGNATURE _____</small>																			

B3-3 (04)

**APPENDIX B****COMMERCIAL CASH ENTRY PROCESSING SYSTEM (CCEPS) LOCATIONS****Atlantic Region**

1403, Route 95  
Woodstock Road  
Belleville NB E7M 4Z9

Centreville  
1449 Route 110  
Royalton NB E7K 2E3

St. Stephen  
73 Milltown Blvd., P.O. Box 160  
St. Stephen NB E3L 2X1

**Québec Region**

Montréal International Airport (PET)  
725, Stuart Graham Nord  
Suite 111  
Dorval QC H4Y 1E6

Stanstead  
2, Route 55  
Stanstead QC J0B 3E2  
  
Côte de Liesse Warehouse  
10765, chemin Côte de Liesse  
Suite 217  
Dorval QC H9P 2R9

Lacolle Route 15 – Commercial  
Route 15  
St-Bernard de Lacolle QC J0J 1J0  
  
Stanhope – Commercial  
1000, Route 147  
Stanhope QC J1A 2S2  
  
St-Armand – Commercial  
10, Route 133  
St-Armand de Philipsburg QC J0J 1T0

Mirabel International Airport – Commercial  
Building « D »  
11955 Cargo A-6, Room 100  
Mirabel QC J7N 1G3

Montréal Long Room  
400 Place Youville, 1<sup>er</sup> étage  
Montréal QC H2Y 2C2

**Northern Ontario Region**

Bridge Plaza Building  
Highway 16  
Prescott ON K0E 1T0  
  
Bridge Plaza Building  
125 Huron Street  
Sault Ste. Marie ON P6A 1R3

Pigeon River  
Highway 61, R.R.7  
Thunder Bay ON P7C 5V5

Hill Island  
1000 Island Bridge  
Lansdowne ON K0E 1L0  
  
Fort Frances  
101 Church Street  
Fort Frances ON P9A 3X8

**Greater Toronto Area Region**

Lester B. Pearson International Airport  
Cargo Building “B”, P.O. Box 40, AMF  
Toronto ON L5P 1A2

**Niagara/Fort Erie Region**

Peace Bridge  
10 Queen Street  
Fort Erie ON L2A 6M4  
  
Queenston Bridge  
14154 Niagara Parkway at Highway 405  
Niagara on the Lake ON L0S 1J0

**Windsor/St. Clair Region**

Blue Water Bridge  
Bridge Street, P.O. Box 640  
Sarnia ON N7T 7J7

London  
2724 Roxburgh Road, Unit 2,  
London, ON N6N 1K9

Ambassador Bridge  
4285 Industrial Drive, P.O. Box 1655  
Windsor, ON N9C 3R9

Windsor Tunnel  
310 Hanna Street  
Windsor ON N8X 4W6

**Prairie Region**

Calgary  
Bay 32  
3033-34th Avenue NE  
Calgary AB T1Y 6X2

Carway  
Highway 2  
Via P.O. Box 699  
Cardston AB T0K 0K0

Coutts  
Highway 4  
P.O. Box 220  
Coutts AB T0K 0N0

Edmonton International Airport  
Arrivals Level  
P.O. Box 9866  
Edmonton AB T5J 2T2

Edmonton International Airport  
Commercial Operations  
4th Ave. & Service Road  
P.O. Box 9866  
Edmonton AB T5J 2T3

Emerson  
Highway 75  
Emerson MB R0A 0L0

North Portal – Commercial  
Highway 39  
North Portal SK S0C 1W0

**Pacific Region**

Aldergrove  
Highway 13, #10, R.R. 5  
Aldergrove BC V4W 2L8

Burnaby Warehouse  
United Terminals, Room 210  
7867 Express Street  
Burnaby BC V5A 1S7

Boundary Bay  
4 – 56th Street  
Delta BC V4L 1Z2

Huntingdon – Commercial  
2 Sumas Way  
Huntingdon BC V2S 7L9

Kingsgate  
Highway 95  
Kingsgate BC V0B 1V0

Osoyoos  
202 – 97th Street  
Osoyoos BC V0H 1V1

Vancouver International Airport  
113-5000 Miller Road  
Richmond BC V7B 1K6

Pacific Highway – Commercial office  
28 – 176th Street  
Surrey BC V4P 1M7

Client Services  
503 – 333 Dunsmuir Street  
Vancouver BC V6B 5R4

Metro Vancouver Long Room  
333 Dunsmuir Street  
Vancouver BC V6B 5R4

**APPENDIX C****HIGH VALUE SHIPMENTS****Example**

Accounting information must be presented or transmitted and accepted by the CBSA's automated system within five business days of the date the CBSA releases the goods. (Day of release is considered day zero). When goods are released on a Saturday, Sunday, or holiday, the accounting period starts on the first business day after release. Importers or customs brokers have until one half hour before the end of the day shift, on the fifth day to submit their accounting data. If the data is transmitted electronically, CADEX must receive and validate the data prior to 9:00 p.m. E.S.T. on the fifth day.

Sunday Dimanche	Monday Lundi	Tuesday Mardi	Wednesday Mercredi	Thursday Jeudi	Friday Vendredi	Saturday Samedi
10	11 100 PCs released / Mainlevée de 100 ordinateurs 	12	13	14	15	16 100 Microwaves released / Mainlevée de 100 fours à micro-ondes 
17	18 Victoria Day / Fête de la Reine	19 Form B3 to account for / formulaire B3 pour les ordinateurs 	20	21	22	23
24	25 Form B3 to account for / Formulaire B3 pour les fours à micro-ondes 	26	27	28	29	30

**APPENDIX D****LOW VALUE SHIPMENT (LVS)****Example**

If the release was granted between April 1 and April 30, the final accounting must be done no later than May 24th; the duties must be paid by the end of the accounting month (i.e., by May 31th).

April Avril						
Sunday Dimanche	Monday Lundi	Tuesday Mardi	Wednesday Mercredi	Thursday Jeudi	Friday Vendredi	Saturday Samedi
12	13	14	15	16	17	18 Goods released/ Mainlevée de marchandises 
19	20	21 Goods released/ Mainlevée de marchandises 	22	23 Goods released/ Mainlevée de marchandises 	24	25
26	27	28	29 Goods released/ Mainlevée de marchandises 	30		

May Mai						
Sunday Dimanche	Monday Lundi	Tuesday Mardi	Wednesday Mercredi	Thursday Jeudi	Friday Vendredi	Saturday Samedi
					1 Goods released/ Mainlevée de marchandises 	2
3	4	5	6	7	8	9
10	11	12	13	14 Goods released/ Mainlevée de marchandises 	15	16
17 Goods released/ Mainlevée de marchandises 	18 Victoria Day/ Fête de la Reine	19	20	21	22 Account for goods released April 1-30/ Déclaration en détail des marchandises libérées entre le 1er et le 30 avril 	23

**APPENDIX E**

**ILLUSTRATION OF STATEMENT GENERATION  
FOR APRIL FOR HIGH VALUE SHIPMENTS**

<b>Sunday Dimanche</b>	<b>Monday Lundi</b>	<b>Tuesday Mardi</b>	<b>Wednesday Mercredi</b>	<b>Thursday Jeudi</b>	<b>Friday Vendredi</b>	<b>Saturday Samedi</b>
			1	2 Goods released / Marchandises libérées	3	4
5	6	7	8	9 Form B3 filing date for goods released on 2 <sup>nd</sup> / Présentation du formulaire B3 pour les marchandises libérées le 2	10 Good Friday/ Vendredi saint	11
12	13 Easter Monday/ Lundi de Pâques	14 Form B3 submitted on 9 <sup>th</sup> appears on K84(Daily Notice)/ Inscription du formulaire B3 présenté le 9 sur le relevé de compte quotidien (K84)	15	16	17	18
19	20 Goods released/ Marchandises libérées	21	22	23	24	25
26	27 Form B3 filing date for goods released on 20 <sup>th</sup> / Présentation du formulaire B3 pour les marchandises libérées le 20	28 Form B3 submitted on 27 <sup>th</sup> appears on K84 (Daily Notice)- will appear on next month's K84/ Formulaire B3 présenté le 27 qui paraît sur le relevé de compte K84 du mois suivant	29 K84 monthly generated-K84 (Daily Notice) of 14 <sup>th</sup> appears on statement/ Production du K84 mensuel incluant le relevé de compte quotidien du 14	30 K84 monthly— payment due/Date d'échéance du montant dû selon le K84 mensuel		

## APPENDIX F

## FORM B3-1, CANADA CUSTOMS – DETAILED CODING STATEMENT

 Canada Border Services Agency	Agence des services frontaliers du Canada	<b>CANADA CUSTOMS — DETAILED CODING STATEMENT</b> <b>DOUANES CANADA — RELEVÉ DÉTAILLÉ DE CODAGE</b>										<small>PROTECTED (WHEN COMPLETED) PROTÉGÉ (UNE FOIS REMPLI)</small>	<small>B</small>								
<b>SEND TO - ENVOYER À</b>															<b>NOTIFICATION TYPE - GENRE DE NOTIFICATION</b>						
1 IMPORTER NAME AND ADDRESS NOM ET ADRESSE DE L'IMPORTATEUR															NO. - N°	<input type="checkbox"/> ACCEPTED AS PRESENTED ACCEPTÉ SELON PRÉSENTÉ		<input type="checkbox"/> ACCEPTED WITH ADJUSTED TOTAL ACCEPTÉ AVEC LE TOTAL AJUSTÉ		<input type="checkbox"/> REJECTED REJETÉ	
2 TRANSACTION NO. - N° DE TRANSACTION																					
10 SUB-HDR. NO. N° DE SOUS-ENTETE		11 VENDOR NAME - NOM DU VENDEUR		NO. - N°		12 COUNTRY OF ORIGIN PAYS D'ORIGINE	13 PLACE OF EXPORT LIEU D'EXPORTATION	14 TARIFF TREATMENT TRAITEMENT TARIFAIRES	15 U.S. PORT OF EXIT BUREAU DE SORTIE DES E-U	STATEMENT DATE - DATE DU RELEVÉ											
16 DIRECT SHIPMENT DATE DATE D'EXPÉDITION DIRECTE		M		17 CRCY. CODE DEVISE		18 TIME LIMIT - DELAI	19 FREIGHT - FRET	EXCHANGE RATE - TAUX DE CHANGE													
21 LINE LIGNE		22 DESCRIPTION DÉSIGNATION			23 WEIGHT IN KILOGRAMS Poids en KILOGRAMMES		24 PREVIOUS TRANSACTION - TRANSACTION ANTERIEURE NUMERO			25 LINE LIGNE		26 SPECIAL AUTHORITY AUTORISATION SPÉCIALE									
27 CLASSIFICATION NO. N° DE CLASSEMENT		28 TARIFF CODE TARIFIQUE		29 QUANTITY QUANTITÉ		30 U - M	31 VFD CODE CODE VD	32 SIMA CODE CODE DE LMSI	33 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE	34 E.T. RATE TAUX T.A.	35 RATE OF GST TAUX DE TPS		36 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHANGÉ								
37 VALUE FOR DUTY VALEUR EN DOUANE		38 CUSTOMS DUTIES DROITS DE DOUANE		39 SIMA ASSESSMENT COTISATION DE LMSI		40 EXCISE TAX TAXE D'ACCISE		41 VALUE FOR TAX VALEUR POUR TAXE		42 GST TPS											
21		22			23		24			25		26									
27		28	29		30	31	32	33	34		35	36									
37		38	39		40		41					42									
21		22			23		24			25		26									
27		28	29		30	31	32	33	34		35	36									
37		38	39		40		41					42									
21		22			23		24			25		26									
27		28	29		30	31	32	33	34		35	36									
37		38	39		40		41					42									
21		22			23		24			25		26									
27		28	29		30	31	32	33	34		35	36									
37		38	39		40		41					42									
B3-1 (06) Printed in Canada - Imprimé au Canada																					

## APPENDIX G

## FORM K23A, INVOICE

Issued to - Remise à		Invoice no. - N° de facture <b>12345678</b>			
Canada Border Services Agency	Agence des services frontaliers du Canada	Time - Temps — Date	Y - A	M	D - J
Business Number - Numéro d'entreprise	From - De				
Agent for - Agent de	To - À				
Issuing office - Bureau de délivrance	GST registration no. N° d'enregistrement de la TPS <b>121491807</b>	Department number Numéro du ministère ▼ 122	Credititor reference no. N° de référence du créancier		
Description of charges - Description des frais		Revenue code Code de recette	Amount - Montant	GST - TPS Amount - Montant	
Officer's signature/Badge no. - Signature du préposé de l'accise/N° de matricule		Signature of client - Signature du client	TOTAL GST - TOTAL DE LA TPS Amount due to Receiver General ▲ Montant dû au Receveur Général ▲ \$		
On receipt of this invoice Dès la réception de cette facture		<input type="checkbox"/> On receipt of statement Dès la réception du relevé			
<ul style="list-style-type: none"> <li>To ensure proper credit of your account include invoice no. on cheque Mentionnez le numéro de la facture sur votre chèque afin d'être certain d'avoir le crédit approprié</li> <li>Make cheque payable to the Receiver General for Canada Établissez le chèque à l'ordre du Receveur général du Canada</li> <li>Do not mail cash - N'envoyez pas d'espèces</li> </ul>		<ul style="list-style-type: none"> <li>Statement to follow - Relevé à suivre</li> <li>Retain this invoice for your records Conservez cette facture pour vos dossiers</li> <li>Send cheque to: - Envoyez le chèque à : • Send cheque to: - Envoyez le chèque à :</li> </ul>			
		CLIENT			
		Canada			

K23A Printed in Canada - Imprimé au Canada

**APPENDIX H**

**ILLUSTRATION OF ASSESSMENT OF LATE ACCOUNTING PENALTY(IES) AND  
LATE PAYMENT TRANSACTION INTEREST AGAINST HIGH VALUE SHIPMENTS (APRIL)**

Sunday Dimanche	Monday Lundi	Tuesday Mardi	Wednesday Mercredi	Thursday Jeudi	Friday Vendredi	Saturday Samedi
			1	2 Goods released / Marchandises dé douanées	3	4
5	6	7	8	9 Form B3 should be présenté for goods released on 2 <sup>nd</sup> / Un formulaire B3 devrait être présenté pour les marchandises dé douanées le 2.	10 Good Friday/ Vendredi saint	11
12	13 Easter Monday/ Lundi de Pâques	14 Form B3 filed for goods released on 2 <sup>nd</sup> / Présentation du formulaire B3 pour les marchandises dé douanées le 2	15 K84 ( <i>Daily Notice</i> ) generated for April 14 <sup>th</sup> transactions \$100 penalty/ Production d'un relevé de compte quotidien (K84) pour les transactions du 14 – pénalité de 100\$	16	17 Goods released / Marchandises dé douanées	18
19	20	21	22	23	24 Form B3 should be présenté for goods released on 17th / Un formulaire B3 devrait être présenté pour les marchandises dé douanées le 17.	25
26	27 Form B3 filed for goods released on 17th / Présentation du formulaire B3 pour les marchandises dé douanées le 17	28 Form B3 submitted on 27 <sup>th</sup> appears on K84 ( <i>Daily Notice</i> )- will appear on next month's K84/ Late transaction payment interest is assessed./ Formulaire B3 présenté le 27 qui figure sur le relevé de compte quotidien(K84) et figurera sur le K84 du mois suivant. Calcul des intérêts sur le montant en souffrance.	29 K84 monthly generated-K84 ( <i>Daily Notice</i> ) of 15 <sup>th</sup> appears on statement and include \$100 penalty./ Production du K84 mensuel incluant le relevé de compte quotidien du 15, y compris la pénalité de 100\$.	30 K84 monthly– payment due/Date d'échéance du montant dû selon le K84 mensuel	May 1 <sup>st</sup> Date late transaction payment interest begins / 1 <sup>er</sup> mai Début du calcul des intérêts sur le montant en souffrance.	

**APPENDIX I****FORM E571, LATE ACCOUNTING PENALTIES APPLICATION FOR WAIVER, CANCELLATION**

	Canada Border Services Agency      Agence des services frontaliers du Canada		
<b>LATE ACCOUNTING PENALTIES APPLICATION FOR WAIVER, CANCELLATION</b>			
<b>PÉNALITÉ DE COMPTABILISATION EN RETARD DEMANDE DE RENONCIATION, D'ANNULATION</b>			
<p>► Please submit in duplicate and attach supporting documentation. Veuillez soumettre deux copies de ce formulaire et joindre la documentation nécessaire.</p>			
Broker (if applicable) - Courrier (s'il y a lieu)	Releasing office code - Code du bureau de mainlevée		
Importer name - Nom de l'importateur			
Transaction number(s) Numéro(s) de transaction	Transmission date and time * Date et heure de transmission *		
<small>* For CADEX and CUSDEC transactions - Pour les transactions SAED et DECDOU</small>			
<b>Reason for request - Raison de la requête</b>			
Manager's name (please print) - Nom du gestionnaire (en lettres moulées)	Telephone No. - N° de téléphone	Extension - Poste	Fax No. - N° de télécopieur
		Signature	Date
<b>Refund of penalties paid - Remboursement des pénalités payées</b>		<b>Customs stamp - Timbre de douane</b>	
Central payment office Bureau de paiement central	K84 payment date Date de paiement du K84		
Mail cheque to - Postez le chèque à			
<b>CBSA use only - Usage réservé à l'ASFC</b>			
<input type="checkbox"/> Request granted Requête acceptée <input type="checkbox"/> Request not granted Requête non acceptée <input type="checkbox"/> Under consideration by Headquarters A l'étude à l'Administration centrale		<b>Refund amount</b> Montant du remboursement ►	
Comments - Commentaires			
		Signature	Date
Name (please print) - Nom (en lettres moulées)			

## APPENDIX J

**FORM K84, IMPORTER/BROKER ACCOUNT STATEMENT  
SAMPLE OF A DAILY NOTICE**

 Government of Canada Services Agency Agence des services du Canada	<b>IMPORTER/BROKER ACCOUNT STATEMENT</b> <b>RELEVÉ DE COMPTE DE L'IMPORTATEUR/COURTIER</b>	<b>PROTECTED (WHEN COMPLETED) PROTÉGÉ (UNE FOIS REMPLI)</b> Page No. N° de page <b>12345</b> Account Security No. N° de sécurité de l'agent ABC Inc.			
Offc No. / N° de bureau  0431	Name of Office - Nom du bureau  OTTAWA LONG RM/HWY SUFF WHSE	Name of Account - Nom du compte  ABC Inc.			
Statement Date - Date d'émission  2005/08/05	Accounting Date Date de comparaison  2005/08/04				
Importer Number/Importer Account Number / Business Number - Numéro d'importateur/Numéro de compte d'importateur ou numéro d'entreprise					
Transaction No. N° de transaction	Customs Duties Droits de douane	SIMA Assessment Cotation de l'MSI	Excise Tax Taxe d'accise	GST TPS	Total
<b>FOR / POUR 0417 : HAMILTON</b>					
000026976	0.00	0.00	0.00	1.28	1.28
OFFICE TOTAL / TOTAL DU BUREAU:	0.00	0.00	0.00	1.28	1.28
<b>FOR / POUR 0453 : WINDSOR - AMBASSADOR BRIDGE</b>					
000026807	0.00	0.00	0.00	0.00	0.00
OFFICE TOTAL / TOTAL DU BUREAU:	0.00	0.00	0.00	0.00	0.00
<b>FOR / POUR 0485 : OTTAWA AIR CARGO CENTRE AND</b>					
000028308	0.00	0.00	0.00	0.00	0.00
000028400	62.40	0.00	0.00	91.72	154.12
000028411	0.00	0.00	0.00	10.83	10.83
000028433	0.00	0.00	0.00	7.91	7.91
000028444	0.00	0.00	0.00	0.00	0.00
000028488	0.00	0.00	0.00	7.87	7.87
OFFICE TOTAL / TOTAL DU BUREAU:	62.40	0.00	0.00	119.23	180.73
ACCOUNT TOTAL / TOTAL DU COMPTE:	62.40	0.00	0.00	119.61	182.01
GRAND TOTAL	62.40	0.00	0.00	119.61	182.01
THIS IS A NOTICE ONLY AND THE TOTAL AMOUNT SHOWN IS DUE ON 2005/08/31					
LE PRESENT DOCUMENT EST UN AVIS SEULEMENT ET LE MONTANT TOTAL INDIQUE EST PAYABLE LE 2005/08/31					
K84 (04) Imported to Canada - Importé au Canada					
Canada 					
14890677					

## APPENDIX K

**FORM K84, IMPORTER/BROKER ACCOUNT STATEMENT**  
**SAMPLE OF MONTHLY ACCOUNT STATEMENT**

Office No. - N° de bureau 0431	Canada Border Services Agency Agence des services frontaliers du Canada	PROTECTED WHEN COMPLETED PROTÉGÉ LORSQU'IL EST COMPLÉTÉ			
Name of Office - Nom du bureau OTTAWA LONG RM/HWY SUFF WHSE	Name of Account - Nom du compte ABC Inc.	Page No. N° de page 1	Account Security No. N° de sécurité du compte 12345		
Statement Date - Date du relevé 2005/09/29		Accounting Date Date de comptabilisation			
Importer Name/Importer Account Number or Business Number - Nom d'importateur/numéro de compte d'importateur ou numéro d'entreprise					
Transaction No. N° de transaction	Customs Duties Droits de douane	BMS Assessment Collectation de LMSI	Excise Tax Taxe d'excise	GST TPS	Total
<b>STATEMENT DATE DU RELEVE</b>					
2005/08/30	0.00	0.00	0.00	379.19	379.19
2005/09/02	15.71	0.00	0.00	3512.66	3528.37
2005/09/03	7.89	0.00	0.00	2265.26	2273.15
2005/09/07	0.00	0.00	0.00	951.43	951.43
2005/09/09	6.68	0.00	0.00	10095.28	10101.96
2005/09/09	0.00	0.00	0.00	2259.37	2259.37
2005/09/12	7.79	0.00	0.00	440.51	440.30
2005/09/13	0.00	0.00	0.00	258.88	258.83
2005/09/14	92.34	0.00	0.00	5989.50	6081.84
2005/09/15	24.06	0.00	0.00	179.86	203.93
2005/09/16	13.84	0.00	0.00	3995.72	4009.56
2005/09/19	0.00	0.00	0.00	76.19	76.19
2005/09/20	1075.89	0.00	0.00	4847.71	5923.60
2005/09/22	0.00	0.00	0.00	20653.64	20653.64
2005/09/26	589.53	0.00	0.00	1980.48	2569.96
<b>ACCOUNT TOTAL / TOTAL DU COMPTE:</b>		1833.75	0.00	0.00	57885.57
<b>GRAND TOTAL PAYABLE:</b>		59719.32			
<p>THIS IS A MONTHLY STATEMENT AND THE TOTAL AMOUNT SHOWN IS DUE ON 2005/09/30</p> <p>LE PRESENT DOCUMENT EST UN RELEVE MENSUEL ET LE MONTANT TOTAL INDIQUE EST PAYABLE LE 2005/09/30</p> <p>LATE PAYMENT INTEREST CHARGES WILL APPLY IF THIS K84 STATEMENT IS NOT PAID BY THE DUE DATE SPECIFIED; LATE PAYMENT PENALTIES MAY ALSO BE APPLICABLE.</p> <p>DES FRAIS D'INTERETS POUR PAIEMENT EN RETARD S'APPLIQUERONT SI CE RELEVE DE COMPTE K84 N'EST PAS PAYE A LA DATE D'ECHENANCE PRECISEE; DES PENALITES POUR PAIEMENT EN RETARD POURRAIENT EGALLEMENT S'APPLIQUER.</p>					
<p>CCRA-ADRC DUTY PAID - DROITS ACQUITTÉS</p> <p>SEP 30 2005</p> <p>Cash Caisse</p>					
<p>K84 (04) Printed in Canada - Imprimé au Canada</p> <p>Canada</p> <p>14950539</p>					

## APPENDIX L

## **SAMPLE OF A COMPLETED FORM B2**

 Canada Border Services Agency      Agence des services frontaliers du Canada		<b>CANADA CUSTOMS – ADJUSTMENT REQUEST</b> <b>DOUANES CANADA – DEMANDE DE RAJUSTEMENT</b>																			
		<b>PROTECTED PROTÉGÉ</b> <b>B</b> when completed une fois rempli																			
<b>1 IMPORTER NAME AND ADDRESS</b> NOM ET ADRESSE DE L'IMPORTATEUR		<b>BUSINESS NO - N° D'ENTREPRISE</b> 123456789RM0001		<b>2 TRANSACTION NO</b> N° DE TRANSACTION																	
XYZ Company Limited  123 Circle Road, Ottawa, Ontario																					
<b>POSTAL / ZIP CODE</b> CODE POSTAL  K1B 2C3		<b>3 GST REGISTRATION NO.</b> N° DE TPS		<b>4 PAGE</b> 1 OF 1																	
<small>#SHIP TO NO. N° DE SOUS- EN-TÊTE</small>  1 ABC Brokers Ltd. 100 Square Road Ottawa, Ontario,		<b>5 OFFICE NO.</b> N° DE BUREAU 451		<b>6 ORIGINAL TRANSACTION NO.</b> N° DE LA TRANSACTION ORIGINALE 8956200000011		<b>7 Y-A</b> 09		<b>M</b> 01		<b>D-J</b> 01		<b>8 DATE RECEIVED</b> DATE DE RÉCEPTION									
<small>POSTAL / ZIP CODE</small> CODE POSTAL  K2P 4E3		<b>11 SECURITY NO.</b> N° DE SÉCURITÉ		<b>12 COUNTRY OF ORIGIN</b> PAYS D'ORIGINE		<b>13 PLACE OF EXPORT</b> LIEU D'EXPORTATION		<b>14 TARIFF TREATMENT</b> TRAITEMENT TARIFAIRES													
<b>18 LINE</b> LIGNE 1		<b>19 DESCRIPTION – AS ACCOUNTED FOR</b> DÉSIGNATION – SELON LA DÉCLARATION												<b>20 SPECIAL AUTHORITY</b> AUTORISATION SPÉCIALE  10-089N1663							
<b>21 CLASSIFICATION NO</b> N° DE CLASSEMENT  8462.31.00.00		<b>22 TARIFF CD</b> CD TARIF		<b>23 QUANTITY</b> QUANTITÉ 4		<b>24 U/M</b> NMB		<b>25 VFD CD</b> CD VO		<b>26 SIMA CD</b> CD LMSI		<b>27 CUSTOMS DUTY RATE</b> TAUX-DROIT DE DOUANE 9.2		<b>28 E.T. RATE</b> TAUX T.A.		<b>29 GST RATE</b> TAUX TPS 7.0		<b>30 VALUE FOR CURRENCY CONVERSION</b> CONVERSION VALEUR POUR CHANGE 100000.00			
<b>31 VALUE FOR DUTY</b> VALEUR EN DOUANE 8164.00		<b>32 CUSTOMS DUTIES</b> DROITS DE DOUANE 751.09		<b>33 SIMA ASSESSMENT</b> COTISATION DE LMSI		<b>34 EXCISE TAX</b> TAXE D'ACCISE		<b>35 VALUE FOR TAX</b> VALEUR POUR TAXE 8915.09		<b>36 GST TPS</b> 624.06											
<b>18 LINE</b> LIGNE 1		<b>19 DESCRIPTION – AS CLAIMED</b> DÉSIGNATION – SELON LA DEMANDE												<b>20 SPECIAL AUTHORITY</b> AUTORISATION SPÉCIALE  10-089N1663							
<b>21 CLASSIFICATION NO</b> N° DE CLASSEMENT  8462.31.00.00		<b>22 TARIFF CD</b> CD TARIF		<b>23 QUANTITY</b> QUANTITÉ 4		<b>24 U/M</b> NMB		<b>25 VFD CD</b> CD VO		<b>26 SIMA CD</b> CD LMSI		<b>27 CUSTOMS DUTY RATE</b> TAUX-DROIT DE DOUANE 9.2		<b>28 E.T. RATE</b> TAUX T.A.		<b>29 GST RATE</b> TAUX TPS 7.0		<b>30 VALUE FOR CURRENCY CONVERSION</b> CONVERSION VALEUR POUR CHANGE 100000.00			
<b>31 VALUE FOR DUTY</b> VALEUR EN DOUANE 14287.00		<b>32 CUSTOMS DUTIES</b> DROITS DE DOUANE 1314.40		<b>33 SIMA ASSESSMENT</b> COTISATION DE LMSI		<b>34 EXCISE TAX</b> TAXE D'ACCISE		<b>35 VALUE FOR TAX</b> VALEUR POUR TAXE 15601.40		<b>36 GST TPS</b> 1092.10											
<b>18 LINE</b> LIGNE 1		<b>19 DESCRIPTION – AS CLAIMED</b> DÉSIGNATION – SELON LA DEMANDE												<b>20 SPECIAL AUTHORITY</b> AUTORISATION SPÉCIALE							
<b>21 CLASSIFICATION NO</b> N° DE CLASSEMENT		<b>22 TARIFF CD</b> CD TARIF		<b>23 QUANTITY</b> QUANTITÉ		<b>24 U/M</b>		<b>25 VFD CD</b> CD VO		<b>26 SIMA CD</b> CD LMSI		<b>27 CUSTOMS DUTY RATE</b> TAUX-DROIT DE DOUANE		<b>28 E.T. RATE</b> TAUX T.A.		<b>29 GST RATE</b> TAUX TPS		<b>30 VALUE FOR CURRENCY CONVERSION</b> CONVERSION VALEUR POUR CHANGE			
<b>31 VALUE FOR DUTY</b> VALEUR EN DOUANE		<b>32 CUSTOMS DUTIES</b> DROITS DE DOUANE		<b>33 SIMA ASSESSMENT</b> COTISATION DE LMSI		<b>34 EXCISE TAX</b> TAXE D'ACCISE		<b>35 VALUE FOR TAX</b> VALEUR POUR TAXE		<b>36 GST TPS</b>											
<b>18 LINE</b> LIGNE 1		<b>19 DESCRIPTION – AS CLAIMED</b> DÉSIGNATION – SELON LA DEMANDE												<b>20 SPECIAL AUTHORITY</b> AUTORISATION SPÉCIALE							
<b>21 CLASSIFICATION NO</b> N° DE CLASSEMENT		<b>22 TARIFF CD</b> CD TARIF		<b>23 QUANTITY</b> QUANTITÉ		<b>24 U/M</b>		<b>25 VFD CD</b> CD VO		<b>26 SIMA CD</b> CD LMSI		<b>27 CUSTOMS DUTY RATE</b> TAUX-DROIT DE DOUANE		<b>28 E.T. RATE</b> TAUX T.A.		<b>29 GST RATE</b> TAUX TPS		<b>30 VALUE FOR CURRENCY CONVERSION</b> CONVERSION VALEUR POUR CHANGE			
<b>31 VALUE FOR DUTY</b> VALEUR EN DOUANE		<b>32 CUSTOMS DUTIES</b> DROITS DE DOUANE		<b>33 SIMA ASSESSMENT</b> COTISATION DE LMSI		<b>34 EXCISE TAX</b> TAXE D'ACCISE		<b>35 VALUE FOR TAX</b> VALEUR POUR TAXE		<b>36 GST TPS</b>											
<b>37 DOCS ATTACHED</b> CI-JOINTS		<b>38 JUSTIFICATION FOR REQUEST - JUSTIFICATION DE LA DEMANDE</b> Extension of Time Limit <small>(TYPE OF REQUEST - GENRE DE DEMANDE)</small>												<b>39 CUSTOMS DUTIES</b> DROITS DE DOUANE <b>40 SIMA ASSESSMENT</b> COTISATION DE LMSI <b>41 EXCISE TAX</b> TAXE D'ACCISE <b>42 SUB TOTAL</b> TOTAL PARTIEL <b>43 GST TPS</b> <b>44 AMOUNT DUE</b> RECHERCHÉ GÉNÉRAL DU CANADA TOTAL DU AU <b>45 INTEREST</b> INTÉRÊTS							
A UNE		<small>UNDER EN VERTU DE</small> 32.2 <small>(LEGISLATIVE REFERENCE - RÉFÉRENCE LÉGISLATIVE)</small>												-563.31  -563.31  -468.04  1031.35							
<b>EXPLANATION - EXPPLICATION :</b>  Goods remaining in Canada an additional 3 months to complete project.																					
I JE PLEASE PRINT NAME - LETTRES MOULÉES S.V.P. DECLARE THE PARTICULARS OF THIS DOCUMENT TO BE TRUE, ACCURATE AND COMPLETE - DÉCLARE QUE LES RENSEIGNEMENTS CI-DESSUS SONT VRAIS ET COMPLETS.																					
Feb 1/10 <small>DATE</small>														J. Doe <small>SIGNATURE</small>							
ABC Brokers Ltd <small>IMPORTER/AGENT - IMPORTATEUR/AGENCE</small>														123-123-4567 <small>TELEPHONE NUMBER - NUMÉRO DE TÉLÉPHONE</small>							
BSF18																					

## APPENDIX M

## FORM B2-1, CANADA CUSTOMS – DETAILED ADJUSTMENT STATEMENT

 Canada Border Services Agency Agence des services frontaliers du Canada	<b>CANADA CUSTOMS – DETAILED ADJUSTMENT STATEMENT</b> <b>DOUANES CANADA – RELEVÉ DÉTAILLÉ DE RAJUSTEMENT</b>										<b>PROTECTED PROTÉGÉ</b> <b>B</b> when completed <b>une fois rempli</b>										
<b>1 IMPORTER NAME AND ADDRESS - NOM ET ADRESSE DE L'IMPORTATEUR</b> <b>2 TRANSACTION NO. - N° DE TRANSACTION</b>																					
<b>3 GST REGISTRATION NO. N° DE TPS</b>																					
<b>4 IMPORTER NO. N° DE L'IMPORTATEUR</b> <b>5 OFFICE NO. N° DE BUREAU</b> <b>6 ORIGINAL TRANSACTION NO. N° DE LA TRANSACTION ORIGINALE</b> <b>7 Y-A    M    D-J</b>																					
<b>8 SUB HDR NO. N° DE SOUS- ENTETE</b> <b>10 BROKER/AGENT - COURTIER/AGENCE</b> <b>11 SECURITY NO. - N° DE SÉCURITÉ</b> <b>PAGE NO. - N° DE PAGE</b>																					
<b>12 COUNTRY OF ORIGIN PAYS D'ORIGINE</b> <b>13 PLACE OF EXPORT LIEU D'EXPORTATION</b> <b>14 TARIFF TREATMENT TRAITEMENT TARIFIQUE</b> <b>15 DIRECT SHIPMENT DATE DATE D'EXPÉDITION DIRECTE</b> <b>16 CURRENCY CODE CODE DEVISE</b> <b>17 TIME LIMIT - DÉLAI</b>																					
<b>18 UNE LIGNE</b> <b>19 DESCRIPTION AS RULED DÉSIGNATION SELON LA DÉCISION</b> <b>20 SPECIAL AUTHORITY AUTORISATION SPÉCIALE</b>																					
21 CLASSIFICATION NO. N° DE CLASSEMENT		22 TARIFF CD CD TARIF		23 QUANTITY QUANTITÉ		24 U-M		25 VFD CODE ID CODE ID		26 SIMA CD CD LMSI		27 RATE OF CUSTOMS DUTY TAUX DE DROIT DE DOUANE		28 E.T. RATE TAUX T.A.		29 GST RATE TAUX TPS		30 VALUE FOR CURRENCY CONVERSION CONVERSION VALEUR POUR CHARGE			
31 VALUE FOR DUTY VALEUR EN DOUANE		32 CUSTOMS DUTIES DROITS DE DOUANE		33 SIMA ASSESSMENT COTISATION DE LMSI		34 EXCISE TAX TAKE D'ACCISE		35 VALUE FOR TAX VALEUR POUR TAXE		36 GST TPS											
18		19													20						
21		22		23		24		25		26		27		28		29		30			
31		32		33		34		35		36											
18		19													20						
21		22		23		24		25		26		27		28		29		30			
31		32		33		34		35		36											
18		19													20						
21		22		23		24		25		26		27		28		29		30			
31		32		33		34		35		36											
18		19													20						
21		22		23		24		25		26		27		28		29		30			
31		32		33		34		35		36											
<b>COPY - COPIE 1</b>															<b>Canada</b>						

**APPENDIX N****CBSA PAYMENT OFFICES****ATLANTIC REGION****Automated Offices**

Bathurst NB (0201)	Halifax NS (0009)
Charlottetown PE (0101)	Moncton NB (0206)
Clair NB (0216)	Saint John NB (0210)
Corner Brook NF (0911)	St. John's NF (0914)
Edmundston NB (0213)	St. Leonard NB (0218)
Fredericton NB (0204)	St. Stephen NB (0211)
Gillespie Portage NB (0219)	St. Stephen (3rd Bridge) NB (0231)
Grand Sault / Grand Falls NB (0217)	Woodstock Road NB (0212)

**Non-Automated Offices**

Amherst NS (0001)	Halifax – Postal Operations NS (0007)
Andover NB (0214)	Harbour Grace NF (0922)
Argentia NF (0921)	Kentville NS (0010)
Campobello NB (0225)	Liverpool NS (0011)
Caraquet NB (0221)	Lunenburg NS (0013)
Centreville NB (0215)	Miramichi NB (0207)
Clareenville NF (0900)	New Glasgow NS (0015)
Dalhousie NB (0202)	Port Hawkesbury NS (0019)
Deer Island/Lord's Cove NB (0208)	Shelburne NS (0020)
Fortune NF (0919)	St. Andrews NB (0209)
Gander NF (0912)	St. Croix NB (0205)
Goose Bay Airport NF (0913)	Summerside PE (0102)
Grand Falls NF (0910)	Sydney NS (0021)
Grand Manan NB (0224)	Truro NS (0022)

**QUEBEC REGION****Automated Offices**

Armstrong QC (0329)	Québec QC (0312)
Drummondville QC (0303)	Rock Island QC (0314)
Granby QC (0305)	Sherbrooke QC (0316)
Lacolle QC (0351)	St-Armand-Philipsburg QC (0328)
Montréal International Airport (PET) (Dorval) QC (0396)	Stanhope QC (0354)
Montréal, Mirabel International Airport QC (0399)	Terminus intermédiaire Montréal QC (0398)
Montréal Main (Youville) QC (0395)	

## QUEBEC REGION (continued)

### Non-automated Offices

Abercorn QC (0318)  
 Baie-Comeau QC (0355)  
 Beebe QC (0376)  
 Cap-aux-Meules QC (0363)  
 Chartierville QC (0365)  
 Chicoutimi QC (0301)  
 Clarenceville QC (0337)  
 Cowansville QC (0356)  
 Daaquam QC (0371)  
 Dundee QC (0330)  
 East Hereford QC (0362)  
 East Pinnacle QC (0369)  
 Freleighsburg QC (0332)  
 Gaspé QC (0304)  
 Glen Sutton QC (0370)  
 Hemmingford QC (0333)  
 Hereford Road QC (0366)  
 Joliette QC (0342)  
 Lachute QC (0343)  
 Montmagny QC (0344)  
 Morses Line QC (0367)  
 Noyan QC (0368)  
 Pohénégamook QC (0331)  
 Richmond QC (0345)  
 Rimouski QC (0313)  
 Rivière-du-Loup QC (0340)  
 Rock Island Rte 143 QC (0375)  
 Rouyn-Noranda QC (0349)  
 Sept-Îles QC (0361)  
 Shawinigan QC (0315)  
 Sorel QC (0317)  
 St-Hyacinthe QC (0320)  
 St-Jean QC (0321)  
 St-Jérôme QC (0346)  
 St-Pamphile QC (0335)  
 Thetford Mines QC (0347)  
 Trois-Rivières QC (0322)  
 Trout River QC (0307)  
 Val-d'Or QC (0350)  
 Valleyfield QC (0323)  
 Victoriaville QC (0327)  
 Woburn QC (0308)

## NORTHERN ONTARIO REGION

### Automated Offices

Arnprior ON (0494)  
 Belleville ON (0402)  
 Brockville ON (0405)  
 Cobourg ON (0473)  
 Cornwall ON (0409)  
 Fort Frances ON (0478)  
 Kenora ON (0490)  
 Kingston ON (0420)  
 Lansdowne ON (0456)  
 Lindsay ON (0477)  
 North Bay ON (0428)  
 Ottawa Air Cargo ON (0485)  
 Otttawa Macdonald Cartier Airport  
 (OACC) ON (0485)  
 Ottawa Long Room ON (0431)  
 Ottawa Sufferance ON (0431)  
 Pembroke ON (0469)  
 Perth ON (0470)  
 Peterborough ON (0400)  
 Pigeon River ON (0475)  
 Prescott ON (0439)  
 Sault Ste. Marie ON (0441)  
 Smiths Falls ON (0474)  
 Sudbury ON (0444)  
 Thunder Bay ON (00461)  
 Timmins ON (0467)  
 Trenton ON (0449)

### Non-Automated Offices

Iqaluit Nunavut (0403) Rainy River ON (0488)

**GREATERTORONTO REGION****Automated Offices**

Barrie ON (0459)	Obico ON (0495)
Bracebridge ON (0460)	Orillia ON (0429)
Brampton Main ON (0480)	Oshawa ON (0430)
Collingwood ON (0460)	Pickering Warehouse ON (0430)
Concord ON (0495)	Toronto Pearson Int'l Airport ON (0497)
Halton Hills ON (0483)	Toronto Main Long Room ON (0495)
Interport Sufferance Warehouse ON (0496)	Toronto Main ON (0495)
Midland ON (0424)	Toronto Sufferance ON (0499)
Newmarket ON (0486)	

**Non-Automated Offices**

Brampton Warehouse ON (0480)

**NIAGARA-FORT ERIE REGION****Automated Offices**

Brantford ON (0404)	Kitchener Warehouse ON (0401)
Cambridge ON (0457)	Niagara Falls Main ON (0427)
Fort Erie Commercial ON (0410)	Oakville Warehouse Main ON (0476)
Fort Erie ON (0410)	Queenston ON (0427)
Guelph ON (0414)	Simcoe ON (0442)
Hamilton Airport ON (0417)	St. Catharines ON (0445)
Hamilton Warehouse ON (0417)	Stratford ON (0425)
Hanover ON (0448)	Welland ON (0451)
Kitchener Main ON (0401)	Woodstock ON (0492)

**Non-Automated Offices**

Port Colborne ON (0471)

**WINDSOR-ST. CLAIR REGION****Automated Offices**

Chatham ON (0406)	Wallaceburg ON (0450)
London ON (0423)	Windsor Ambassador Bridge ON (0453)
Sarnia ON (0440)	Windsor Main ON (0454)
St. Thomas ON (0446)	Windsor Tunnel ON (0452)
Tillsonburg ON (0447)	

**Non-Automated Offices**

Leamington ON (0464)	Sombra ON (0465)
----------------------	------------------

**PRAIRIE REGION****Automated Offices**

Carway AB (0707)	Moose Jaw SK (0601)
Coutts AB (0705)	North Portal SK (0602)
Del Bonita AB (0708)	Prince Albert SK (0603)
Edmonton AB (0702)	Regina SK (0604)
Edmonton Main AB (0702)	Saskatoon SK (0605)
Emerson Commercial MB (0502)	Winnipeg Main MB (0504)
Lethbridge AB (0703)	Winnipeg International Airport MB (0510)

## PRAIRIE REGION (continued)

### Non-Automated Offices

Aden AB (0706)  
 Alert CNX Demandes B2 (0700)  
 Big Beaver SK (0614)  
 Boissevain MB (0507)  
 Calgary AB (0700)  
 Carievale SK (0612)  
 Cartwright MB (0521)  
 Churchill MB (0511)  
 Chief Mountain AB (0709)  
 Climax SK (0719)  
 Coronach SK (0615)  
 Coulter MB (0524)  
 Crystal City MB (0520)  
 Estevan Highway SK (0610)  
 Goodlands MB (0508)  
 Gretna MB (0503)  
 Inuvik NT (0512)  
 Lena MB (0522)  
 Lyleton MB (0523)  
 Medicine Hat AB (0704)  
 Monchy SK (0718)  
 Northgate SK (0613)  
 Oungre SK (0616)  
 Piney MB (0517)  
 Red Deer AB (0710)  
 Regway SK (0607)  
 Snowflake MB (0509)  
 South Junction MB (0506)  
 Sprague MB (0505)  
 Tolstoi MB (0516)  
 Torquay SK (0617)  
 Tuktoyaktuk NT (0514)  
 West Poplar River SK (0618)  
 Wild Horse AB (0711)  
 Willow Creek SK (0712)  
 Windy Gates MB (0519)  
 Winkler MB (0518)  
 Yellowknife NT (0515)

## PACIFIC REGION

### Automated Offices

Huntington BC (0817)  
 Kingsgate BC (0818)  
 Osoyoos BC (0819)  
 Pacific Highway BC (0813)  
 Paterson BC (0832)  
 Vancouver International Airport BC (0821)  
 Vancouver Main Long Room BC (0809)  
 Victoria BC (0811)

### Non-Automated Offices

Aldergrove BC (0841)  
 Beaver Creek BC (0892)  
 Boundary Bay BC (0815)  
 Campbell River BC (0838)  
 Carson BC (0834)  
 Cascade BC (0816)  
 Chopaka BC (0836)  
 Courtenay BC (0830)  
 Cranbrook BC (0801)  
 Dawson City YT (0894)  
 Dawson Creek BC (0839)  
 Douglas BC (0840)  
 Flathead BC (0829)  
 Fraser BC (0893)  
 Kamloops BC (0814)  
 Kelowna BC (0831)  
 Kitimat BC (0827)  
 Midway BC (0835)  
 Nanaimo BC (0804)  
 Nelway BC (0828)  
 PCB Highway Sufferance Warehouse (0842)  
 Penticton BC (0807)  
 Pleasant Camp BC (0891)  
 Port Alberni BC (0825)  
 Powell River BC (0826)  
 Prince George BC (0820)  
 Prince Rupert BC (0808)  
 Rykerts BC (0822)  
 Sidney BC (0837)  
 United Terminals BC (0810)  
 Vancouver Mail Centre BC (0803)  
 Vancouver Marine and Rail BC (0806)  
 Vernon BC (0823)  
 Waneta BC (0833)  
 Whitehorse YT (0890)

**APPENDIX O**

**CUSTOMS BROKERS' MONTHLY ACCOUNT STATEMENT (K84) –  
RECONCILIATION CONTROL SHEET**

Please complete the following with your payment for clients participating in the GST or Importer Direct Security Options.

Account Security No.: \_\_\_\_\_ K84 Amount: \$ \_\_\_\_\_ .

Name: \_\_\_\_\_

Customs Broker Cheque Amount: \$ \_\_\_\_\_ .

Importer Cheques Amount: \$ \_\_\_\_\_ .

K21 During Billing Period: \_\_\_\_\_ .

Total Amount Received: \$ \_\_\_\_\_ .

Total Amount Outstanding: \$ \_\_\_\_\_ .

**Breakdown of Outstanding Amount**

Complete Only if Total Amount Outstanding is Greater Than Zero.

<b>Business Number</b>	<b>Transaction No.</b>	<b>Importer's Account Security No.</b>	<b>GST Option</b>	<b>Contact Name and Phone Number/Fax Number</b>	<b>Amount</b>
89999 9999RM0001	12345612346123	45678		John Doe/613-999-9999/ 613-999-9999	\$50,000.00

This is not a prescribed form. Reproduction to meet your business requirements is permitted providing all information is included.

## APPENDIX P

**FORM K21, CASH RECEIPT**

**REFERENCES**

<b>ISSUING OFFICE –</b> Assessment and Licensing Division	<b>HEADQUARTERS FILE –</b> 7632-0
<b>LEGISLATIVE REFERENCES –</b> <i>Customs Act</i> , sections 31, 33, 35, 58, 59, 60, 74, 97 and 129	<b>OTHER REFERENCES –</b> D1-2-1, D1-6-1, D5-1-1, D8-1-4, D8-1-7, D17-1-2, D17-1-11, D17-2-1, D17-2-2, D17-2-3, D22-1-1
<b>SUPERSEDED MEMORANDA “D” –</b> D17-1-5, February 17, 2010	

Services provided by the Canada Border Services Agency are available in both official languages.



Printed in Canada

# **TAB 23**

**CBSA Memo D6-2-6 “Refund of Duties and Taxes on Non-commercial  
Importations”**



Ottawa, March 27, 2015

# Memorandum D6-2-6

## Refund of Duties and Taxes on Non-commercial Importations

### In Brief

This memorandum has been revised to reflect the new Government of Canada policy surrounding the refund of low value payments. In addition, service standards have been added and Appendix A has been updated with the current free trade agreement information. Finally, general updates clarifying refund procedures have been made.

This memorandum outlines and explains the procedures for the refund of duties, goods and services tax (GST), harmonized sales tax (HST), provincial sales tax (PST), provincial tobacco and alcohol taxes, and levies under the [Special Import Measures Act](#) (SIMA) for non-commercial importations brought into Canada by mail, courier, or hand carried by the traveller.

### Legislation

[Customs Act](#), paragraph 59(1)(a), subsections 60(1), 60.1(1) and Sections 74 and 76

[Refund of Duties Regulations](#)

## Guidelines and General Information

### Definitions

1. For the purpose of this memorandum, the following definitions apply:

“Casual Goods” are defined as goods imported into Canada other than commercial goods; as per [Memorandum D17-1-3, Casual Importations](#) and the [Accounting for Imported Goods and Payment of Duties Regulations](#).

“Casual Goods Accounting Document” (Form BSF715, formerly Form B15) is used to account for goods acquired by travellers entering Canada from abroad.

“Casual Refund Centre” (CRC) is the Canada Border Services Agency (CBSA) office responsible for the receipt, review and processing of the Form [B2G](#) casual refund requests.

“CBSA Informal Adjustment Request” (Form [B2G](#)) is used to request an adjustment or refund of duties and taxes paid for non-commercial goods imported by mail, courier, or carried by the traveller.

“CBSA Postal Import Form” (Form E14) is used to assess duties and taxes and keep track of importations arriving through the mail.

“Foreign Sales Company” is a company located outside of Canada that markets its goods directly to the Canadian public through such media as catalogues, television, radio, magazine/newspaper advertisements, or online Internet shopping services (e-tailing), and that ships the goods to Canada either by mail or courier.

“Non-commercial goods” are defined as goods imported for individual use, and not intended for resale, commercial, industrial, occupational, institutional, or other like use. May also be referred to as casual goods.

“Refund of duties and taxes on non-commercial importations” means, the CRC will authorize refunds of duties, GST/HST, provincial taxes, and/or SIMA levies where goods imported have been subsequently exported, or where determination, re-determination, re-classification, or re-appraisal of goods are being requested, or where duties and taxes have been overpaid or paid in error.

## Casual Refund Program

2. Under prescribed conditions, the [\*Customs Act\*](#) allows for a person who paid duties on imported goods to apply for, and for the Minister to issue a refund of all, or part of the duties and taxes collected on non-commercial (casual) importations.
3. Effective April 1, 2015, all casual refund requests in the amount of \$2.00 or less in duties and/or taxes will no longer be refunded as per the updated Government of Canada policy.
4. The Casual Refund Program manages the refund and adjustment processes for duties and taxes levied on non-commercial importations brought into Canada by mail, by courier or hand carried. The Program also allows for the reimbursement of duties and taxes paid, upon presentation of evidence that the imported casual goods have been returned to the sender.
5. It is the responsibility of border services officers to ensure that duties and taxes are collected on non-commercial goods imported into Canada at the time of importation, and after personal exemptions are applied to the eligible traveller. Refer to [Memorandum D17-1-3, Casual Importations](#) and [Memorandum D17-1-22, Accounting for the Harmonized Sales Tax, Provincial Sales Tax, Provincial Tobacco Tax and Alcohol Markup/Fee on Casual Importations in the Courier and Commercial Streams](#) and [series D2](#) for import and accounting requirements.
6. Only under the prescribed conditions, which are contained within the [\*Customs Act\*](#), will refunds be authorized. The CRCs are the designated authority for all casual refund requests under the [\*Customs Act\*](#).
7. The CRCs, which are located throughout Canada, have the delegated authority to refund, where applicable, duties, GST/HST, and provincial taxes, which were collected upon importation by either mail, courier, or carried by the traveller. CRCs are listed on the back of the Form [B2G, CBSA Informal Adjustment Request](#).
8. The following procedures are to assist non-commercial importers with their request to apply for a refund.

### Requesting a Refund

9. An importer may request a refund of duties and taxes paid on non-commercial importations using Form [B2G](#).

### Completion of CBSA Informal Adjustment Request (Form B2G)

10. Form [B2G](#) must be completed according to the instructions indicated on the reverse side of the form. The importer's signature must appear on either Form B2G or the accompanying correspondence requesting a refund of duties and taxes paid.
11. If a person other than the importer submits the request for refund, a letter signed by the importer authorizing the person to act as an agent, or a General Agency Agreement, must be included with the claim. The [B2G](#) is to be made out to the importer c/o customs broker with the importer's address. Only the person who paid the duties is entitled to a refund under the refund provisions of the [\*Customs Act\*](#), Section 74 and 76. Additional details for authorized agents can be found in [Memorandum D1-6-1, Authority to Act as an Agent](#).

### Supporting Documentation

12. The original accounting document showing the amount of duties and taxes paid at the time of importation must be attached to Form [B2G](#). The accounting document required is dependent upon the method of importation: for travellers' importations attach Form BSF715 (formerly form B15); postal importations attach Form E14; and courier importations attach the courier receipt that includes the B3 transaction number.
13. Documents supporting the request for a refund or adjustment must be attached to Form [B2G](#). The following are examples of acceptable documentation:
  - (a) where after duties and taxes were paid and the goods were returned to the foreign sales company - a credit note from the foreign sales company showing that the importer's account was credited for the return of the goods, and proof that the goods were exported, such as, a bill of lading, a receipt, or other documentation that describes the goods and gives the date of export;

- (b) where the value of the goods is incorrect; proof of the correct value, such as an invoice from the exporter or foreign sales company;
- (c) where the goods were classified incorrectly or the wrong tariff treatment was applied - proof of the origin of goods such as invoices or purchase orders that provide a complete description and origin of the goods;
- (d) where the goods were damaged before release from the CBSA - proof from the exporter or shipper that the goods were damaged during shipping; or,
- (e) when the quantity or quality of goods delivered was less than claimed - proof from the exporter or foreign sales company such as a credit note or equivalent showing the quantity shipped or describing the goods that were actually sent.

14. For more details concerning the conditions for refunds and documentation requirements, please refer to Appendix A.

### **Time limitations**

- 15. Requests for refunds must be made within one (1) year of the date of original importation for traveller and postal redeterminations of tariff classification, value and/or origin.
- 16. Requests for refunds under sections 74 or 76 of the *Customs Act* must be submitted within four (4) years of the original date of importation except when claiming the benefits of preferential tariff treatment under the North American Free Trade Agreement (NAFTA). The free trade agreement and paragraph 74(1)(c.1) of the *Customs Act* stipulate a one (1) year time frame.
- 17. To avoid delays with the review and processing, requests for refund or adjustment should be presented to the CRC corresponding to the importer's address, as indicated in the instructions provided on Form [B2G](#). The CBSA is not responsible for delays occurring from misdirected requests which impact the time eligibility specified under the *Customs Act*. If an application is received in another office, the receiving office will forward the application to the appropriate CRC.

### **Authorized Refunds**

- 18. The CRCs are authorized to refund, where applicable, all or part of the duties, taxes, GST/HST, SIMA levies as well as provincial sales tax and tobacco tax that were paid at the time of importation. For information on the application of HST please refer to memoranda [D2-3-6, Non-commercial Provincial Tax Collection Programs](#) and [D17-1-22, Accounting for the Harmonized Sales Tax, Provincial Sales Tax, Provincial Tobacco Tax and Alcohol Markup/Fee on Casual Importations in the Courier and Commercial Streams](#).
- 19. Provincial alcohol mark-ups/levies collected at time of importation will only be refunded when an error in calculation occurred, which results in an overpayment of taxes or when duty-paid unconsumed alcohol is exported.
- 20. Diplomatic missions, consular posts, and international organizations personnel are entitled to duty-free privileges. For further information, please refer to [Memorandum D21-1-1, Customs Privileges for Diplomatic Missions, Consular Posts, and International Organizations \(Tariff Item No. 9808.00.00\)](#). They must have their title and the name of the embassy, consular post or international organization clearly indicated on the parcel by the sender or exporter so that CBSA officials may recognize their duty-free status.
- 21. Refunds may not be claimed in respect of penalties imposed on imported goods. Information on how to appeal a penalty can be found on the [CBSA website](#).
- 22. The CRCs do not issue refunds of other government department (OGD) fees or penalties. Travellers and importers must contact the OGD to request refunds or adjustments of OGD fees and penalties.
- 23. The handling costs assessed on postal shipments are only refundable when the goods should have been duty-free and tax-exempt at time of importation. Canada Post charges for priority mail service, for example, Express Mail Service (EMS) items from the U.S., are non-refundable.

24. Blanket refund requests for casual goods are not accepted, with the exception of CREDITS participants on a case by case basis. Please refer to [Memorandum D6-2-3, Refund of Duties](#), for information regarding refunds of duties paid on commercial goods.
25. All refunds will be made payable to the importer to whom the goods were originally consigned.
26. The CBSA will strive to process casual refunds within 30-business days of receipt of the [B2G](#) package and all requisite supporting documentation.

## **Interest**

27. For refunds granted under subparagraph 59(1)(a)(ii) of the [Customs Act](#) (re-determination of tariff classification, origin, or value of traveller or postal goods), interest will be computed at the prescribed rate for the period beginning on the first day after the duty was paid and ending on the day the refund is given.
28. For refunds granted under any other section of the [Customs Act](#), interest at the prescribed rate will be granted for the period beginning on the 91st day after the day the application for refund is received and ending on the day the refund is granted.
29. Interest will not be paid on any refunded amount of provincial sales taxes, tobacco taxes, and alcohol mark-ups/levies.

## **Voluntary Entries**

30. Where importers find that insufficient duties and taxes were assessed on their non-commercial postal, courier, or traveller declarations, an adjustment to the original assessment may be submitted on Form [B2G](#).
31. Form [B2G](#) may be used to show the proper duties and taxes that should have been collected and must be accompanied by the original CBSA accounting documentation, for example, Form E14, Form BSF715 (formerly Form B15), or courier receipt. The claim should be submitted to the corresponding CRC as indicated on Form B2G.

## **Appeal Process**

32. If an importer's refund or adjustment request is denied by the CRC for re-determination of tariff classification, origin, or value under subparagraph 59(1)(a)(ii) of the [Customs Act](#), the importer may appeal this decision. This can be done by letter addressed to the CBSA Regional Recourse Division, Trade Program Appeals Unit as stated on the CRC decision notice. The appeal request must be presented within 90 days of the Section 59 decision notice's decision date and include a copy of the decision along with information and documents supporting the request. Please refer to Appendix B of this memorandum and [Memorandum D11-6-7, Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods](#), for further information regarding appeal requests.
33. Where the importer's refund or adjustment request is rejected by the CRC for reasons other than the tariff classification, origin and value for duty, the importer may submit a new application along with appropriate supporting documentation to the originating CRC for review and re-processing under the original provisions of the [Customs Act](#). For the conditions to appeal decisions made by the CRC, please refer to Appendix B.

## **Casual Refund Electronic Data Interchange Transaction System (CREDITS)**

34. The Casual Refund Electronic Data Interchange Transaction System (CREDITS) is an electronic process allowing customs brokers to represent a foreign sales company and electronically submit refund claims on behalf of the importer. CREDITS is used for high volume refund applications for which customs brokers have originally accounted for the payment of duties and taxes on a Form [B3-3, Canada Customs Coding Form](#), and which the goods were subsequently destroyed, or returned to the foreign sales company. CREDITS allow authorized customs brokers to electronically transmit certain key information to the CBSA. A CRC will issue a refund for the importer in care of the customs broker. The refund will be deposited directly into the customs broker's bank account and the importer will receive their refund of duties and taxes directly from the foreign sales company.

35. To participate in CREDITS the licensed customs broker must complete an *Agreement to Electronically Process Casual Refund Claim* application, Form [E613](#), and submit it for authorization by the CBSA. The licensed customs broker must have full power of attorney from the importer allowing them to act as the importer's agent, to account for the duty and taxes to the CBSA, to export the goods, to file the [B2G](#) refund claim for the returned goods, and to receive the refund.

36. The Power of Attorney must be available on the foreign sales company website in the ordering/shipping instructions and must clearly explain to the importer that they are authorizing the customs broker to act on their behalf in all aspects of the import, accounting, export and refund process.

37. A foreign sales company can be represented by more than one CREDITS approved customs broker. The foreign sales company must have a separate Power of Attorney for each approved customs broker. The functions in the Power of Attorney cannot be interchangeable from one customs broker to another.

38. CREDITS requirements for the approved customs broker are detailed in the CREDITS Participant's Requirement Document (PRD). A copy of the CREDITS PRD, is available upon request by e-mailing [Assessment-Cotisation@cbsa-asfc.gc.ca](mailto:Assessment-Cotisation@cbsa-asfc.gc.ca).

39. CREDITS allow the transmission of minimal data on the basis that original import and export records are maintained by the broker. The CBSA will conduct verification checks on the broker by asking for the original import and export documentation to be presented within an acceptable period of time following the request. An audit may be performed by the CBSA on the applicant's books.

40. Brokers wishing to participate in the CREDITS program must complete and submit a Form [E613, Agreement to Electronically Process Casual Refund Claims](#). Form E613 should be mailed to:

Canada Border Services Agency  
 Trade and Anti-dumping Programs Directorate  
 Assessment and Licensing Unit  
 150 Isabella Street, 8th floor  
 Ottawa ON K1A 0L8

41. Upon receipt, the CBSA will review the application for completeness and conduct a workload analysis. Once the application is approved, the CBSA will make arrangements with the applicant for system testing. After the testing is complete the CBSA will issue a letter of approval authorizing the applicant to begin filing the CREDITS casual refund claims. Claims for goods destroyed or returned may then be filed electronically from the date that CBSA authorization was given.

42. By participating in CREDITS the customs broker agrees to the terms outlined in the Participants Requirement Document and listed in section 2 of the *Agreement to Electronically Process Casual Refund Claims* form. The CBSA reserves the right to terminate this agreement if the conditions of the agreement are not met.

## **Additional Information**

43. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

## Appendix A

### Casual Refund Center Refund Guidelines

Type of Refund	Legislation	Conditions	Requirements
Damaged, Deteriorated Goods	<i>Customs Act</i> 74(1)(a)	<ul style="list-style-type: none"> <li>• goods remain in Canada;</li> <li>• value is reduced by appraisal or credit;</li> <li>• adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>• a damage report or customs report on damaged goods;</li> <li>• a credit note or copy from the foreign sales company of any document relating to a refund or credit given by the foreign sales company (i.e., Visa, MC);</li> <li>• proof of loss in value of the goods as a result of the damage, deterioration, or destruction of the goods;</li> <li>• as a result of damage, a written statement by a carrier or an operator of a warehouse to certify that the goods suffered damage, deterioration, or destruction prior to release by the CBSA.</li> </ul>
Shortage of Goods (Duty Paid on Full Quantity)	<i>Customs Act</i> 74(1)(b)	<ul style="list-style-type: none"> <li>• goods do not arrive in Canada;</li> <li>• quantity released is less than quantity on which duties and taxes were paid;</li> <li>• adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>• a credit note from the foreign sales company for goods which were not subsequently shipped;</li> <li>• a written statement from the carrier or operator of a warehouse verifying the deficiency in quantity of the goods;</li> <li>• any supporting documents containing sufficient details to clearly determine the value for duty of the short goods.</li> </ul>
Inferior Quality	<i>Customs Act</i> 74(1)(c)	<ul style="list-style-type: none"> <li>• goods remain in Canada;</li> <li>• goods are inferior in quality than those ordered;</li> <li>• adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>• a written statement from the foreign sales company which clearly indicates the amount of refund or credit given due to the inferiority of the product.</li> </ul>
North American Free Trade Agreement (NAFTA)	<i>Customs Act</i> 74(1)(c.1) 74(3)(b)(ii) 74(1.1) 74(4)(a) 59(1)(a)(ii)	<ul style="list-style-type: none"> <li>• no duties apply as the goods are from a NAFTA country (U.S. or Mexico) and a re-determination of tariff treatment is requested;</li> <li>• no claim for preferential treatment has been previously made;</li> <li>• adjustment request must be presented within 1 year.</li> </ul>	<ul style="list-style-type: none"> <li>• invoice or statement from the foreign sales company indicating goods are of U.S. or Mexican origin;</li> <li>• Certificate of Origin, or other acceptable information indicating the goods are not manufactured outside the U.S., Mexico or Canada.</li> </ul>

Type of Refund	Legislation	Conditions	Requirements
Canada-Israel Free Trade Agreement (CIFTA), Canada-Chile Free Trade Agreement (CCFTA), Canada-Costa Rica Free Trade Agreement (CCRFTA), Canada-European Free Trade Association Free Trade Agreement (CEFTA), Canada-Peru Free Trade Agreement (CPFTA), Canada-Colombia Free Trade Agreement (CCOFTA), Canada-Jordan Free Trade Agreement (CJFTA)	<i>Customs Act</i> For CIFTA, CCRFTA, CEFTA, CPFTA, CCOFTA and CJFTA: 74(1)(c.11) 74(3)(b)(i) 74(1.1) 74(4)(a) 59(1)(a)(ii) For CCFTA: 74.(1)(c.1) 74.(3)(b)(ii) and Part 4 of the <i>Refund of Duties Regulations</i>	<ul style="list-style-type: none"> <li>no duties apply as the goods qualify for tariff treatment under the CIFTA, the CCFTA, the CCRFTA, the CEFTA, the CPFTA, the CCOFTA or the CJFTA;</li> <li>adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>an invoice or a statement by the foreign sales company indicating that the goods originate: in Israel (for CIFTA), in Chile (for CCFTA), in Costa Rica (for CCRFTA), in Iceland, Norway, Switzerland or Liechtenstein (for CEFTA), in Peru (for CPFTA), in Colombia (for CCOFTA), or in Jordan (for CJFTA);</li> <li>Certificate of Origin, or other acceptable information indicating the goods are not manufactured outside: Israel or Canada (for CIFTA), Chile or Canada (for CCFTA), Costa Rica or Canada (for CCRFTA), Iceland, Norway, Switzerland, Liechtenstein or Canada (for CEFTA), Peru or Canada (for CPFTA), Colombia or Canada (for CCOFTA), and Jordan or Canada (for CJFTA).</li> </ul>
Clerical Error	<i>Customs Act</i> 74(1)(d)	<ul style="list-style-type: none"> <li>calculation errors;</li> <li>clerical errors on accounting documents/invoices;</li> <li>exchange rate in error;</li> <li>adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>copies of accounting documents, invoices, or letter explaining reason for errors.</li> </ul>
Duties Overpaid or Paid in Error due to Determination	<i>Customs Act</i> 74(1)(e) 74(1.1) 74(4)(b) 59(1)(a)(ii)	<ul style="list-style-type: none"> <li>duties paid or overpaid as a result of an error in the determination under subsection 58(2) of origin (other than in (c.1) or (c.11)), tariff classification or value for duty;</li> <li>applies to self-declared entries (courier/B3 entries);</li> <li>adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>invoice/documents indicating information such as a proper description of the goods, quantity, country of origin, date of sale, and/or descriptive or illustrative literature;</li> <li>written evidence of value or detailed goods description such as commercial invoices, credit notes, agreement of sale, purchase order confirmation or other supporting documentation.</li> </ul>
Overpayment of Duties/Duties Paid in Error	<i>Customs Act</i> 74(1)(g) 74(1.1) 74(4)(b) 59(1)(a)(ii)	<ul style="list-style-type: none"> <li>duties and taxes paid in error;</li> <li>duty rate changes but no change in tariff classification, value, or origin;</li> <li>duplicate payment;</li> <li>adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>copies of accounting documents, invoices, or letter explaining reason for overpayment;</li> <li>documentation indicating the incorrect duty rate was used for calculation of duty;</li> <li>proof of duplicate payment by producing copies of customs accounting documents showing duties and taxes were paid twice.</li> </ul>

Type of Refund	Legislation	Conditions	Requirements
Goods Returned to Sender/ Exported/ Destroyed	<i>Customs Act</i> 76(1)	<ul style="list-style-type: none"> <li>• goods must be exported from Canada;</li> <li>• goods are not according to order;</li> <li>• goods returned to sender for other reasons;</li> <li>• Adjustment request must be presented within 4 years.</li> </ul>	<ul style="list-style-type: none"> <li>• a credit note or any supporting documents to indicate that credit from the foreign sales company has been given to the importer; and,</li> <li>• a written statement by the exporter of the goods confirming that the goods have been returned;</li> <li>• a completed Form <a href="#">E15</a>, <i>Certificate of Destruction/Exportation</i>.</li> </ul>
Tariff Classification, Value for Duty, and Origin	<i>Customs Act</i> 59(1)(a)(ii)	<ul style="list-style-type: none"> <li>• changes to tariff classification, value, or origin such as tourist exemptions, goods to follow (9804.20), settlers' effects/returning residents, wrong tariff classification assessed;</li> <li>• Adjustment request must be presented within 1 year for postal and traveller claims as stipulated in the 1998 Ministerial Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• invoice/documents indicating information such as a proper description of the goods, quantity, country of origin, date of sale; and/or descriptive or illustrative literature;</li> <li>• an original Form E24, <i>Personal Exemption CBSA Declaration</i>, used to document goods to follow;</li> <li>• an original Form Y38, <i>Identification of Articles for Temporary Exportation</i>, used to identify Canadian goods being taken out of the country by a traveller and which will be returned;</li> <li>• written evidence of value such as commercial invoices, credit notes, agreement of sale, purchase order confirmation.</li> </ul>

## Appendix B

### Conditions to Appeal Sections 59 Decision Rendered by the Casual Refund Centres

Type of Refund	Legislation	Conditions	Requirements
Appeals on Tariff Classification, Value for Duty, and Origin	<i>Customs Act</i> 60	<ul style="list-style-type: none"> <li>• must be presented within 90 days of the Section 59 decision rendered by the CRC;</li> <li>• appeals are to be presented to the Regional Recourse Division, Trade Program Appeals Unit as stated in the CRC decision notice.</li> </ul>	<ul style="list-style-type: none"> <li>• Previously submitted documents including the <a href="#">B2G</a>, copy of the CRC decision as well as any further documents, and information that substantiate the request.</li> </ul>

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	7965-4
<b>Legislative References</b>	<p><i>Customs Act</i>  <i>Refund of Duties Regulations</i>  <i>Accounting for Imported Goods and Payment of Duties Regulations</i></p>
<b>Other References</b>	<p>D1-6-1, D2-3-6, D6-2-3, D11-6-7, D17-1-3, D17-1-22,  D21-1-1, series D2  Forms <a href="#">B2G</a>, <a href="#">B3-3</a>, BSF715, E14, <a href="#">E15</a>, E24, <a href="#">E613</a>, Y38</p>
<b>Superseded Memorandum D</b>	D6-2-6 dated February 6, 2013

# TAB 24

Counterfeit gold coins ad from aliexpress.com

<https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-Gold-Maple-Leaf-coin-1-oz-50-BU-50pcs-lot-free/32555167302.html?spm=2114.40010208.4.50.f8s87G>

Non Magnetic coin,2015 Not secure | <https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-Gold-Maple-Leaf-coin-1-oz-50-BU-50pcs-lot-free/32555167302.html?spm=2114.40010208.4.50.f8s87G>

Buyer Protection Help Save big on our app! Ship to CAD Language

AliExpress™ I'm shopping for... Search Cart (0) Heart User

Store: Souvenir Coin~Discount Store 389 5 98.4% Positive feedback Follow

Home > All Categories > Home & Garden > Home Decor > Ornaments > Non-currency Coins



Non Magnetic coin,2015 Canada Gold Maple Leaf coin- 1 oz - \$50 - BU.50pcs/lot free shipping,brass plated gold coin Replica coin

★★★★★ 0.0 (2 votes) | 4 orders

Price: **C\$ 185.01** / lot 50 pieces / lot , C\$ 3.71 / piece | Bulk Price ▾

Shipping: Free Shipping to Canada via FedEx IP ▾  
Estimated Delivery Time: 7-15 days ?

Quantity: - 1 + lot (991 lots available)

Total Price: **C\$ 185.01**

Buy Now Add to Cart

Add to Wish List (8 Adds) ▾

Return Policy [Info] Returns accepted if product not as described, buyer pays return shipping fee; or keep the product & agree refund with seller.  
[View details ▾](#)

Seller Guarantees: [Info] On-time Delivery  
**7 days**

Payment: [Info]       
 Bank Transfer [View More ▾](#)

 **Buyer Protection**  
 Full Refund if you don't receive your order  
 Full or Partial Refund , if the item is not as described

Recently Viewed

Non Magnetic coin,2015

Not secure https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-G

**Buyer Protection**

Full Refund if you don't receive your order  
 Full or Partial Refund , if the item is not as described

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Product Details    Feedback (2)    Shipping & Payment    Seller Guarantees

**Item specifics**

Style: Modern	Regional Feature: Europe
Material: Metal	Technique: Gilding
Year: 2000-Present	Theme: Plant
Products Type: Canada Maple Leaf Coins 2015 gold plat...	condition: Brand New Without Defect
Color: Mallard Duck Gold Coins,Titanic Coins,m...	Material: brass/zinc alloy plated pure gold coin
package: plastic cases and opp bag packed each	Technique: Stamping +24k Gold Plating + Hydraulic...
Theme:: 2015 new CANADA FINE GOLD 1 oz coin	Style: COIN ELIZABETH II 50 DOLLARS COIN Ca...
size: about 40mm*3mm	related products: 2015 gold plated Canadian maple leaf C...

**Product Description**

Welcome to my store

We supply a variety of creative metal crafts including coins,badges,medals,key,chains,poker chips,cufflinks,dog tags,etc.

All of our items are taked photo from definite object, so our items are extremely refinement.



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Recently Viewed



Not secure

<https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-G>



Product Details

Feedback (2)

Shipping & Payment

Seller Guarantees

refinement.



Store No: 1360153



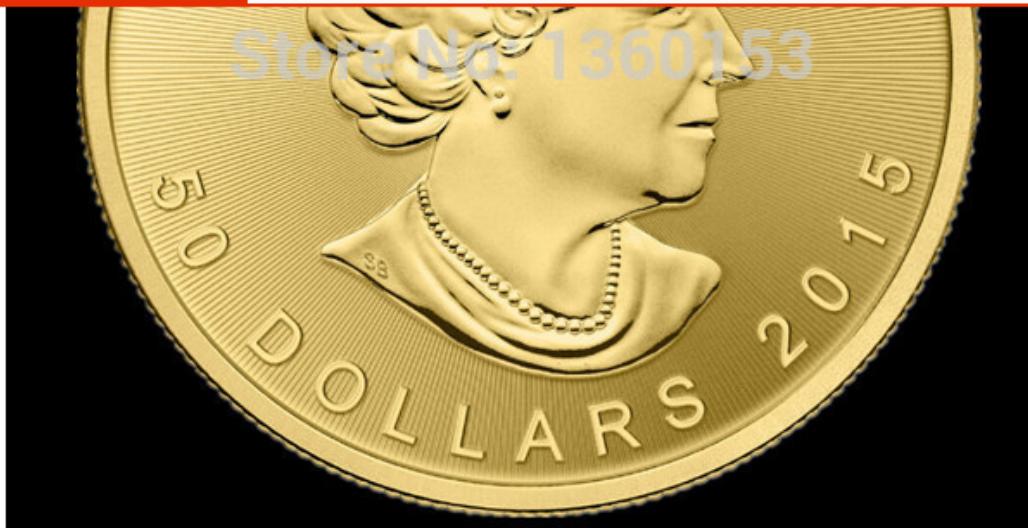
Store No: 1360153



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[←](#) [→](#) [C](#) [H](#)

Not secure

<https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-G>[Product Details](#)[Feedback \(2\)](#)[Shipping & Payment](#)[Seller Guarantees](#)

**Shipping** I will ship all the items through Standard Air Mail with Tracking Number and DHL. I also accept express

post method, please contact me to pay extra shipping charge if you want to get it faster.

Delivery time:

\* 7-21 business days to United States,Australia,Canada and New Zealand.

Recently Viewed

Non Magnetic coin,2015 X Radu

Not secure | https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-G

Product Details Feedback (2) Shipping & Payment Seller Guarantees

## Shipping

I will ship all the items through Standard Air Mail with Tracking Number and DHL. I also accept express post method, please contact me to pay extra shipping charge if you want to get it faster.

Delivery time:

- \* 7-21 business days to United States,Australia,Canada and New Zealand.
- \* 10-30 business days to European
- \* Please make sure your shipping address is updated and correct before purchasing. I will not responsible for postal lost caused by invalid address.
- \* Sunday Saturday and Public Holiday are not included in Business Days.
- \* Any customs clearance problem may cause a delay of the parcel up to 1-2 weeks.
- \* Import duties taxes and charges are not included in the item price or shipping charges. These charges are the buyer's responsibility.
- \* Please do not bid our item in case you can not accept my shipping regulations. Otherwise I am unable to take any responsibility for it.

## Return Policy

I accept returns and refund only if the item was not as described in the listing page. If item found DOA, item must be reported immediately and contact me with photo and details within 3 days after received. Please return items without man-made damage and pack in its original packing. Buyers are responsible on return shipping cost.

## Contact me

I pursue your satisfaction and welcome any questions to my products. I will make every effort to help you resolve all the problems. If you have special requests for the products, please also contact me, I will try my best to help you.

## Feedback

Your satisfaction is important to me. If you have questions regarding your order or if you feel that everything are great!

Packaging Details

Unit Type: lot (50 pieces/lot) Package Weight: 3.5kg (7.72lb.)  
Package Size: 10cm x 10cm x 10cm (3.94in x 3.94in x 3.94in)

Transaction History 4 transactions in last 6 months. Recently Viewed

f  
p  
v  
t  
  
X  
^

## Product Details

## Feedback (2)

## Shipping &amp; Payment

## Seller Guarantees

## Packaging Details

Unit Type: lot (50 pieces/lot)

Package Weight: 3.5kg (7.72lb.)

Package Size: 10cm x 10cm x 10cm (3.94in x 3.94in x 3.94in)

## Transaction History

4 transactions in last 6 months.

Sort by latest

## Buyer

## Transaction Information

A3 P\*\*\*e C.

1 Lot

CA

02 Mar 2017 22:14

A4 V\*\*\*j L.

1 Lot

DE

14 Feb 2017 06:00

A2 G\*\*\*o M.

2 Lots

US

27 Dec 2016 09:56

A2 A\*\*\*t S.

3 Lots

US

21 Nov 2016 18:45

&lt;

1

&gt;

## More Products

## From This Seller



Non Magnetic coin!  
2pcs/lot 24k go...  
**C\$ 4.10 / lot**



Free shipping 5pcs/lot  
2015 new CA...  
**C\$ 25.36 / lot**



2010 British St George  
Dragon Gold...  
**C\$ 8.21 / piece**



Unbeatable prices  
Canadian Maple L...  
**C\$ 157.60 / lot**



## From Other Sellers



Recently Viewed



[←](#)[→](#)[C](#)[H](#)[Not secure](#)<https://www.aliexpress.com/item/Non-Magnetic-coin-2015-Canada-G>**Product Details****Feedback (2)****Shipping & Payment****Seller Guarantees**

2016 New Arrivals Metal  
Germany So...  
**C\$ 6.45 / piece**



Wholesale 1oz 24ct Gold  
Plated CRE...  
**C\$ 12.32 / lot**



Canadian maple leaf  
COINS 2015 CAN...  
**C\$ 18.64 / lot**



1pcs/lot Excellent 1933  
& 1921 Sai...  
**C\$ 3.43 / piece**

**Premium Related Products**

genuine leather Belts for  
man designer belt  
**US \$15.80 / piece**



unakite Cylinder natural  
stone beads for jewelry  
**US \$0.50 / piece**



customized velvet  
jewelry bag for  
**US \$0.40 / piece**



90% Silver Any Date  
4Pieces Morgan Dollars  
**US \$30.53 / piece**

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# TAB 25

R. v. Nawaya BCSC-179965

# Provincial Court Record of Proceedings and Endorsement of Information

Court File No.	179965-1
Court File No.	
Police Agency and File No.	INSE: 09-3931

Name of Accused

NAWAYA, Khaled

Language	
For	

## COURT APPEARANCES

Video App. By	Date DD MMM YY	Time	Room	Reason	Interpreter Required	Clerk A N P V	Counsel	A C D S N V	Prosecutor	V	Results	No JIR by Consent	Custody Status	B.W. (Time)	V-Vacated / H-Hold	Seized	Prov. Court Judge	V
	19 Apr 10	900	100	PA							NIC							
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
04 Apr 10 900 AM App																		
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
APR - 4 2010	1030	311	ELE	HSP Rankin C Pross							NIC							
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
25 Oct 10 900 AM TCH DEP Rankin C —											IBD	N						
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
13 Nov 10 1030 ELE KCN Rankin S.P. Bacha											IBD	NIC						
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
13 Nov 10 1030 1031 HP KK P. FRANKIN J. HAYMAN											IBD	NIC						
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
STRIKE THIS 02 DEC 10 03 DEC 10 + 06 DEC 10 - 3M Non fit																		
03 Dec 10 930 1031 IGP MDP P. Rankin S.J. Hayman end											N							
Notes and Tape Nos. <input type="checkbox"/> See Inside																		
13 Dec 10 130 311 DEC TW P. P. RANKIN C J. HAYMAN bus											NIC							
Notes and Tape Nos. <input type="checkbox"/> See Inside																		

## BANS

Date DD	MMM	YY

## Order for Publication Ban

- s. 517(1) – Show Cause – JIR
- s. 539(1) – Preliminary Inquiry
- s. 65 YCJA – No Adult Sentence being sought
- s. 75(3) YCJA – Youth Sentence Imposed

Date DD	MMM	YY
APR 09	2010	
APR 09	2010	

- Information Read
- Advised Language Choice
- Information Amended

- Waives Reading
- English
- French Trial
- Bilingual Trial

DEC 03 2010 Information Amended again  
delete original amendment

## Order for Disclosure Ban

- s. 486.4(1) – (Application by Accused) Identity of complainant or witness – sexual offences \_\_\_\_\_
- s. 486.4(2) – (Application by Crown, Complainant or Witness under 18) Identity of complainant or witness – sexual offences \_\_\_\_\_
- s. 486.4(3) – Identity of witness under 18 or any victim – child pornography \_\_\_\_\_
- s. 486.5(1) – Identity of complainant or witness \_\_\_\_\_
- s. 486.5(2) – Identity of justice system participant \_\_\_\_\_
- s. 672.51 – Mental Disorder Proceedings (See Insert) \_\_\_\_\_
- Other \_\_\_\_\_

JUDICIAL INTERIM RELEASE OF DETENTION ( <input type="checkbox"/> See reverse for subsequent JIR)	
Date Ordered DD MMM YY	Ordered by Judge / Justice: _____
	<input type="checkbox"/> Detention Order _____
	<input type="checkbox"/> UTA _____
Release Date DD MMM YY	<input type="checkbox"/> OR \$ _____ <input type="checkbox"/> Deposit \$ _____
	<input type="checkbox"/> Sureties \$ _____
	<input type="checkbox"/> Alternate Bail _____
Change Date DD MMM YY	<input type="checkbox"/> Conditions (See attached) <input type="checkbox"/> POR _____
	<input type="checkbox"/> Variation of Bail _____
Remarks (Details of Variation)	<input type="checkbox"/> Original Bail continues _____
	<input type="checkbox"/> Variation of Bail by Consent (Dated) _____
	<input type="checkbox"/> Clerks of the Court _____
	SEP 30 2016
	Date _____

## PLEAS AND FINDINGS

Date DD MMM YY	Counts
APR 09 2010	All
DEC 13 2010	all
DEC 13 2010	01

Accused: NAYA, K.M.

DOB: DD MM YY

Court File No.: 179965-1

Police Agency and File No.

## Charges:

 Summarily       By Indictment Prov. Court Judge Judge Judge & Jury

Before \_\_\_\_\_

[Signature]

Signature of Judge

## Crown Proceeded:

## Election:

## Re-election:

## Plea:

## Re-enters/Changes Plea:

## INFORMATION/DÉNONCIATION

CANADA:

PROVINCE OF BRITISH COLUMBIA  
PROVINCE DE LA COLOMBIE-BRITANNIQUE

Page 1 of 1

"BY INDICTMENT"

Court Identifier: 3585 - P - R - A  
Court File Number: 179965  
Type Reference:  
Info. Seq. Number: 1  
Agency File Number: INSE:2009-3931

DNA:   
K File:   
SOR:

This is the information of / Les présentes constituent la dénonciation de 1st Suzanne Rydler, a  
Peace Officer RCMP (the "informant" / le "dénonciateur") of / de Surrey, BC.

The informant says that the informant has reasonable and probable grounds to believe and does believe that / Le dénonciateur déclare qu'il a des motifs raisonnables et probables et croit effectivement que

Count 1

Khaled Mohammed NAWAYA, on or about the 6th day of October, 2009, at or near the City of Surrey, in the Province of British Columbia, did, upon arriving in Canada at the Douglas (Peace Arch) Border Crossing, fail to report to an officer, in accordance with the regulations, the importation of currency or monetary instruments of a value greater than \$10,000.00, to wit: Canadian currency in the amount of \$40,000.00 and U.S. currency in the amount of \$30,110.00, contrary to Section 12(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and did thereby commit an offence contrary to Section 74 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

and 812 Canadian Mint 50 dollar gold coins,

AFFIRMED

SWORN BEFORE ME / ASSERMENTÉ DEVANT MOI

ON / CE 11 DAY OF / JOUR DE  
MARCH, 2010.

AT / À Surrey,  
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE

S.  
A JUSTICE OF THE PEACE IN AND FOR THE  
PROVINCE OF BRITISH COLUMBIA  
JUGE DE PAIX DANS ET POUR LA PROVINCE DE  
LA COLOMBIE-BRITANNIQUE

S. Rydler  
(SIGNATURE OF INFORMANT)  
(SIGNATURE DU DÉNONCIATEUR)

SUMMONS TO ISSUE  
PROCESS CONFIRMED / ACTE DE PROCEDURE  
CONFIRMÉ

S.  
A JUSTICE OF THE PEACE IN AND FOR THE  
PROVINCE OF BRITISH COLUMBIA  
JUGE DE PAIX DANS ET POUR LA PROVINCE DE  
LA COLOMBIE-BRITANNIQUE

Amended this 9 day of April 2010  
By the Honourable Judge E. Gohdin

Amended this 03 day of December 2010  
By the Honourable Judge P.M. Dohrn  
delete original amendment  
Surrey Provincial Court  
Certified a True Copy

Clerk of the Court  
SEP 30 2016  
Date

## Probation Order

(Conditional Discharge)

Canada: Province of British Columbia  
Ban - none

Police File No.  
INSE:2009-3931

Court File No.  
3585:179965-1

IND

File

Primary Enf. Agency:

Interpreter present

D.O.B.: January 22, 1975

Proceeded: By Indictment

Whereas on December 3, 2010 at Surrey, British Columbia,

**Khaled Mohammed Nawaya**

(the "offender") was convicted or found guilty, as the case may be, upon the following charge(s) and on December 13, 2010 the Court adjudged that the offender be discharged upon the conditions hereinafter prescribed:

Count 1, on or about October 6, 2009, at or near Surrey, BC, did commit an offence of fail to report importation/exportation of currency, contrary to section 74 Proceeds Of Crime (Money Laundering) And Terrorist Financing Act.

**SENTENCE: Probation Order: 1 Year(s); Conditional Discharge;**

I have read or have had read to me and understand a total of 1 Charge

Now, therefore, the said offender shall for the period stated above from the date of this order comply with the following conditions, namely, that the said offender shall:

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page

Dated / Fait le December 13, 2010 at / à Surrey, British Columbia / Colombie-Britannique  
I, the undersigned offender, acknowledge that I have received:

- a copy of the Probation Order
- an explanation of the substance of the sections dealing with changes to the Probation Order and failing to comply with the Probation Order (Sec 732.2(3) and (5), and Sec 733.1), and
- an explanation of the procedures for applying for changes to the Probation Order,

and that I understand the terms of this Probation Order and the explanations which I have received.

Other Signer  
Mon Dec 13 2010 15:02:00

Offender / Contrevenant(e)  
Address / Adresse :  
9651 No. 2 Road  
Richmond, BC, Canada

Phone Number / Numéro de téléphone :

PCR 0098C  
08/02  
Conditional Discharge Cle14:49-13.12.2010

File, Offender, Police, Crown

S. Morgan 2010.12.13 15:02:10  
-08'00'

A Judge or a Clerk of the Court on behalf of / Un juge ou greffier du

tribunal au nom du Judge / Juge P Dohm

Surrey Provincial Court  
Certified a True Copy

  
Clerk of the Court Page 1 of 3

SEP 30 2016

Date

Probation (Conditional Discharge)

**Probation Order/  
Ordonnance de probation**

(Conditional Discharge/ libération conditionnelle)  
Canada: Province of British Columbia  
Province de la Colombie-Britannique

Police File No./  
Nu. de dossier de la police  
INSE:2009-3931

Court File No./  
Nu. de dossier du greffe  
3585:179965-1

File

D.O.B. / D.D.N. : January 22, 1975

Ban - none

Re/ Objet : Nawaya

**Conditions Attachment/  
Annexe des conditions**

**Condition 1: Keep the peace and be of good behaviour.**

**Condition 2: Appear before the Court when required to do so by the Court.**

**Condition 3: Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.**

=====

**Condition 4: Report by noon Dec. 14, 2010 to the Probation Officer at #100-13545 64th Avenue, Surrey, BC, and thereafter as and when directed.**

**Condition 5: Reside where directed by the Probation Officer and do not change that residence without the prior written permission of the Probation Officer.**

**Condition 6: Complete 100 hours of community work service under the direction and to the satisfaction of the Community Work Service Officer and the Probation Officer by the end of the ninth month of this order.**

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page/ J'ai lu ou j'ai m'a lu et je comprends 6 conditions sur 1 page de l'Annexe des conditions

Probation (libération conditionnelle)/ Probation (Conditional Discharge)

Surrey Provincial Court  
Certified a True Copy

Clerk of the Court

SEP 30 2016

Page 3 of 3

Date

# **TAB 26**

**Money Laundering and Terrorist Financing Trends in FINTRAC Cases**

**Disclosed Between 2007 and 2011**



Financial Transactions and  
Reports Analysis Centre  
of Canada

Centre d'analyse des  
opérations et déclarations  
financières du Canada



# MONEY LAUNDERING AND TERRORIST FINANCING TRENDS IN FINTRAC CASES DISCLOSED BETWEEN 2007 AND 2011



FINTRAC Typologies and Trends Reports – April 2012



Canada



# MONEY LAUNDERING AND TERRORIST FINANCING TRENDS IN FINTRAC CASES DISCLOSED BETWEEN 2007 AND 2011

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Catalogue No.: FD5-1/5-2012E-PDF  
ISBN: 978-1-100-20282-2

FINTRAC Typologies and Trends Reports – April 2012

April 2012

## MESSAGE FROM THE DIRECTOR

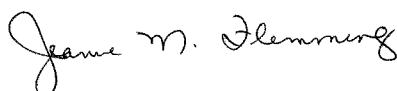
I am pleased to present the latest in FINTRAC's series of Trends and Typologies Reports, *Money Laundering and Terrorist Financing Trends in FINTRAC Cases Disclosed Between 2007 and 2011*. Previous reports in this series have addressed specific business sectors that have reporting obligations under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This report, however, boasts a greatly expanded scope, studying the 2,122 case disclosures that FINTRAC has provided to assist law enforcement and intelligence agencies in their investigations throughout the last four years. As such, it offers the public an unprecedented survey of FINTRAC's core product: its tactical intelligence. This report provides a bird's-eye view of how this intelligence tracks national and international trends in money laundering and terrorist financing.

FINTRAC's main tactical intelligence product, the case disclosure, is a vital tool to our partners in law enforcement and intelligence. Each case is built from thousands of transaction reports that FINTRAC receives from reporting entities such as banks, credit unions and casinos. These reports are analyzed for suspicious behaviour or patterns, and to identify key links between individuals, accounts and businesses - all of which assist law enforcement and intelligence agencies' investigations.

Case disclosures are instrumental for investigations of money laundering, terrorist financing and security threats in Canada and around the world. Because of the sensitive information they contain, individual case disclosures are only seen by selected members of FINTRAC and our partners. However, in this report, a wider audience can now see for the first time the larger trends that case disclosures reveal.

The cases FINTRAC compiles yield a wealth of details about potential money laundering, terrorist financing and other national security threats. Moreover, they contribute to an ever-more-precise profile of the suspected perpetrators. FINTRAC's intelligence contributes to the safety of Canadians, and this report offers the public greater insight into how this is achieved.

We at FINTRAC are proud of the work we do. I am equally proud to share this work with you.



Jeanne M. Flemming  
Director





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# INTRODUCTION

This report is one in a series of FINTRAC publications that are intended to provide strategic financial intelligence and feedback to specific reporting sectors and FINTRAC partners. Unlike previous reports, which focused on suspected money laundering and terrorist financing activities conducted through various sectors, this particular paper is focused on an overview of FINTRAC cases disclosed between April 1, 2007 and March 31, 2011.

While researching this paper, FINTRAC extracted relevant financial intelligence from cases previously disclosed to law enforcement and intelligence agencies. These cases involved money laundering (ML), terrorist financing (TF) and other threats (TH) to the security of Canada. The resulting report presents general observations related to case disclosures, and describes methods and trends in ML and TF<sup>1</sup>. In doing so, this report seeks not only to demonstrate how FINTRAC contributes to the anti-money laundering/anti-terrorist financing (AML/ATF) regime, but also to illustrate how all the information received by reporting sectors is an essential component of investigations of money laundering and terrorist financing.

Part I of this report offers a general overview of issues related to case disclosures. Part II describes methods and trends in ML and TF, while Part III expands on FINTRAC's role in the international AML/ATF community.

## Part I: General observations

At its most basic level, financial intelligence establishes identity and behaviour in relation to the financial activities of suspected money launderers or terrorist financiers; as such, it is an important source of information in the fight against unlawful activities, organized crime and terrorism. FINTRAC offers a unique

contribution to ML and TF investigations by assisting law enforcement and intelligence agencies in tracking and tracing the proceeds of crime across Canada and around the world.

FINTRAC must first ensure that reporting entities (REs) comply with their legislative obligations, which include the submission of the following reports to FINTRAC:

- Suspicious transaction reports (STRs) as well as reports of attempted suspicious transactions;
- Large cash transaction reports (LCTR);
- Electronic funds transfer reports (EFTRs);
- Casino disbursement reports (CDRs); and
- Terrorist property reports (TPRs).

In addition to these, FINTRAC receives cross-border currency reports (CBCRs) and cross-border seizure reports (CBSRs) from the Canada Border Services Agency.

FINTRAC case disclosures can be generated from information provided by numerous sources, such as information provided by domestic law enforcement and intelligence agencies through voluntary information records (VIRs) and by foreign financial intelligence units (FIUs) through queries (FIUQs). STRs submitted by reporting entities, results of data mining techniques (known as pattern detection), and open source information also lead to case disclosures. Once these case instigators have been identified, the tactical analytical process begins.

FINTRAC's tactical analytical process involves the analysis of the reports and VIRs found in its databases in conjunction with information from other sources. These include law enforcement databases, commercially or publicly available databases, open source information and information from foreign financial intelligence units. When FINTRAC has reasonable grounds to suspect that the information provided in these reports would be relevant to an investigation or prosecution of ML

<sup>1</sup> The Proceeds of Crime (Money Laundering) and Terrorist Financing Act does not allow FINTRAC to publish trends related to threats to the security of Canada.



or TF, the designated information is shared with relevant recipients in the form of case disclosures. These case disclosures mainly include details about financial transactions, their conductors, the locations and dates where and when they were conducted, the relationships between various individuals and entities, and other information.

### A) Types of cases

Between April 2007 and March 2011, FINTRAC disclosed a total of 2,122 cases to law enforcement, intelligence agencies and foreign financial intelligence units. These cases amounted to 72% of all cases disclosed since FINTRAC's inception in 2000. They can be broken down into three main disclosure type categories, as represented in Table 1. As noted in this table, ML cases continue to be the leading category, followed by TF/TH and the combination of ML/TF/TH. The hybrid nature of the last category highlights the connection between crime and terrorism.

### B) Disclosure recipients

FINTRAC discloses cases generated by STRs, open source and pattern detection to relevant law enforcement or intelligence agencies; however, cases generated by VIs are disclosed to the VI originator only, unless the originator allows dissemination to other relevant disclosure recipients. FINTRAC's disclosure recipients include ML/TF investigative bodies, as well as foreign FIUs. In addition, FINTRAC can also disclose to the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA) and the Communications Security Establishment Canada (CSEC) if the related financial transactions fall within their respective mandates and FINTRAC has already met its disclosure threshold relating to a suspected ML or TF offence. Table 2 and Figures 1 and 2 highlight the main recipients of disclosures, as well as the distribution of disclosure recipients in Canada.

TABLE 1: CASES DISCLOSED PER CATEGORY

DISCLOSURES BY TYPE	2007-08	2008-09	2009-10	2010-11	TOTAL
ML	171	474	470	626	1741
TF/TH	29	52	73	103	257
ML/TF/TH	10	30	36	48	124
Total	210	556	579	777	2122

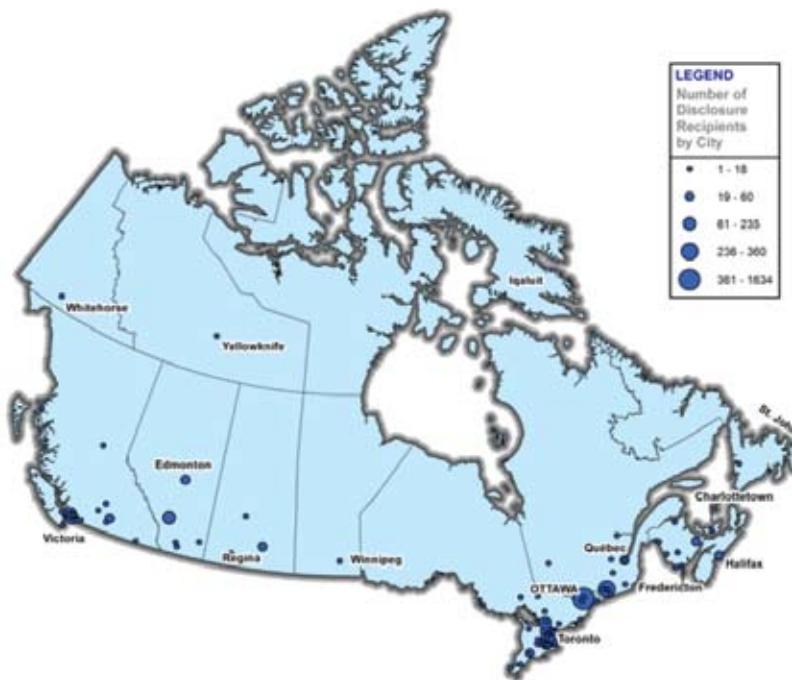
TABLE 2: MAIN DISCLOSURE RECIPIENTS<sup>2</sup>

RECIPIENTS	2007-08	2008-09	2009-10	2010-11
RCMP	61%	68%	63%	59%
Municipal Police Services	24%	27%	23%	18%
Foreign Financial Intelligence Units	24%	17%	22%	19%
Provincial Police Services	12%	10%	21%	21%
Canadian Security Intelligence Service	12%	10%	13%	15%
Canada Border Services Agency	5%	14%	7%	11%
Canada Revenue Agency	5%	27%	22%	18%

In 2010-11, more than half of FINTRAC's case disclosures were sent to the RCMP, a result similar to what was observed in previous years. Generally, the distribution of disclosure recipients has remained relatively stable over the last four years. As illustrated in Figures 1 and 2, disclosure recipients were concentrated in Canada's metropolitan areas, particularly in Vancouver, Montreal and the Greater Toronto Area. On a provincial scale, there

were a higher number of disclosure recipients in British Columbia, Alberta, Ontario and Quebec, as well as in major urban centres across Canada in close proximity to the border. Despite what appears to be a high distribution of disclosures focused in the national capital region, this is mainly attributed to the disclosure recipients' headquarters being located in that region, who often received copies of disclosures sent to provincial branches.

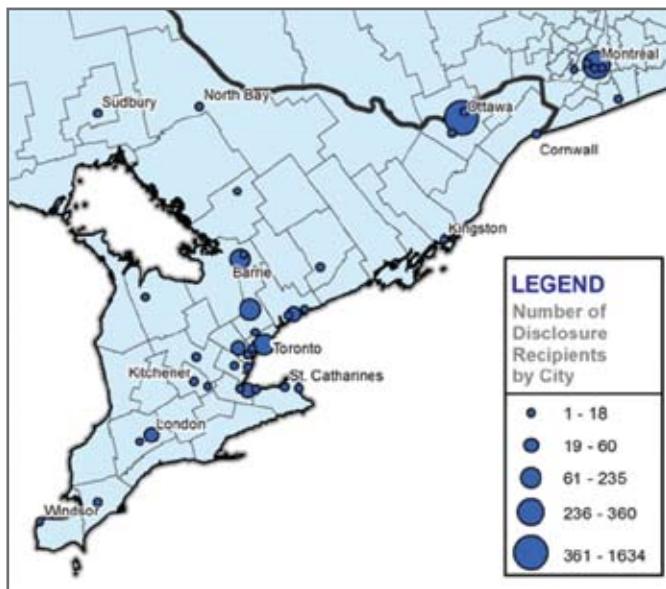
FIGURE 1: DISTRIBUTION OF DISCLOSURE RECIPIENTS IN CANADA (2007-11)



<sup>2</sup> The percentages in this report do not add up to 100% because FINTRAC disclosures are often sent to more than one recipient. A few cases were disclosed throughout the years to the CSEC; however, the percentages were not significant enough to be included in the report.



FIGURE 2: DISTRIBUTION OF DISCLOSURE RECIPIENTS IN SOUTHERN ONTARIO AND WESTERN QUEBEC (2007-11)



### C) Predicate offences related to cases

FINTRAC may be informed of a suspected predicate offence<sup>3</sup> either through information that is volunteered by law enforcement, intelligence agencies or other

partners such as CBSA, or through what is included in a suspicious transaction report and open source information. Table 3 highlights the most common types of predicate offences related to cases.

TABLE 3: TYPES OF PREDICATE OFFENCES RELATED TO CASES<sup>4</sup>

PREDICATE OFFENCE CATEGORY	2007-08	2008-09	2009-10	2010-11
Fraud	35%	27%	29%	33%
Drug	28%	31%	34%	26%
Unknown <sup>5</sup>	16%	18%	13%	14%
Tax Evasion	4%	13%	6%	5%
Customs/Excise <sup>6</sup>	8%	4%	3%	5%
Corruption	0%	4%	3%	5%
Human Smuggling	0.5%	2%	2%	4%
Theft	2%	4%	4%	3%
Illegal Gambling	1%	2%	2%	1%

<sup>3</sup> The term “predicate offence” is used in this report in the same context as the term “designated offence,” which is defined as an offence under Canada’s *Criminal Code* or any other federal Act.

<sup>4</sup> Figures included in the table do not total 100% given that cases can involve multiple predicate offences.

<sup>5</sup> This category reflects cases where the pattern of financial activity, or other information available to FINTRAC, suggested money laundering for which the predicate offence was unknown or not identified.

<sup>6</sup> The customs/excise category includes cigarette smuggling/contraband and illegal imports/exports.

Throughout the past four years, the most frequently observed cases were those related to fraud and drugs. In general, the percentages of cases in each category have been relatively stable across offences. It is important to note, however, that since most FINTRAC case disclosures are generated from information received from partners (i.e. VIRs or FIUQs), the case disclosures may for the most part reflect trends in criminal activity, but may also be a reflection of law enforcement and intelligence agencies' investigative priorities.

#### D) Reporting sectors most commonly “used” in suspected ML and/or TF schemes

During the past three years<sup>7</sup>, financial institutions (e.g. banks, credit unions, caisses populaires, etc.) were the reporting entity sector whose financial transactions and

reports (i.e. STRs, LCTR, EFTRs, etc.) constituted the majority of those associated with case disclosures. An average of 94% of cases involved the use of financial institutions, a statistic most likely attributable to the size of this sector and the volume of reports it produces. Money services businesses (MSBs) were involved in 36% of case disclosures (making them the second most used sector), while 15% of case disclosures involved the use of the casino sector. Figures 3 to 5 illustrate how the use of various reporting sectors in case disclosures where FINTRAC suspected the transactions were linked to ML and/or TF has changed over time.

**FIGURE 3: PERCENTAGE OF SUSPECTED ML DRUG-RELATED CASES INVOLVING MAIN REPORTING SECTORS**

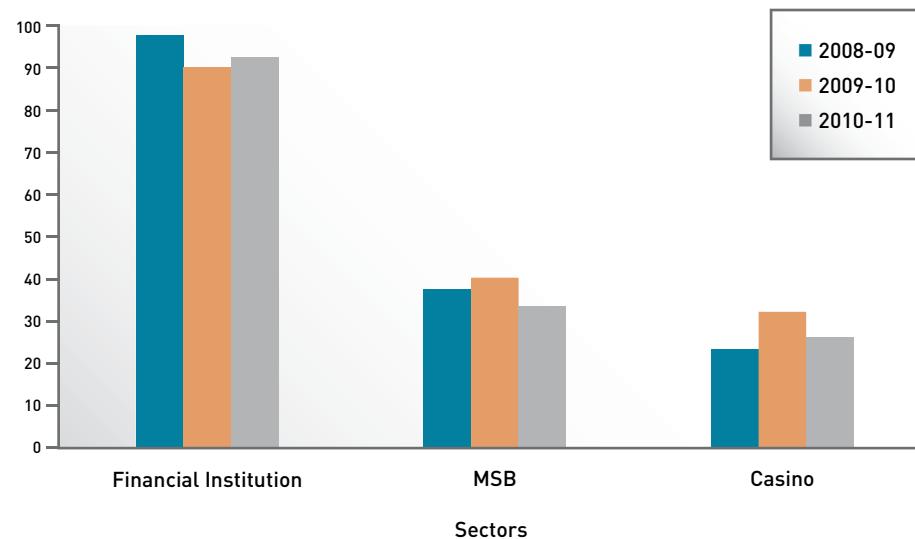




FIGURE 4: PERCENTAGE OF SUSPECTED ML FRAUD-RELATED CASES INVOLVING MAIN REPORTING SECTORS

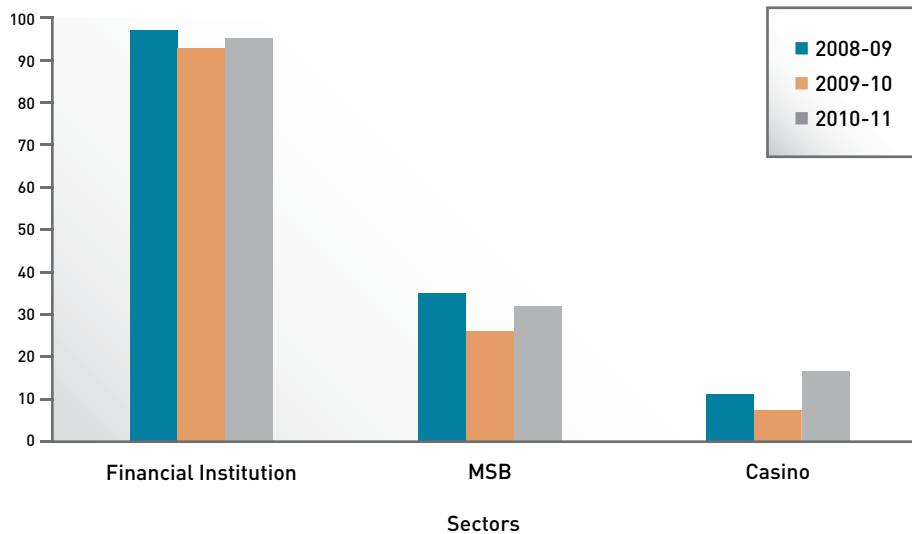
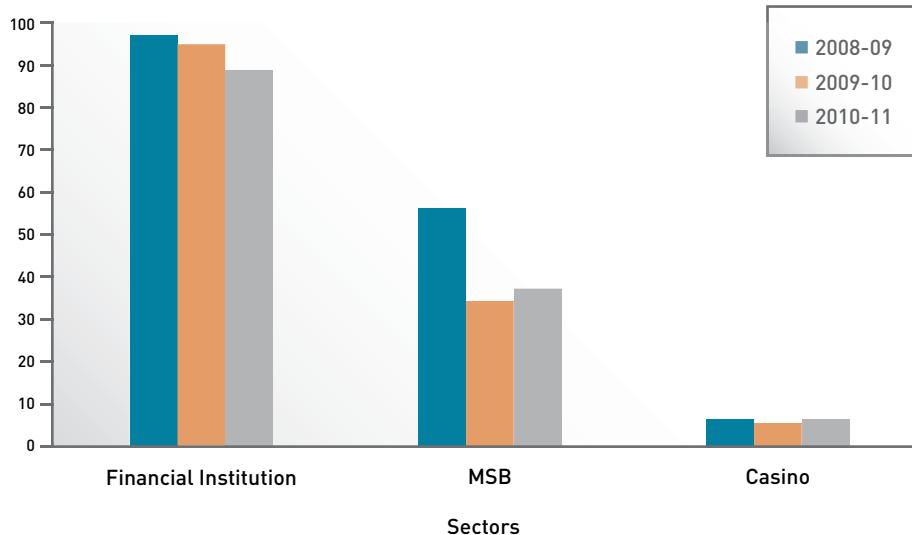


FIGURE 5: PERCENTAGE OF SUSPECTED CASES RELATED TO TERRORIST FINANCING INVOLVING MAIN REPORTING SECTORS



As shown in Figure 3, there was a slight increase in the use of casinos in drug-related cases observed from 2008-09 to 2009-10. Secondly, as illustrated in Figure 4, there was a slight increase in the use of casinos in fraud-related cases from 2009-10 to 2010-11. Lastly, the most significant change was the decrease in the use of MSBs for TF cases from 2008-09 to 2009-10, as shown in Figure 5.

## E) Financial transaction reports included in case disclosures

STRs, EFTRs, LCTRs, and other reports and information received by FINTRAC are an extremely valuable source of financial intelligence. A total of 407,835 of those reports were included in cases disclosed between 2007 and 2011. Of that number, 60% were EFTRs, followed by LCTRs at 36%, STRs at 33%, CBCRs at 0.6% and CDRs at 0.5%. Figure 6 shows the percentage of money laundering, terrorist financing and a combination of both types of cases disclosed between 2007 and 2011 containing at least one STR, LCTR, EFTR, or other type of report.

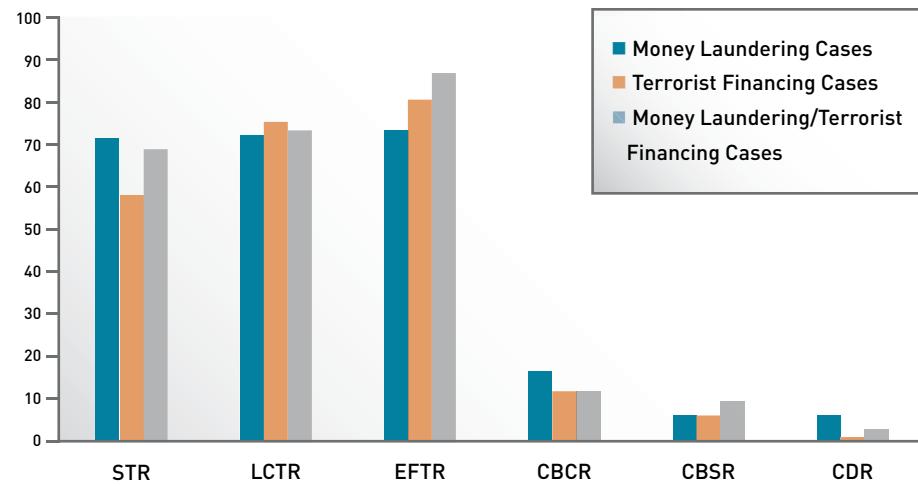
Interestingly, the percentage of cases containing at least one STR is similar to the percentage of cases including at least one EFTR or LCTR. This is significant, since STRs

are usually human-generated and therefore the volume of these reports submitted to FINTRAC is much lower than that of EFTRs and LCTRs. STRs are particularly useful for providing additional information related to individual behaviour and transactional activity. STRs and other reports are powerful tools in detecting suspected money laundering and terrorist financing activities.

In some instances, STRs alone provide the necessary grounds to suspect ML and/or TF. While it is a challenge for compliance professionals and employees within the financial system to remain vigilant and report suspicions through STRs, FINTRAC and disclosure recipients depend on the experience and judgement of those on the front line in their efforts to detect and deter suspected ML and/or TF.

Results shown in Figure 6 further reveal that the percentages of ML cases containing at least one STR, LCTR or EFTR were about the same. However, for TF and ML/TF cases, the percentage of cases including at least one LCTR or EFTR was greater than that for cases with at least one STR. Although the percentages of cases containing at least one CBCR, CBSR or CDR are much lower, it is interesting to note that CDRs have been mostly included in ML cases.

**FIGURE 6: PERCENTAGE OF ML, TF AND ML/TF CASE DISCLOSURES (2007-11) CONTAINING AT LEAST ONE OF EACH REPORT TYPE**





## Part II: Role of FINTRAC within Canada

A significant component of FINTRAC's mandate is to assist in the detection, deterrence and prevention of money laundering and terrorist financing. As part of its mandate, FINTRAC produces different types of tactical and strategic financial intelligence that assist investigations or prosecutions by law enforcement and intelligence agencies.

As indicated earlier, FINTRAC provides proactive disclosures (i.e. generated by STRs, pattern detection and/or open source), as well as other disclosures generated following the receipt of VIs or FIUQs to law enforcement and intelligence agencies. It also provides regular tactical disclosures to specific ongoing investigations, in the form of case updates and/or new but related case disclosures. For example, in 2010, FINTRAC contributed to two related municipal police force investigations. The investigations focused on an organized crime group suspected of drug trafficking and other criminal activities. FINTRAC played an active analytical role in these investigations, and through numerous and ongoing disclosures, helped police target individuals who were later arrested. The financial intelligence produced by FINTRAC revealed to police that the suspects were involved in activity consistent with money laundering, and this information was important in leading to the arrests.

FINTRAC's greatest asset is its database of reports. In the world of analysis, one report is valuable, but thousands are invaluable. The accumulation of these reports (provided primarily by REs), pieced together with other sources of information, can ultimately allow FINTRAC to uncover networks of seemingly unconnected individuals and entities participating together in criminal activity. Case disclosures often identify additional aliases, associates, individuals and entities previously unknown by law enforcement or intelligence agencies, bank accounts, addresses and other identifiers, as well as businesses owned

or operated by individuals that are suspected to be involved in ML or TF activities. This additional information can be obtained, for example, through a combination of information reported in STRs, through transactional data linking personal identifiers, and through open source information and commercial databases, to name but a few methods. It identifies individuals or entities involved in possible schemes of collusion or those involved in common ML methods such as the use of nominees or front companies.

FINTRAC's strategic intelligence assessments and reports (such as the present report) are based on the macro analysis of a large number of tactical disclosures combined with other sources of information and attempt to explain trends in money laundering and terrorist financing. The goal of these reports is to assist partners and REs in their front line detection and deterrence. For example, FINTRAC recently produced a classified Financial Intelligence Brief which described and explained suspicious financial activity between a South American country and Canada. This activity was suspected to be linked to drug trafficking. The report identified the methods that individuals and entities used to transport the illicit cash into Canada, to deposit it in the financial system, then – through various layering techniques – to integrate it back into the regular economy. Such strategic intelligence reports can assist law enforcement and intelligence agencies in identifying individuals and entities conducting similar suspicious activities and can lead to new investigative approaches.

Further to the strategic intelligence produced for this report, FINTRAC assessed a number of case disclosures in an attempt to find common characteristics of money laundering and/or terrorist financing cases. For the purpose of this report, FINTRAC identified general characteristics much like the customer risk profile applied by many REs as part

of their compliance regime. The common characteristics, which are presented in the following sections of this report, are merely guidelines; they should not be assumed exclusive of other factors, since criminals and terrorists have consistently operated outside of a single profile and are each uniquely resourceful in the methods and techniques they employ.

**MONEY LAUNDERING** Money laundering is the process whereby “dirty money” – produced through criminal activity – is transformed into “clean money,” the criminal origin of which is difficult to trace. The money laundering process is continuous, with new dirty money constantly being introduced into the financial system.

There are three widely recognized stages in the money laundering process:

**PLACEMENT** involves placing the proceeds of crime in the financial system.

**LAYERING** involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds. This stage may involve transactions such as the buying and selling of stocks, commodities or property.

**INTEGRATION** involves placing the laundered proceeds back in the economy to create the perception of legitimacy.

**TERRORIST FINANCING** Terrorist financing refers to direct or indirect financial support to an individual, group, entity, state, or agent thereof, which plans or carries out acts of organized violence against the Government of Canada, Canadians, or Canadian interests or allies, or against other sovereign states, for the purpose of weakening the state, influencing policy, communicating a perceived grievance, and/or to threaten or intimidate the public or portion thereof. Terrorist financing is a defined criminal offence under section 83 of the *Criminal Code* of Canada. In general terms, the criminal dimension of terrorist financing includes collecting property/money for terrorists, possessing property of or making property available to terrorists, and/or using terrorist property. It also constitutes a threat to the security of Canada as defined under section 2 of the *Canadian Security Intelligence Service Act (CSIS Act)*.

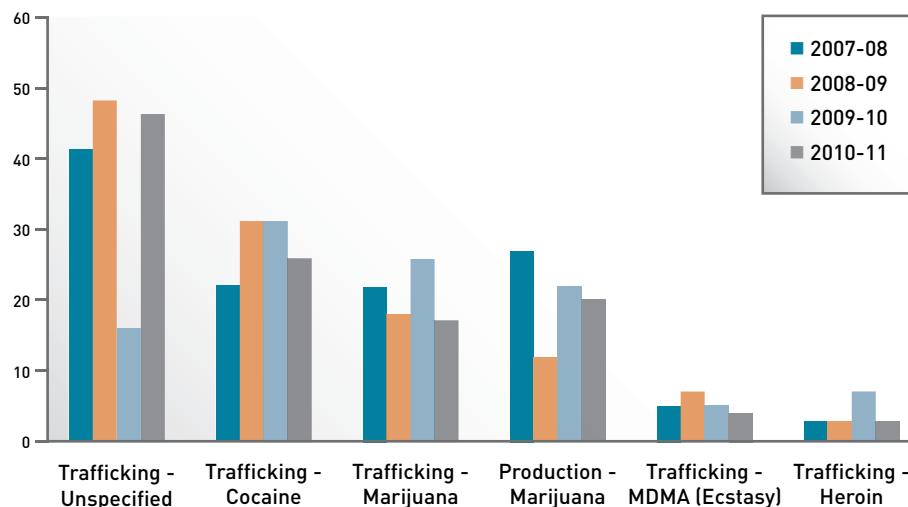


## A) Money laundering methods and techniques related to suspected drug offences<sup>8</sup>

Investigations of drug trafficking and/or production were suspected in 30% (632/2122) of cases involving money laundering or terrorist financing. Of those cases, the most common drug offences were related to marijuana and/or cocaine. Figure 7 provides an additional breakdown of the more commonly observed drug-related offences per year.

It was also found that, during the same period, organized crime groups were involved in at least 28% of drug-related cases.

**FIGURE 7: PERCENTAGE OF ALL CASES RELATED TO INVESTIGATIONS OF DIFFERENT DRUG OFFENCES<sup>9</sup>**



<sup>8</sup> Changes over time in the percentage of cases related to investigations of different drug offences are closely linked to law enforcement priorities.

<sup>9</sup> Percentages included in the chart do not total 100% given that cases can involve multiple predicate offences.

The main findings related to suspected ML drug cases have been summarized in the following text box:

## Common Characteristics of Suspected ML Drug Cases

### 1) Typical scheme:<sup>10</sup>

*Tony, age 35, had worked at his family's car dealership (which his father owned) since he was young. After working there for several years, and having sold cars to numerous people, he also started to get to know members of the local organized crime group. They would often walk into the dealership with bags full of cash and purchase the latest flashy car. Tony was happy, as the commission he made was great. Then they started asking him for favours. They told him that they would give him a bag of cash which would "buy" a car, but the car would actually just sit there on the dealership lot. Six months later, they would return to "sell" the car back and pick up a cheque from the dealer – after paying Tony's commission. This is how Tony, unbeknownst to his father, became the "banker" of choice for this organized crime group.*

*The banks started to suspect something when Tony started to deposit large amounts of cash on a regular basis. He told them it was from the sale of vehicles; however, bank staff knew how unusual it was for someone working for a car dealership to walk in with a bag of cash (and for it to come from a legitimate source). Tony started to ask his wife to deposit cash in order to draw less suspicion to himself. He figured that if they split the deposits between themselves under the \$10,000 reporting threshold, the bank wouldn't be suspicious. However, the banks quickly picked up on this trend, linking Tony and his wife to the same address on file, and submitted multiple STRs to FINTRAC regarding the couple.*

*At some point, the police were tipped off that Tony was providing money laundering services for an organized crime group. In order to gather more intelligence, the police informed FINTRAC of their suspicions through a VIR and FINTRAC quickly made an ML disclosure to the police force. After finalizing their investigation, the police charged Tony, who was eventually sentenced to jail for money laundering.*

### 2) Characteristics of individuals suspected of ML related to drug offences:

*Based on a review of a sample of 2010-11 ML case disclosures related to suspected drug offences, the following characteristics were noted:*

- The majority of suspected offenders are middle-aged males;
- While participation of females in ML activities is generally less frequent than that of males, females were mostly involved in ML cases related to drugs;
- Females are often linked in cases through familial relationships and they hold jobs in a variety of sectors, including food, retail and the services sector; otherwise, they are either homemakers or unemployed;
- It is not uncommon to find an entire family taking part in the suspected criminal activity;

<sup>10</sup> The details of the scheme represented here are not taken from one particular case disclosure; rather, they are based on observations made in a number of similar cases.



- Business ownership is the most common “declared” occupation, second to individuals employed in the service sector, i.e. trades (e.g. carpenter, electrician, plumber, etc.), restaurants/bars, travel or the beauty industry;
- The businesses owned are also often classified as being part of the service sector, i.e. restaurant, real estate, financial, etc.

### **3) ML methods and techniques observed in suspected drug-related cases:**

- Structuring and smurfing:
  - Cash purchases by one or many individuals of EFTs that fall under the reporting threshold;
  - Currency exchanges under \$10,000 from CAD to USD or vice versa;
  - Cash purchase of money orders or bank drafts under \$1,000 (which does not require identification) that are payable to third parties;
  - Depositing a large number of \$20 bills totaling under \$10,000.
- Refining:
  - Exchanging small-denomination bills for larger ones (e.g. \$20 bills for \$100 bills).
- Commingling:
  - Financial transactions suspected to be a mix of legitimate business revenue with criminal proceeds;
  - Businesses acting as fronts to make financial transactions appear more legitimate, indicated by multiple entities sharing a common address;
  - Holding numerous business bank accounts and conducting various transfers between accounts. Funds are then moved to one account and bank drafts are purchased.
- Casinos
  - Cash purchase of casino chips, with minimal play, followed by the redemption of chips for either cash or cheque.
- Electronic funds transfers
  - Large funds transfers from a business account to individuals located in countries of concern.
- Foreign exchange transactions
  - Currency exchanges from CAD to USD or vice versa;
  - Large cash deposits, converted to USD, then wired to a country related to drug trafficking;
  - Currency exchanges followed by purchases of EFTs.

#### 4) Types of businesses used in suspected drug-related cases:

Over the past four years, 68% of drug-related cases consistently involved at least one business that was not necessarily a cash-based business. Examples of businesses and sectors observed in drug-related cases were:

- MSBs
- Construction/development industry
- Shipping/freight companies
- Import/export companies
- Travel agencies
- Real estate
- Electronics
- Pharmaceutical
- Convenience/grocery stores
- Food and entertainment
- Auto industry
- Hydroponics/indoor gardening
- Trucking companies
- Gas stations



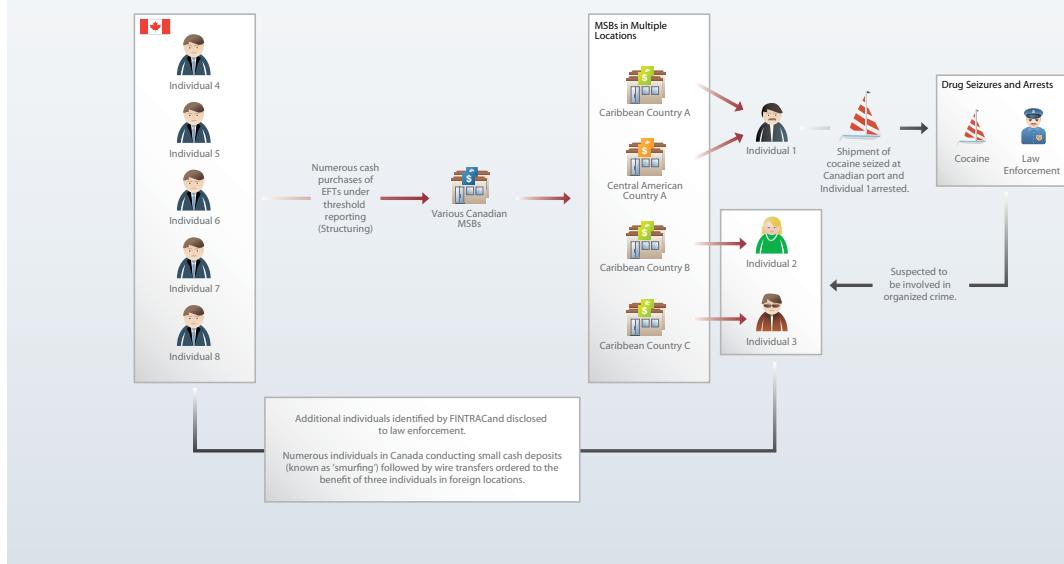
## Case example 1: ML case related to a cocaine trafficking network

FINTRAC received a VIR from the police regarding a shipment of cocaine which originated in Central America and was seized in Canada. Individuals identified in the VIR were suspected to be connected to the shipment. Upon its analysis, FINTRAC quickly uncovered a money laundering network and identified five new individuals who were suspected of facilitating the laundering of funds relating to a cocaine trafficking syndicate.

Analysis of the flow of EFTs and information submitted by reporting entities, especially STRs, led FINTRAC to piece together a smurfing network consisting of EFTs conducted by various individuals under the \$10,000 threshold. The following money laundering scheme was identified:

- Law enforcement suspected that the imported cocaine was sold on the streets in Canada and cash was received as method of payment.
- Over time, the group of individuals took the money to MSBs and ordered EFTs below the \$10,000 threshold limit to avoid detection, to the benefit of three individuals operating in the same syndicate located in South American and Caribbean countries. According to STRs, these individuals in Canada were trying to avoid providing any ID, and when prompted, provided similar false address information. Analysis led FINTRAC to suspect that the cash was taken and divided into smaller amounts and distributed to a group of individuals.
- The three individuals in the Caribbean and South America received these funds at MSBs.
- The funds were then suspected to be ultimately distributed for payment where the cocaine was originally produced.

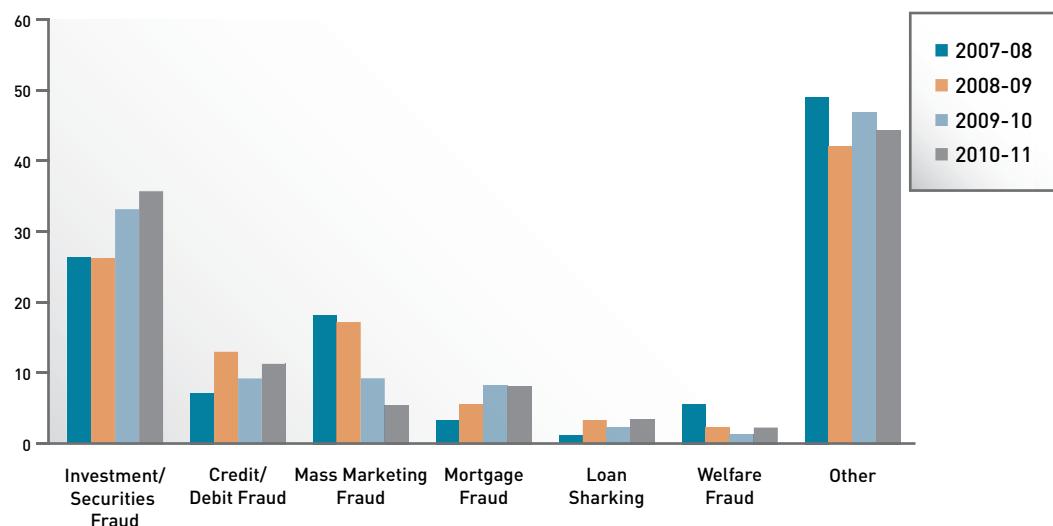
FINTRAC provided all relevant designated information to law enforcement to assist them in their investigation.



## B) Money laundering methods and techniques related to suspected fraud offences<sup>11</sup>

Fraud was suspected in 30% (644/2122) of all cases disclosed from 2007 to 2011 and 12% of these cases involved organized crime groups. Based on yearly statistics, investment/securities fraud was the most prevalent type of fraud observed in 2010-11, followed by credit/debit card fraud, which surpassed mass marketing fraud in comparison to previous years. Based on information received from law enforcement and intelligence agencies, specific fraud types were observed and are depicted in Figure 8.

FIGURE 8: PERCENTAGE OF ALL CASES RELATED TO INVESTIGATIONS OF DIFFERENT FRAUD OFFENCES



As shown in Figure 8, mass marketing fraud (including popular schemes such as 419 scams, advanced fee schemes, telemarketing fraud, internet fraud, etc.) has declined significantly since 2007. Meanwhile, investment/securities fraud and mortgage fraud have continued to increase.

Drawing on the most recent data available (from April 2010 to March 2011), a sample of ML case disclosures related to all types of fraud was analyzed, but securities/investment fraud was assessed independently of the other types due to its unique characteristics. The main findings have been summarized in the following text box:

<sup>11</sup> Changes over time in the percentage of cases related to investigations of different fraud offences are closely linked to law enforcement priorities.



## Common Characteristics of Suspected ML Fraud Cases

### **1) Typical investment fraud scheme:<sup>12</sup>**

*Richard Jr., age 30, inherited his father's empire while Richard Sr., age 60, still had controlling interest. The two individuals approached elderly individuals in their Canadian community. They presented them with their business proposal to develop land nearby, for which they were seeking investment funding. They promised a 30% return on the initial investment once the development would be finished. The community trusted them as they were already established, successful businessmen and had strong ties to the greater community. Through the assistance of colluding investment advisors, a network of offshore shell companies was established. The two men, aided by their wives (who also held directorships in some of the companies), took the investors' money and used multiple business and personal bank accounts to order numerous EFTs for the benefit of individuals and entities located in the Caribbean as well as the newly established companies in offshore locations. Some of those offshore EFTs were used to purchase large luxury assets in those jurisdictions. EFTs worth millions of dollars were also sent to law firms in multiple countries through the company accounts.*

*Eventually, investors started asking questions; they demanded the return of their initial investments, but the family had already packed up and relocated to another country far away. Contrary to many other types of crimes, investment fraud funds were already in the financial system and transferred electronically by victims to the perpetrators of the scheme. There were no STRs reported on this family or their businesses, as the companies under them were so diverse that the number of EFTs and the beneficiaries to which they were sending them could all be justified as normal business activity. There were many EFTs involved and hardly any LCTRs reported.*

### **2) Characteristics of individuals conducting ML activities related to fraud**

*Based on a review of a sample of 2010-11 ML case disclosures related to suspected fraud offences, the following characteristics were noted:*

- Fraudsters are typically middle-aged males, but are on average 10 years older than individuals disclosed in drug and TF cases;
- Females are typically related through marriage or other familial ties and are suspected to work in partnership to facilitate the fraud;
- The involvement of an entire family is more commonly noted in investment/securities fraud cases than in other types of cases;
- Individuals perpetrating investment fraud often hold ownership or senior management positions within a number of private and/or public companies, sometimes holding up to a dozen positions at one time. These companies are commonly related to investment/financing/consulting services;

<sup>12</sup> The details of the scheme represented here are not taken from one particular case disclosure; rather, they are based on observations made in a number of similar cases.

- Individuals suspected of taking part in other types of fraud hold various employment positions which do not fit a single profile. In reviewed cases, the majority of individuals under suspicion owned their own business. Where this was not the case, individuals mainly held an office job or were employees of businesses under suspicion.

### **3) ML methods and techniques observed in suspected fraud-related schemes:**

- Use of multiple institutions:
  - Individuals used the proceeds of fraud to purchase a bank draft, which was deposited in another financial institution, then followed by an EFT to another individual;
  - Individuals deposited cheques from a business account at one financial institution to a business account at another institution, then offset the money by depositing cheques into personal accounts, then purchased bank drafts and drew personal cheques payable to the first business account at a different institution.
- Use of credit cards:
  - Individuals purchased large amounts of goods on credit cards and paid it off with fraudulent funds on a regular basis.
- Use of shell/front companies:
  - Individuals registered shell companies in foreign jurisdictions and sent the proceeds of fraud to the foreign accounts of these companies;
  - Individuals used asset management and securities firms as a front to lure investors. Once the investors' money was acquired, bank drafts were issued to nominees or individuals;
  - Several investment companies located offshore were used in the process of moving money from one country to another to create a complex trail;
  - Individuals used multiple front companies which shared the same address.
- Use of electronic funds transfers:
  - Individuals frequently used EFTs (EFTs appear to be used four times more often in fraud cases than in drug cases);
  - Individuals moved proceeds of fraud to specific bank secrecy and tax haven countries, and took up residence there;
  - EFTs were received in a company account, then were immediately wired to a personal account;
  - Complicit investment advisors or lawyers established offshore accounts and businesses and used EFTs to send funds to multiple offshore locations. Money was moved between these accounts and new offshore companies were created;
  - EFTs were ordered to 10 or more countries, with the ordering business registered in a high-risk jurisdiction;
  - Individuals used foreign pass-through accounts: money sent by EFT from Canada to a secondary country, which was then immediately sent by EFT to a third country;
  - Some investor victims sent EFTs directly to offshore accounts held by the fraudsters.



- Personal bank accounts
  - Excessive activity was observed in a short period of time with multiple unrelated third parties depositing funds.
- Nominees
  - Owners of companies were only nominees, and financial transactions were really conducted by suspected criminals.
- Use of prepaid cards
  - Investors ultimately defrauded in a Ponzi scheme received untraditional payouts through prepaid cards.
- Use of MSBs
  - MSBs were used to send and receive funds to/from offshore companies and Canadian companies, where this would have normally been a direct payment at a financial institution between the company bank accounts. The use of MSBs redirected the money trail to avoid linking the two companies together.

#### 4) Types of businesses used in suspected fraud-related cases:

Cases involving fraud are more commonly associated with businesses compared to other predicate offences, particularly when it involves investment/securities fraud. For example, businesses act as conduits to receive investments from victims which can then be easily transferred to accounts held in offshore banking centres. Other types of fraud, such as debit/credit card fraud, can utilize the services of collusive merchants to perpetrate the fraud. Throughout the last four years, 84% of fraud-related cases involved at least one business. Examples of businesses and sectors observed in fraud-related cases were:

- Holding companies
- Financial services companies
- Investment/securities companies
- Real estate development
- Consulting firms
- Energy sector
- Precious metals
- Life insurance
- Technology (e.g. aviation, computers, etc.)
- Medical supplies
- Food and entertainment
- Auto industry

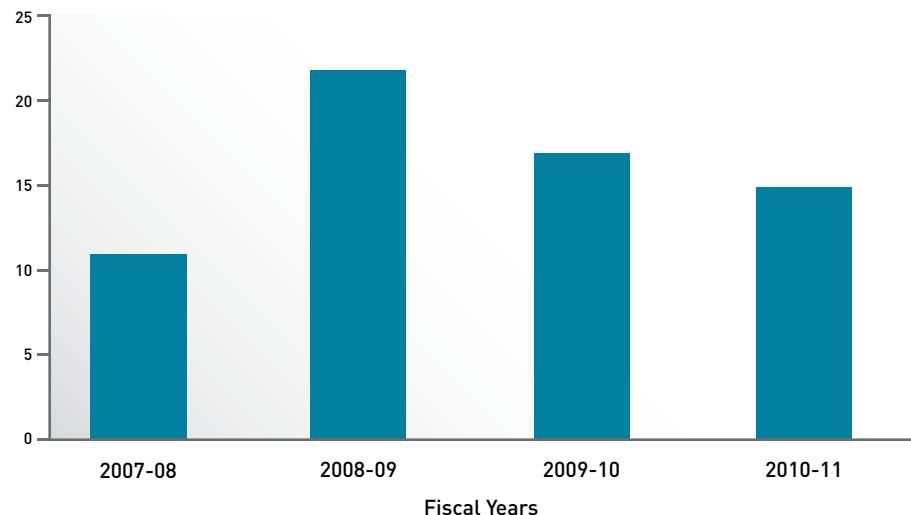
### C) Methods and techniques observed in cases related to suspected terrorist financing

FINTRAC disclosed 287 cases related to TF throughout the last four years. Of these TF case disclosures, 34% also involved suspected ML predicate offences. FINTRAC observed a higher occurrence of such TF cases when human smuggling, credit/debit card fraud, and visa/passport fraud were investigated. This could possibly relate to an increasing reliance of terrorist organizations

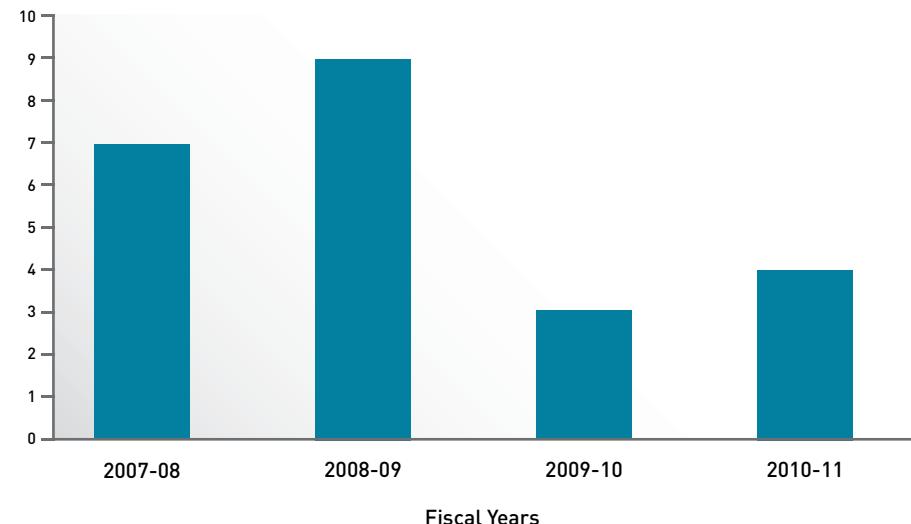
on revenue raised through criminal operations, which seems to support the growing concern in the international community regarding the crime-terrorism nexus.

Overall, 17% of TF case disclosures involved fraud offences, while 5% of cases involved drug offences. As observed in Figure 9, between 2007-08 and 2008-09, the percentage of fraud-related cases more than doubled, but was followed by a gradual decline. Figure 10 also illustrates how the percentage of cases involving drug offences has changed over time.

**FIGURE 9: PERCENTAGE OF TF-RELATED CASES INVOLVING INVESTIGATIONS OF FRAUD**



**FIGURE 10: PERCENTAGE OF TF-RELATED CASES INVOLVING INVESTIGATIONS OF DRUGS**





Drawing on the most recent data available, from April 2010 to March 2011, FINTRAC analyzed a sample of case disclosures related to suspected TF. The main findings have been summarized in the following text box:

## Common Characteristics of Suspected Terrorist Financing-Related Cases

### 1) Typical scheme:<sup>13</sup>

*For years, the Smith family had supported the liberation efforts in their home country. They had an especially deep attachment to the cause as some of their close family members continued to live in that country and were affected by the ongoing conflict. They had become close with a number of individuals in their community who felt the same way and through this friendship the Smith family employed them in their family business. Together, they conspired to raise funds for this cause and attempted to develop ways in which to transfer funds to their country of origin without being detected. The following methods and techniques were employed:*

- *They took small amounts of cash under \$10,000 to MSBs and ordered numerous EFTs to individuals, including relatives, in their country of origin;*
- *Through business and personal accounts, they also ordered EFTs at banks in larger amounts which benefited individuals in their country of origin;*
- *They would also order EFTs to bank accounts they held abroad and indicated they were for purposes such as real estate. However, the frequency and amounts of the EFTs were excessive;*
- *They would deposit cash at banks and purchase multiple drafts payable to precious metal dealers, for the buying and selling of gold;*
- *They physically couriered the cash in large amounts when travelling, without declaring it at the border;*
- *Some of them were nervous when they came to the bank and appeared to be following instructions from someone who came into the branch with them.*

*By the time each individual conducted his own transactions over a period of time, the group had managed to transfer a significant amount of money indirectly (through nominees and businesses) and directly to the country where the terrorist group was active. Law enforcement informed FINTRAC of its suspicions and FINTRAC was able to identify numerous types of reports on these individuals. A number of STRs were submitted by multiple institutions, providing detailed information on the actions and suspicions relating to the individuals. STRs also provided information, based on keen observations from bank staff, that certain individuals were linked. A number of cross-border seizure reports were also received when individuals failed to declare having \$10,000 or more when leaving Canada. Based on FINTRAC's analysis of the financial transactions and other information received, FINTRAC reached reasonable grounds to suspect that the information would be relevant to the ongoing terrorist financing investigation.*

<sup>13</sup> The details of the scheme represented here are not taken from one particular case disclosure; rather, they are based on observations made in a number of similar cases.

## **2) Characteristics of individuals suspected of terrorist financing activities:**

*Based on a review of a sample of suspected 2010-11 TF case disclosures, the following characteristics were noted:*

- The majority of these individuals are middle-aged males. Individuals working in groups are within the same decade in age;
- Females are related through marriage and familial ties and are suspected of facilitating terrorist financing;
- Individuals are not generally connected through business relationships, in contrast to other crimes;
- However, where there is a business involved, there are often familial ties between the individuals;
- Individuals suspected of being involved in TF activity are more likely to own a small business;
- Other employment sectors include non-profit organizations; professions (such as accountant, doctor, dentist, engineer, etc); service industry, including retail; trades (such as painter, flooring professional, etc.); and the food industry. In some instances, individuals were students.

## **3) Methods and techniques observed in cases involving suspected terrorist financing and money laundering:**

- Structuring and smurfing:
  - Individuals conducted large cash deposits into bank accounts, but split it up so that deposits were under the \$10,000 threshold to avoid reporting requirements;
  - Individuals ordered several EFTs on the same day, each under \$10,000, to the benefit of the same individual when it would have been more economical and logical to send a single EFT;
  - Multiple unrelated individuals ordered EFTs (through MSBs) to the benefit of the same beneficiaries located in a high-risk foreign jurisdiction.
- Precious metal dealers
  - A group of individuals used smurfing methods to deposit large amounts of cash into the financial system followed by purchases of multiple drafts payable to precious metal dealers.
- Use of nominees
  - Individuals conducted transactions at financial institutions while receiving instructions from unknown individuals over the phone;
  - Two individuals arrived at the bank and only one conducted transactions while receiving instructions from the unidentified individual.



- **Commingling and the use of front companies**
  - Business bank accounts were used to conceal illicit funds;
  - Bank accounts were opened for front companies. When compared to similar types of business bank accounts, transactional activity was not in keeping with that type of business.
- **Use of credit cards to perpetrate “bust out schemes” in both TF and ML cases**
  - A change in cardholder activity occurred with an increase in purchases, followed by out-of-pattern cheque payments. Large purchases at retail stores were made which were abnormal for that type of business, such as gas stations, fast food restaurants, etc. Eventually, the cheque payments were returned but the cardholder quickly used the available credit before a hold was placed on the account;
  - This scheme often used collusive merchants (according to STR information) to facilitate false credit transactions, where goods or services were never exchanged;
  - In the instance where illicit cash was laundered, both layering and integration phases were observed when payments were made to the credit card account with proceeds of crime and then using the credit card to conduct purchases.
- **Use of electronic funds transfers**
  - Individuals ordered numerous but low-value EFTs under \$1000 at MSBs to the same foreign beneficiary or various foreign individuals on a daily or weekly basis. Over time, the amounts increased to under \$5000.
- **Laywer's trust account**
  - Large bank drafts were purchased and large cheques were issued to lawyers' trust accounts. At times, there were multiple law firms receiving deposits.
- **Real estate**
  - In the instance where terrorist financiers are laundering illicit cash, bank account funds were depleted for high value real estate purchases, which might have been part of the integration stage.
- **MSBs**
  - Suspected complicit MSBs ordered large EFTs to the benefit of foreign MSBs in countries of concern;
  - Individuals appeared to be operating an MSB through a personal account with rapid movement of funds and unknown source and destination of funds.
- **Prepaid cards**
  - Large cheques were issued to companies that distributed prepaid cards, including telephone cards.

#### **4) Use of various businesses and NPOs in suspected terrorist financing cases**

The last decade has seen an urgent commitment to developing anti-money laundering and terrorist financing compliance regimes; in response, terrorists have evolved and found ways to adapt to these restrictions. The use of non-profit organizations (NPOs) and legitimate businesses quickly became exploited by these groups. However, in reviewing cases of the past four years, a notable decline in the use of businesses to move funds was observed, as shown in Table 4.

Table 4: Percentage of suspected terrorist financing cases involving the use of at least one business

	2007-08	2008-09	2009-10	2010-11
% of cases involving businesses	82%	84%	56%	64%

Table 5: Percentage of suspected terrorist financing cases involving the use of NPOs

	2007-08	2008-09	2009-10	2010-11
% of cases involving NPOs	29%	25%	24%	20%

Throughout the past four years, the following businesses and sectors have been commonly implicated in suspected terrorist financing cases:

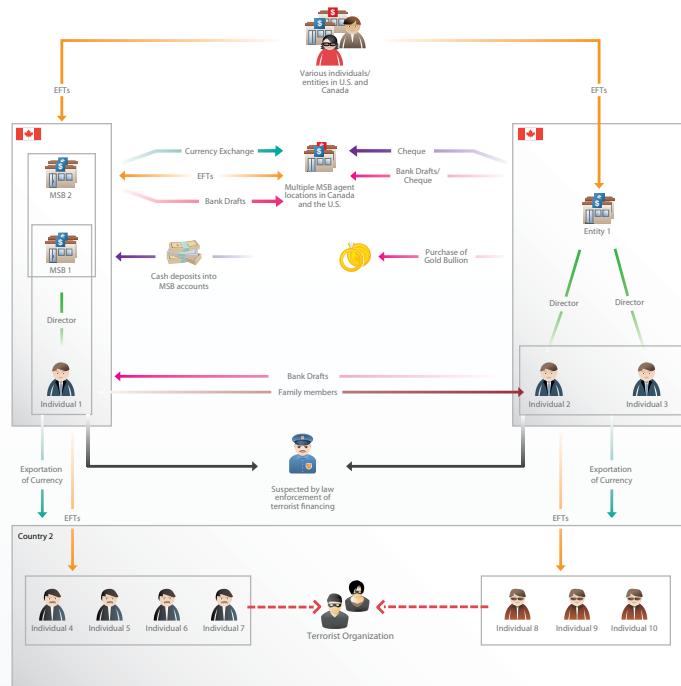
- Non-profit organizations
- Food industry (i.e. butcher, food distributor, grocery store, etc.)
- Real estate
- Auto industry
- Shipping/freight companies
- Import/export companies
- Trades (i.e. painter, flooring professional, carpenter, etc.)
- Textile and trading companies



## Case example 2: Suspected Terrorist Financing

Law enforcement provided information on family members suspected of providing financial support for a terrorist organization (**Individuals 1 and 2**). Information was also provided on **MSB 1** owned by **Individual 1**. Upon further analysis, FINTRAC identified another MSB (**MSB 2**) registered to the same address, another company (**Entity 1**) owned by **Individual 2** and another family member (**Individual 3**). It was suspected that through these businesses, funds were deposited into accounts or moved through multiple MSB agent locations (by cheque and bank draft), then EFTs were ordered to numerous beneficiaries in the country where the terrorist organization was located. Some of the foreign beneficiaries were suspected to be related to the individuals in Canada. **MSB 1** sent and received numerous EFTs to and from two MSB agent locations in the United States. The purposes of these transactions were not known, but they could have been a way to potentially receive terrorist financing funds from anonymous individuals/entities in the United States and Canada. Millions of dollars worth of large cash deposits into accounts held at banks by **MSB 1 and 2** were reported by financial institutions to FINTRAC.

Currency exchanges were also conducted at MSBs to convert US dollars to Canadian dollars and vice versa, and **Individuals 1 and 2** were issued bank drafts and cheques which were then deposited into various accounts, including third party accounts. FINTRAC also received CBCRs relating to travel pertaining to **Individuals 1 and 2** and their declarations of currency being imported into the same country where the terrorist organization was located. According to an STR, large cash, cheque and bank drafts were deposited into bank accounts held by **Individuals 2 and 3**, which were then followed by the purchase of drafts payable to precious metal dealers, where they regularly bought and sold gold. All parties disclosed on also benefited from numerous EFTs ordered by various individuals and entities in the United States. This activity, pertaining to **Entity 1**, was described by the bank as being unusual for the nature of their business.



According to numerous STRs, the following red flags were identified:

- The individuals avoided the \$10,000 reporting threshold by breaking up large cash deposits;
- The individuals had multiple bank accounts at multiple financial institutions, and issued cheques from one financial institution to another;
- The individuals constantly moved money around between business and personal accounts;
- An individual withdrew funds from a personal account, then a few hours later deposited the amount plus a little extra into a business account, then proceeded to transfer the original amount back to the personal account;
- An individual deposited cheques and bank drafts for large amounts and then re-issued the drafts to third parties;
- The individuals issued cheques to an MSB in US dollars, then received drafts from the same MSB in Canadian dollars which were deposited back into the original issuing account;
- A third party made a cheque deposit into an individual's account drawn from the same MSB as above;
- When deposits and withdrawals were questioned by the bank, the individual was secretive and avoided providing an answer;
- Numerous third-party cash deposits were placed into accounts;
- Immediately after large cheque deposits were made, outgoing EFTs were purchased for foreign beneficiaries or bank drafts were purchased and made payable to MSBs;
- There was a rapid movement of funds inconsistent with personal banking;
- An account remained dormant for some time and then suddenly became very active.



## D) Country distribution of EFTs included in FINTRAC case disclosures

Electronic funds transfers are used after money generated by criminal activities is placed in the financial system, or when terrorist financiers send or receive funds related to terrorism. Individuals use EFTs often to complicate the money trail, to conceal funding of terrorism, or to evade anti-money laundering authorities; they may send or receive EFTs in Canada or in foreign countries, offshore locations and tax haven countries with lax anti-money laundering laws.

Drug trafficking and the demand for drugs are fuelling global criminal operations. Drug traffickers are extremely diversified and their tentacles reach beyond our Canadian borders. In the drug trade, production and trafficking elements may take place in different countries, from the origin of precursor chemicals for production to countries of cultivation or drugs produced in one country, which may then be trafficked into a second country, and supplied to a third country. Similarly, the laundering of illicit drug proceeds can be done through various jurisdictions. FINTRAC is in a unique position to identify unusual patterns and emerging trends in EFT flows and, as a result, to recognize global financial routes related to those ML activities. Individuals involved in the drug trade normally introduce their illicit funds into the financial system through various methods (such as cash deposits and the use of front companies) to conduct financial transactions, which are followed by purchases of EFTs. In contrast to drug-related cases, fraudulent funds are normally already in the financial system, and so the placement stage of money laundering is not required. It is therefore more difficult to detect the layering and integration phases. One way to launder the proceeds of fraud is to send them to a foreign bank account, either in a bank secrecy country or offshore location, where the Canadian authorities cannot look for them. Overall, fraud-related cases have been observed to contain

four times the number of EFTs compared to drug-related cases, which indicates that this is a common method employed by these schemes.

Terrorist financing requirements are diverse and vary among groups. Typically, financing is required not only to fund specific terrorist operations, but also to meet the operational demands of the group, from recruitment to planning to training. At times, these groups are local, but most are part of a larger organization with an international footprint. The financial intelligence collected from EFT reports is especially significant when it comes to identifying suspicious transactions related to terrorist financing. Terrorist financing activity is unique in comparison to drugs and fraud cases, as money used to fund terrorist operations is sometimes derived through legitimate means; as such, concealing the source of funds is not required. However, in some terrorist financing cases, a crime may be committed and the proceeds may be sent by EFTs directly or indirectly to a foreign terrorist organization. Terrorist financiers may also attempt to send EFTs to individuals in unexpected locations, or through several countries, to further complicate the money trail.

Tables 6 to 9 list the jurisdictions where EFTs were most commonly sent or received in case disclosures between 2007 to 2011, and refer to specific case types. FINTRAC is not an investigative agency, and therefore cannot confirm the purpose and nature of all financial transactions included in disclosures. Consequently, relevant transactions disclosed in cases could, on further investigation by disclosure recipients, be found legitimate. Similarly, it is impossible for FINTRAC to differentiate between legitimate and illegitimate funds that are commingled by businesses or individual transactions. As a result, the identification of the top 15 countries provided in this section is more a general indication of geographic locations that may be more commonly linked to money laundering or terrorist financing. Regardless of the above caveats, the inclusion of these lists of jurisdictions may contribute to enhancing public awareness and understanding of matters related to money laundering and terrorist financing.

**TABLE 6: TOP DESTINATION OR ORIGINATING JURISDICTIONS OF ELECTRONIC FUNDS TRANSFERS RELATED TO SUSPECTED MONEY LAUNDERING CASES INVOLVING DRUG OFFENCES**

1. United States of America	6. Taiwan	11. Switzerland
2. India	7. Iran	12. Mexico
3. Vietnam	8. United Kingdom	13. Peru
4. Hong Kong	9. Belarus	14. Israel
5. China	10. Latvia	15. Thailand

**TABLE 7: TOP DESTINATION OR ORIGINATING JURISDICTIONS OF ELECTRONIC FUNDS TRANSFERS RELATED TO SUSPECTED MONEY LAUNDERING CASES INVOLVING FRAUD OFFENCES (EXCEPT SECURITIES/INVESTMENT FRAUD)**

1. United States of America	6. Israel	11. Austria
2. United Kingdom	7. Switzerland	12. France
3. Iran	8. China	13. Cyprus
4. Japan	9. Germany	14. Guernsey
5. Hong Kong	10. Italy	15. India

**TABLE 8: TOP DESTINATION OR ORIGINATING JURISDICTIONS OF ELECTRONIC FUNDS TRANSFERS RELATED TO SUSPECTED MONEY LAUNDERING CASES INVOLVING SECURITIES/INVESTMENT FRAUD OFFENCES**

1. United States of America	6. Bahamas	11. Panama
2. Netherlands Antilles	7. Antigua and Barbuda	12. Dominican Republic
3. United Kingdom	8. Netherlands	13. Turks and Caicos
4. China	9. Bermuda	14. Barbados
5. Mexico	10. Hong Kong	15. Luxembourg

**TABLE 9: TOP DESTINATION OR ORIGINATING JURISDICTIONS OF ELECTRONIC FUNDS TRANSFERS RELATED TO SUSPECTED TERRORIST FINANCING CASES**

1. United States of America	6. India	11. Sri Lanka
2. United Arab Emirates	7. Austria	12. Saudi Arabia
3. Lebanon	8. Netherlands	13. Switzerland
4. Pakistan	9. Iran	14. Hungary
5. United Kingdom	10. Hong Kong	15. Turkey



While many of the countries listed above are large financial hubs and trading partners with Canada, some of these jurisdictions are also known transits or entry points for drug traffickers. Some are also known for being tax havens and offshore financial centres, or locations of terrorist groups. The most frequently represented jurisdictions across the identified predicate offences were the USA, the UK and Hong Kong. Hong Kong is known as an offshore financial centre and for having strong bank secrecy laws. The prevalence of the USA and UK is mainly due to the strong financial ties between these jurisdictions and Canada.

Jurisdictions such as Vietnam, Taiwan, Belarus, Latvia, Peru and Thailand only appeared in the top 15 of drug-related cases (Table 6). Both Vietnam and Thailand have been previously identified by the Financial Action Task Force (FATF) as having deficient AML/ATF regimes, which have since improved. The Asia-Pacific region is known for its supply and smuggling routes. Latvia is a regional financial centre and is vulnerable to organized crime activity, which may explain its ranking in this category. Drug trafficking is a primary source of illicit proceeds in Belarus, which is also a drug transshipment point. Peru is known as a top producer of cocaine.

In terms of general fraud-related cases (Table 7), Japan, Germany, Italy, France, Cyprus and Guernsey were the jurisdictions identified uniquely. Europe had the greatest representation in this category, which included the UK, Switzerland, Germany, Italy, Austria, France, and Guernsey.

The securities/investment fraud category in Table 8 had the highest number of unique jurisdictions not found in other categories. These jurisdictions were the Netherlands Antilles, Bahamas, Antigua and Barbuda, Bermuda, Panama, Dominican Republic, Turks and Caicos Islands, Barbados and Luxembourg. With the exception of the Dominican Republic, all of these jurisdictions have strong bank

secrecy laws. Antigua and Barbuda and the northern part of Cyprus were previously identified by the FATF as having deficiencies in their AML/ATF regime; these have since improved.

Analysis of TF cases identified the following unique jurisdictions, not found in the other tables: United Arab Emirates (UAE), Lebanon, Pakistan, Sri Lanka, Saudi Arabia, Hungary and Turkey. Some of the jurisdictions identified in Table 9 have direct and indirect associations to terrorism, where they have been either a target of terrorism or a training/organizational base for terrorist activity. These jurisdictions include Lebanon, Pakistan, India, Iran, Sri Lanka, Saudi Arabia, and Turkey. The FATF has singled out Sri Lanka, Pakistan and Turkey as having deficient AML/ATF regimes. Pakistan has since improved, but as of June 2011, Sri Lanka and Turkey have yet to improve their deficiencies. India's geographic location makes it susceptible to drug trafficking via neighbouring countries and it is a significant target for terrorism. The UAE is a major financial centre in the Middle East region, as well as a leading trade and transportation hub. Due to its geographic location, the UAE is vulnerable to money laundering and terrorist financing. As well, many Canadian REs (such as MSBs) use the UAE as a hub for funds which are then distributed to other jurisdictions.

In summary, the main locations from which EFTs were ordered or where they were received, revealed that:

- Many of these jurisdictions had previously or currently been declared deficient in their AML/ATF regimes by the FATF;
- Many are known as offshore financial centres and have strong bank secrecy laws;
- Some are known for their drug supply and smuggling routes;
- Others are popular financial or transshipment hubs in Europe, Asia, and the Middle East; and
- Some have either been a target of terrorism or are a training/organizational base for terrorist activity.

## Part III: Role of FINTRAC internationally

FINTRAC strives to be one of the leading financial intelligence units in the world and has endeavoured to take a strong leadership role in the international community. FINTRAC's work with international bodies, such as the FATF and the Egmont Group, contributes to the development of international anti-money laundering/anti-terrorist financing policies and standards. FINTRAC also strives to foster a greater cooperation among FIUs and to contribute to a better understanding of new trends and challenges.

Given that most money laundering activities involve transnational movements of funds, and that terrorist financing tends to transcend national borders, the effectiveness of FINTRAC's financial intelligence is reliant on information sharing, where appropriate, with our international counterparts. FINTRAC currently holds 76 Memoranda of Understanding (MOUs) with other FIUs around the world, and this number is constantly growing.

### Case example 3: Assistance in international investigations

In one particular instance, FINTRAC received a query from a partner FIU regarding a criminal investigation of securities fraud relating to a Canadian citizen. As part of its investigation, the FIU was seeking to identify the perpetrators of the fraud and identify suspicious transactions, as this information could help identify where the funds had been placed in the financial system to prevent the further disposition of the proceeds of the fraud. FINTRAC's analysis identified suspicious transactions related to nine individuals/entities mentioned in the FIU query. Moreover, the analysis identified seven additional entities, some of which were affiliated to two previous criminal investigations in Canada relating to a large-scale marijuana grow operation and securities fraud. Many suspicious transactions were identified and a case disclosure was sent to the originating FIU, as well as to national and provincial law enforcement in Canada. Furthermore, FINTRAC granted permission for the FIU to share the information with a third FIU, as suspicious transactions were linked to the third identified jurisdiction. Therefore, although the query originated from one FIU, three countries became involved in a possible money laundering scheme.



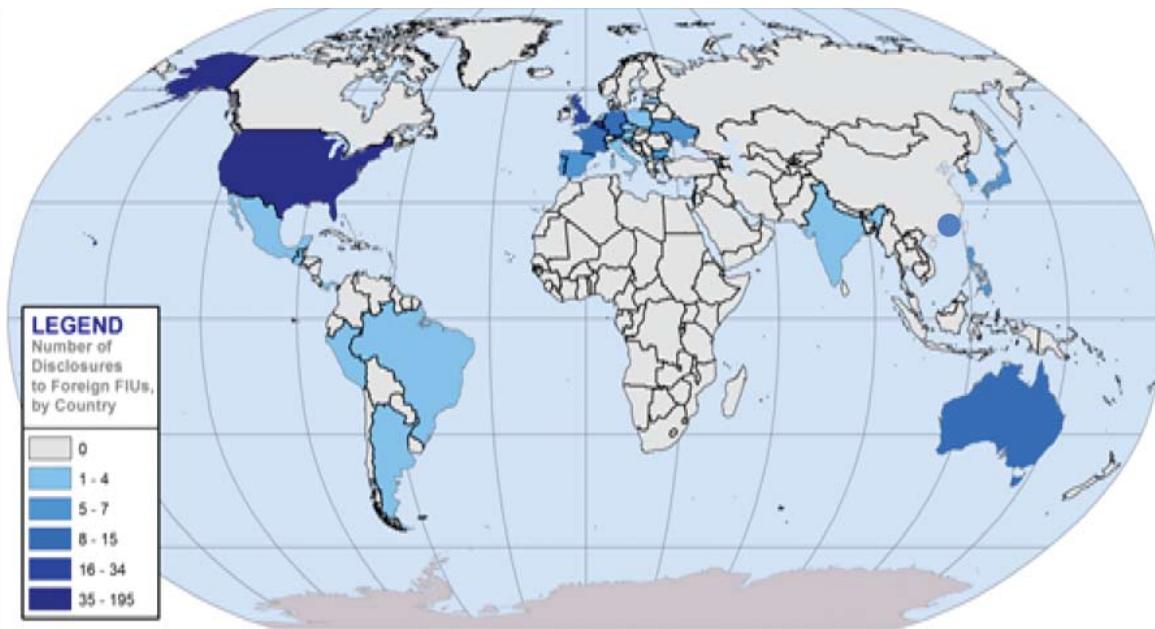
Throughout the past four years, foreign FIUs have consistently been within the top four leading recipients of case disclosures. FINTRAC provides case disclosures to FIUs either in response to a query originating from the receiving FIU where transactions are suspected of involving ML or TF, or when FINTRAC identifies suspicious transactions going to or from a FIU partner

country. By querying the foreign FIU, FINTRAC is able to obtain foreign transactional data and other information identified as suspicious by the foreign partner. This foreign information builds on the domestic information and can provide further leads in the case. The top 10 FIU country disclosure recipients from 2007 to 2011 are listed in Table 10 and the distribution for all FIU disclosures is illustrated in Figure 15.

TABLE 10: MAIN FIU DISCLOSURE RECIPIENTS

- |                             |               |
|-----------------------------|---------------|
| 1. United States of America | 6. France     |
| 2. United Kingdom           | 7. Australia  |
| 3. Bahamas                  | 8. Luxembourg |
| 4. Belgium                  | 9. Singapore  |
| 5. Hong Kong                | 10. Germany   |

FIGURE 15: DISTRIBUTION OF ALL DISCLOSURES PROVIDED TO FOREIGN FIUS (2007-11)



## CONCLUSIONS

As demonstrated in this report, money launderers and terrorist financiers continue to exploit Canada's financial system to launder the proceeds of crime or support terrorism. While some trends, typologies and methods may be new, many described in this report have been observed for several years, and will continue to be employed by criminals and terrorist supporters.

What we have observed over the past four years is that criminals and terrorist supporters are opportunistic; their activities evolve based on the AML/ATF community's pre-emptive response and preventative compliance measures. For example, debit/credit card fraud is gradually overtaking mass marketing fraud. Investment/securities fraud will likely persist due to the current unstable economic climate. It is more common to uncover fraudulent investment schemes in bad economic times. The promise of a huge return on one's investment administered by a trusted individual in the same community is more appealing than keeping money in a stagnant or declining investment fund. Unbeknownst to the investor, these funds will later disappear – along with the trusted friend.

The prevalence of transnational crime and the enhanced sophistication of international criminal and terrorist networks have highlighted the complexities of cross-border transactions. These trends, however, further entrench FINTRAC's role in the global

community by highlighting its important responsibility in detecting and deterring money laundering and terrorist financing activities. Financial intelligence is playing a heightened role in law enforcement and intelligence investigations as FINTRAC's analysis continues to provide useful leads and identify new players. The majority of case disclosures include international elements which would normally impede the investigative flow of information, but FINTRAC is uniquely placed at the heart of global financial communications with the international EFT reports it receives and its collaboration with counterparts abroad. Of course, without the valuable reports – particularly the suspicious transaction reports and EFTRs – provided by reporting entities, FINTRAC's analysis would not be as comprehensive. Reporting entities themselves play a pivotal role in the success of the AML/ATF regime, as they represent the first line of defence against financial crime; they question suspicious and unusual activity as it happens, and provide a concise account of their suspicions to FINTRAC.

FINTRAC's financial intelligence owes much to the outstanding effort and work that all reporting entities have made in the fight against money laundering and terrorist financing. Together, we ensure the continued integrity of Canada's financial system and deter individuals and organizations from using Canada as a criminal base.



## ACRONYMS

<b>AML</b>	Anti-money laundering
<b>ATF</b>	Anti-terrorist financing
<b>CAD</b>	Canadian dollar
<b>CBCR</b>	Cross-border currency report
<b>CBSA</b>	Canada Border Services Agency
<b>CBSR</b>	Cross-border seizure report
<b>CDR</b>	Casino disbursement report
<b>CRA</b>	Canada Revenue Agency
<b>CSEC</b>	Communications Security Establishment Canada
<b>CSIS</b>	Canadian Security Intelligence Service
<b>EFT</b>	Electronic financial transaction
<b>EFTR</b>	Electronic financial transaction report
<b>FATF</b>	Financial Action Task Force
<b>FINTRAC</b>	Financial Transactions and Reports Analysis Centre of Canada
<b>FIU</b>	Financial intelligence unit
<b>FIUQ</b>	Financial intelligence unit query
<b>ID</b>	Identification document
<b>LCTR</b>	Large cash transaction report
<b>MDMA</b>	Methylenedioxymethamphetamine ("Ecstasy")
<b>ML</b>	Money laundering
<b>MOU</b>	Memorandum of understanding
<b>MSB</b>	Money services business
<b>NPO</b>	Non-profit organization
<b>RCMP</b>	Royal Canadian Mounted Police
<b>RE</b>	Reporting entity
<b>STR</b>	Suspicious transaction report
<b>TF</b>	Terrorist financing
<b>TH</b>	Threats (to the security of Canada)
<b>TPR</b>	Terrorist property report
<b>UAE</b>	United Arab Emirates
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>USD</b>	United States dollar
<b>VIR</b>	Voluntary information record

# **TAB 27**

**CBSA Travellers Entry Processing System (TEPS) description**

**archive.is**  
webpage capture

Saved from <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/atip-aipr/infoisou> search  
All snapshots from host [www.cbsa-asfc.gc.ca](http://www.cbsa-asfc.gc.ca)

20 Mar 2017 17:50:53 UTC

Webpage

Screenshot

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# Canada Border Services Agency



Canada

 
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## Access to Information and Privacy

### Info Source - Sources of Federal Government and Employee Information 2014

## Canada Border Services Agency

### General Information

#### Introduction to *Info Source*

*Info Source: Sources of Government and Employee Information* provides information about the functions, programs, activities and related information holdings of government institutions subject to the [Access to Information Act](#). The [Privacy Act](#) provides individuals and employees of the government (current and former) with relevant information to access personal information about themselves held by government institutions subject to the [Privacy Act](#) and to exercise their rights under the [Privacy Act](#).

The [Introduction](#) to *Info Source: Sources of Government and Employee Information* and an [index of institutions](#) subject to the Access to Information Act and the [Privacy Act](#) are available centrally.

The [Access to Information Act](#) and the [Privacy Act](#) assign overall responsibility to the President of Treasury Board (as the designated Minister) for the government-wide administration of the legislation.

### Background

To better understand the Canada Border Services Agency (CBSA), read about its [history, including its legislative foundation](#) and [how it reports to Parliament](#).

### Responsibilities

Read about the Canada Border Services Agency's (CBSA) [mandate, its program responsibilities and its major policies](#).

### Institutional Functions, Programs and Activities

### Risk Assessment

The Risk Assessment program "pushes the border out" by seeking to identify high-risk people, goods and conveyances as early as possible in the travel and trade continuum to prevent inadmissible people and goods from entering Canada. This benefits the travelling public and the trade community by enabling the Agency to focus its examination and interdiction activities on high-risk people and goods, thereby facilitating the entry of low-risk travellers and goods. The Agency uses a variety of threat and risk assessment methodologies, intelligence and supporting technologies to identify potential risks to the security and safety of people and goods.

### CBSA Programs/Operations Systems Development

**Description:** Describes records related to the development and management of systems used by the Canada Border Services Agency's (CBSA) Programs and Operations Branches, including the Confirmation & Tracking System (CATS), the Immigration Detainees Management System (IDMS), the Immigration Mail and Courier Tracking System (IMPACT), the Integrated Customs Enforcement System (I.C.E.S.), the Enforcement Information Index System (EIIS), the Policy and Program Development Enforcement Data System, the Support System for Intelligence (SSI), the Screening Referral Request & Secure Tracking System (SSR) and the Travel and Identity Document System (TIDS).

#### In this section

[Info Source](#)
[Completed Access to Information Requests](#)
[How to make a request under the Access to Information Act](#)
[How to make a request under the Privacy Act](#)
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[Forms](#)
[Privacy Impact Assessments Summaries](#)
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Show table of contents

**Record Number:** CBSA ADM 141

### Systems Development - Admissibility Branch

**Description:** Describes records related to the development and management of systems used by the Canada Border Services Agency's (CBSA) Admissibility Branch, including the Travellers Entry Processing System (TEPS) and the Travellers National Database System (TRANDS).

**Document Types:** system descriptions and test packages, evaluation reports, briefing notes, Treasury Board submissions, Memoranda of Understanding, Information Sharing Agreements, forms, instructions manuals and training materials, Privacy Impact Assessments (PIA), Threat Risk Assessments(TRA).

**Record Number:** CBSA ADM 143

#### Travellers Entry Processing System (TEPS) / Travellers National Database System(TRANDS)

**Description:** This bank consists of information captured from travellers B15 - Casual Goods Accounting Document and K21 General Receipt. TEPS captures the information at the time of importation and TRANDS retrieves the information for management reporting purposes. The information consists of the traveller's name, address, commodity information and duty/tax summary.

**Class of Individuals:** Members of the general public.

**Purpose:** *TEPS* - Assists the Border Service Officers in the assessment and collection of duties, taxes and other relevant data on travellers' importations. *TRANDS* - Provides B15 data for Agency queries.

**Consistent Uses:** The information is used primarily to provide the Agency, other government departments and outside agencies with financial and statistical data pertaining to travellers' importations.

**Retention and Disposal Standards:** Records will be maintained for a minimum of three years plus current fiscal year and will then be destroyed.

**RDA Number:** 2000/033**Related Record Number:** CBSA ADM 143**TBS Registration:** 003778**Bank Number:** CBSA PPU 010

### Unpaid Accounts

**Description:** This bank describes records of those importers who have unpaid accounts. When an importer fails to account for customs duties payable on imported goods within a specified time limit, his or her name is circulated to ports of entry within that region and to other regions across Canada, depending on the circumstances.

**Class of Individuals:** Members of the importing public.

**Purpose:** The purpose of this bank is to maintain records of those importers who have unpaid accounts. The list of names is used to alert customs officials to detain the goods of those importers whose names appear thereon.

**Consistent Uses:** None.

**Retention and Disposal Standards:** Names are retained in this bank indeterminately.

**RDA Number:** 2000/033**Related Record Number:** CBSA ADM 143**TBS Registration:** 000010**Bank Number:** CBSA PPU 037

### Valuation Program

**Description:** Describes records relating to the Valuation Program. May include records related to the establishment or use of electronic systems used to administer or manage the program the Technical Reference System (TRS), the Compliance Management System (CMS) and the Facility for Information Retrieval Management (FIRM).

**Document Types:** Memos, Customs Notices on Valuation issues, Guides, Trade Verification Manual - Valuation (Chapter R), verification files, correspondence, presentations, and training materials.

**Record Number:** CBSA ADM 142

# TAB 28

## **Customs Tariff**

- Includes HS 490700 - Unused Postage, Revenue Stamps, Cheque Forms, Banknotes, Bond Certificates and The Like
-



Canada Border  
Services Agency

## Agence des services frontaliers du Canada



# Customs Tariff

## Departmental Consolidation 2014

The image shows a circular emblem. At the top is a detailed crown. Below the crown is a circular wreath made of stylized leaves. In the center of the wreath is a shield. The shield contains a black and white illustration of a building with a chain across its front. The words "PROTECTION SERVICE INTEGRITY" are repeated in a large, faint, light-grey font that forms the background of the entire image, surrounding the central emblem.

BSF5019 (E) Rev. 13

# **PROTECTION • SERVICE • INTEGRITY**

# Canada

## **WARNING**

Users of this Departmental Consolidation are reminded that it is prepared for convenience of reference only and that, as such, has no official sanction.

**Printed copies may be  
available from booksellers.**

**Catalogue No. PS36-1/2014E-PDF**

**ISSN: 1927-419X Customs Tariff 2014**

**ISBN: 978-0-660-20165-8**

## CUSTOMS TARIFF - SCHEDULE

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
4903.00.00		Children's picture, drawing or colouring books.		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
	10	- - - - Picture books.....	NMB		
	20	- - - - Drawing or colouring books.....	NMB		
4904.00.00		Music, printed or in manuscript, whether or not bound or illustrated.		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
	10	- - - - Sheet music, whether or not stapled or folded, but not otherwise bound	NMB		
	90	- - - - Other .....	NMB		
49.05		Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed.			
4905.10.00	00	-Globes	NMB	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
		-Other:			
4905.91.00	00	- - In book form	NMB	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
4905.99.00		--Other		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
	10	- - - - Geographical, hydrographical or astronomical maps or charts .....	-		
	90	- - - - Other .....	-		
4906.00.00	00	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitized paper and carbon copies of the foregoing.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
4907.00.00		Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title.		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT: Free
		- - - - Banknotes being legal tender:			
	11	- - - - Not issued .....	-		
	12	- - - - Issued.....	-		
		- - - - Stock, share or bond certificates and similar documents of title:			
	21	- - - - Not issued .....	-		
	22	- - - - Issued.....	-		
	90	- - - - Other .....	-		
49.08		Transfers (decalcomanias).			

# **TAB 29**

**Industry Canada HS490700 exports, imports**



# Report - Trade Data Online

Report Date: 2017-03-20

## Criteria

**Title**

Canadian Imports

**Products**

HS 490700 - Unused Postage, Revenue Stamps, Cheque Forms, Banknotes, Bond Certificates and The Like

**Origin**

All Countries (Total)

**Destination**

Canada

**Period**

Latest 10 years

**Units**

Value in Thousands of Canadian Dollars

## Report

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>HS 490700 - Unused Postage, Revenue Stamps, Cheque Forms, Banknotes, Bond Certificates and The Like</b>										
All Countries (Total)	54,055	44,408	50,590	31,217	24,009	32,990	44,793	16,106	22,469	15,028
Sub-total	54,055	44,408	50,590	31,217	24,009	32,990	44,793	16,106	22,469	15,028

Data Source: Statistics Canada & US Census Bureau

**Date modified:**

2016-04-18

[Home](#) → [Import, Export and Investment](#) → [Trade Data Online](#)

# Report - Trade Data Online

Report Date: 2017-03-20

## Criteria

**Title**

Canadian Total Exports

**Products**

HS 490700 - Unused Postage, Revenue Stamps, Cheque Forms, Banknotes, Bond Certificates and The Like

**Origin**

Canada

**Destination**

All Countries (Detailed)

**Period**

Latest 10 years

**Units**

Value in Canadian Dollars

## Report

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>HS 490700 - Unused Postage, Revenue Stamps, Cheque Forms, Banknotes, Bond Certificates and The Like</b>										
New Zealand	13,810,594	13,211,908	8,691,435	14,650,830	17,405,558	8,596,628	--	--	1,688,029	18,554,233
United States	41,585,381	31,799,433	6,503,602	17,931,190	8,251,666	9,287,637	8,165,953	11,618,867	13,797,976	16,336,252
Mexico	4,590,097	1,471,075	173,204	8,787	2,501,460	3,627,607	4,154,495	3,092,101	3,930,505	3,506,745
Paraguay	--	--	--	--	--	4,432,433	--	--	--	1,937,243
Mauritania	--	--	--	--	--	--	15,478	1,888,715	--	1,907,327
Venezuela	14,272,104	12,276,434	9,617,048	9,128,845	3,618,450	--	--	--	9,724,213	1,817,298
Papua New Guinea	--	--	--	--	--	--	--	--	--	1,720,215
Mali	945,734	1,626,315	1,097,461	1,212,902	984,789	634,868	908,530	426,206	1,134,246	1,612,124
Netherlands	288,570	1,575,233	1,120,131	526,440	868,683	493,922	569,975	489,159	329,342	1,192,007
Romania	1,730,507	1,950,578	1,000,313	573,293	590,898	593,747	928,668	653,579	1,159,379	1,100,903
Burkina Faso	287,666	642,569	579,946	948,146	127,351	400,100	458,563	299,555	--	639,979
Honduras	1,856,467	2,123,750	3,254,953	1,529,138	8,000	--	68,400	478,746	434,941	361,038
Cuba	143,883	1,364	--	770	45,110	234,080	250,645	82,564	902,175	277,202
Yemen	--	--	--	--	--	--	--	--	--	250,142
Bahamas	31,609	28,398	--	--	8,092	--	104,670	237,276	83,851	186,432
Turkey	324,061	54,264	--	649,727	1,134,000	--	--	100,960	144,412	150,674
Guyana	174,179	72,790	194,083	1,320,106	224,125	624,522	754,838	4,900	78,500	115,905
Dominican Republic	14,461	6,559	--	--	24,000	1,345	22,800	174,593	147,111	97,083
Switzerland	272,883	76,954	--	--	29,296	61,241	40,514	34,167	48,729	91,952

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Macau (Macao)	7,685	9,513	--	--	--	--	--	--	--	90,500

<b>Belgium</b>	2,052,762	160,710	14,351	266	153,553	88,976	69,934	73,537	75,304	79,332
<b>United Kingdom</b>	11,696,099	627,541	263,605	28,431	612,078	474,334	178,803	233,798	85,208	65,564
<b>South Africa</b>	273,667	270,216	21,341	--	--	--	15,750	68,728	--	54,265
<b>Barbados</b>	154,744	--	54,913	--	982	7,871	--	21,776	20,319	53,989
<b>Greenland</b>	--	--	--	--	--	52,369	80,641	26,607	59,311	38,911
<b>Oman (formerly Muscat and Oman)</b>	--	--	--	--	--	--	--	--	--	38,599
<b>Togo</b>	41,509	629,882	695,616	481,146	88,684	599,220	--	110,929	229,279	36,503
<b>Gibraltar</b>	48,638	69,382	--	--	8,400	--	18,402	4,668	47,204	33,693
<b>Namibia</b>	--	--	--	--	6,200	16,895	16,197	20,135	--	32,991
<b>Armenia</b>	--	--	--	22,323	98,041	24,251	36,549	34,023	13,000	30,546
<b>Brazil</b>	532,366	73,828	26,678	--	38	70	39	27	20,176	25,872
<b>Austria</b>	596,701	96,495	20,747	21,005	37,456	58,968	40,260	102,319	1,601	16,406
<b>Singapore</b>	5,966,565	317,993	13,040	27,470	9,250	119,845	20,734	185,220	4,170	14,800
<b>Poland</b>	94,621	--	784	--	8,098	954,079	45,710	63,737	9,168	14,636
<b>Finland</b>	527,206	301,502	54,700	--	22,164	--	37,072	31,290	--	12,900
<b>Bonaire, Sint Eustatius and Saba</b>	--	--	--	--	--	--	--	--	--	11,102
<b>Trinidad and Tobago</b>	434,649	659,165	391,397	284,348	720,242	--	6,800	7,431	10,216	9,404
<b>Iceland</b>	872,493	1,244,127	777,729	840,190	1,059,040	551,175	--	6,176	--	8,915
<b>Italy (incl. Vatican City State)</b>	1,528,646	10,129	16,667	158,568	2,008,852	--	121,178	--	--	8,830
<b>Peru</b>	458,105	168,648	5,334	22,343	--	3,246	--	--	11,981	6,776
<b>Saint Kitts and Nevis</b>	14,921	--	1,122	240	--	--	--	1,189	507	5,320
<b>Antigua and Barbuda</b>	37,405	--	723	--	--	--	--	--	--	3,570
<b>Sint Maarten</b>	--	--	--	--	--	--	--	--	2,587	3,352
<b>Bermuda</b>	99,507	41,220	10,045	4,346	2,000	9,100	8,666	17,260	8,400	2,603
<b>Cayman Islands</b>	104,363	17,205	3,362	--	6,643	--	6,870	15,870	9,512	2,486
<b>Denmark</b>	38,834	--	14,880	--	25,522	17,636	64,588	17,182	24,025	2,484
<b>Spain</b>	2,294,710	153,748	982	3,510	--	--	--	--	--	2,000
<b>Colombia</b>	151,778	17,750	--	--	--	--	--	--	1,314	1,967
<b>Turks and Caicos Islands</b>	2,644	--	298	665	--	--	--	--	--	942
<b>Aruba</b>	87,729	--	--	--	--	--	--	1,652	4,150	852

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Panama</b>	177,252	237,868	246,585	33,747	--	--	--	--	--	648
<b>Germany</b>	3,924,595	15,715,012	11,024,953	19,602,235	7,532,407	14,255,021	311,497	9,389	12,625	20
<b>India</b>	965,306	28,181	1,347	--	--	14,430	--	--	--	1
<b>Hong Kong</b>	792,988	126,567	8,419	1,236,098	--	--	--	6,289,551	7,816,828	--

<b>Suriname</b>	557,316	461,710	2,076,156	108,277	320,798	183,313	101,632	--	229,839	--
<b>France (incl. Monaco, French Antilles)</b>	3,580,610	825,797	--	33,521	89,303	25,208	61,274	82,499	61,997	--
<b>Ukraine</b>	129,910	--	--	--	--	--	--	--	39,663	--
<b>Japan</b>	607,644	885,441	244,883	87,949	51,974	30,000	22,510	152,705	24,000	--
<b>Mauritius</b>	5,402	--	6,002	--	--	--	--	--	8,160	--
<b>Chile</b>	363,087	301,762	558	3,399	9,251	1,266	--	--	6,706	--
<b>Faeroe Islands</b>	65,530	50,301	4,500	--	--	--	--	--	6,542	--
<b>Malaysia</b>	818,516	11,227	1,331	2,118	--	--	--	--	5,712	--
<b>Sweden</b>	52,298	3,375	4,505	--	--	--	--	--	2,923	--
<b>Saint Lucia</b>	150,812	96,989	82,264	--	30,281	115,287	2,752	--	940	--
<b>Guatemala</b>	7,573,975	29,724	--	--	8,257,041	7,601,528	4,150,877	2,888,662	607	--
<b>EI Salvador</b>	99,392	--	--	--	1,481	--	--	--	549	--
<b>Australia</b>	2,768,925	51,879	111,420	11,311	70,000	34,001	--	11	49	--
<b>China</b>	1,612,779	596,859	94,388	3,659	15,576	31,584	31,625	3,387	35	--
<b>Cape Verde</b>	--	--	--	--	--	--	--	--	1	--
<b>Pakistan</b>	140	--	--	--	--	--	--	4,404	--	--
<b>Ireland</b>	446,663	46,927	--	--	2,250	3,894	--	3,042	--	--
<b>Saudi Arabia</b>	1,017,111	345,011	310	1,667	--	--	--	108	--	--
<b>Taiwan</b>	151,250	111,311	--	--	--	--	--	46	--	--
<b>Madagascar</b>	592,130	--	392,288	--	357,968	--	--	17	--	--
<b>Guinea</b>	--	--	--	--	6,006,119	10,985,225	3,040,849	--	--	--
<b>Belize</b>	14,103	--	--	1,159	37	--	4,380	--	--	--
<b>Libya</b>	--	--	--	--	--	--	3,030	--	--	--
<b>Hungary</b>	1,300	270,109	--	--	--	--	2,286	--	--	--
<b>Korea, South</b>	548,916	220,877	--	3,647	2,000	--	103	--	--	--
<b>Saint Vincent and the Grenadines</b>	204,031	--	70,658	--	103,162	--	41	--	--	--
<b>Côte-d'Ivoire</b>	--	--	--	--	1,669,419	2,073,561	--	--	--	--
<b>Nicaragua</b>	3,364	1,000	--	--	--	1,386,720	--	--	--	--
<b>Jamaica</b>	391,011	393,583	580,515	507,591	569,769	554,428	--	--	--	--
<b>Morocco</b>	--	--	--	--	--	14,649	--	--	--	--
<b>Russia</b>	335,744	14,504	3,255	--	--	10,499	--	--	--	--
<b>British Virgin Islands</b>	16,507	--	--	--	--	5,430	--	--	--	--
<b>Senegal</b>	--	--	--	--	--	4,996	--	--	--	--

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>United Arab Emirates</b>	308,870	81,547	22,299	807	3,399	756	--	--	--	--
<b>Thailand</b>	48,130	100,405	11,422	49	--	600	--	--	--	--
<b>Sudan</b>	--	--	--	--	3,775,810	--	--	--	--	--
<b>Israel</b>	139,029	609	--	--	597,301	--	--	--	--	--
<b>Azerbaijan</b>	556,489	887,038	1,029,361	527,740	566,000	--	--	--	--	--
<b>Tonga</b>	181,825	143,468	--	152,921	184,572	--	--	--	--	--

Tonga	151,520	170,700	--	102,021	107,072	--	--	--	--	--
Portugal	308,494	955,901	--	--	49,258	--	--	--	--	--
Chad	--	180,615	2,054	116,959	32,344	--	--	--	--	--
Grenada	124,543	--	31,687	25,776	25,594	--	--	--	--	--
Ecuador	21,842	46,557	--	94	1,387	--	--	--	--	--
Argentina	2,066,464	251,966	16,717	301	360	--	--	--	--	--
Vietnam	985,467	42,066	--	--	62	--	--	--	--	--
Kuwait	238,650	198,911	--	--	48	--	--	--	--	--
Bolivia	306	4	--	30,126,257	--	--	--	--	--	--
Ghana	--	--	--	693,720	--	--	--	--	--	--
Christmas Island	--	--	--	96,652	--	--	--	--	--	--
Philippines	244,195	19,305	--	54,579	--	--	--	--	--	--
Luxembourg	109,438	5,200	17,933	2,300	--	--	--	--	--	--
Uruguay	29,093	54,554	--	1,647	--	--	--	--	--	--
Costa Rica	230,178	26,081	36	241	--	--	--	--	--	--
Tanzania	--	1,104,696	3,945,000	--	--	--	--	--	--	--
Haiti	7,114	--	765,026	--	--	--	--	--	--	--
Czech Republic	871	34,841	3,956	--	--	--	--	--	--	--
Indonesia	13,024	353,503	3,654	--	--	--	--	--	--	--
Egypt	1,519,099	--	2,453	--	--	--	--	--	--	--
Botswana	244,945	--	31	--	--	--	--	--	--	--
Greece	638,002	1,102,656	--	--	--	--	--	--	--	--
Slovakia	--	303,671	--	--	--	--	--	--	--	--
Dominica	57,073	201,140	--	--	--	--	--	--	--	--
Netherlands Antilles	17,230	43,371	--	--	--	--	--	--	--	--
Cambodia (Kampuchea)	--	35,916	--	--	--	--	--	--	--	--
French Polynesia	--	25,732	--	--	--	--	--	--	--	--
Brunei Darussalam	--	21,566	--	--	--	--	--	--	--	--
Norway	14,805	17,826	--	--	--	--	--	--	--	--
U.S. Minor Outlying Islands	--	10,275	--	--	--	--	--	--	--	--
Latvia	--	6,840	--	--	--	--	--	--	--	--
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Bahrain	31,899	6,426	--	--	--	--	--	--	--	--
Guam	6	3,495	--	--	--	--	--	--	--	--
Mongolia	--	1,800	--	--	--	--	--	--	--	--
Georgia	--	600	--	--	--	--	--	--	--	--
Estonia	820,500	--	--	--	--	--	--	--	--	--
Lithuania	281,114	--	--	--	--	--	--	--	--	--
Algeria	223,300	--	--	--	--	--	--	--	--	--
Lebanon	173,461	--	--	--	--	--	--	--	--	--
Kazakhstan	104,165	--	--	--	--	--	--	--	--	--

<b>Jordan</b>	71,793	--	--	--	--	--	--	--	--	--	--
<b>Albania</b>	50,966	--	--	--	--	--	--	--	--	--	--
<b>Nigeria</b>	17,113	--	--	--	--	--	--	--	--	--	--
<b>Kenya</b>	16,334	--	--	--	--	--	--	--	--	--	--
<b>Anguilla</b>	13,605	--	--	--	--	--	--	--	--	--	--
<b>Seychelles</b>	10,614	--	--	--	--	--	--	--	--	--	--
<b>Qatar</b>	5,715	--	--	--	--	--	--	--	--	--	--
<b>Maldives</b>	5,394	--	--	--	--	--	--	--	--	--	--
<b>Fiji</b>	4,291	--	--	--	--	--	--	--	--	--	--
<b>Kiribati</b>	3,200	--	--	--	--	--	--	--	--	--	--
<b>Iran</b>	1,962	--	--	--	--	--	--	--	--	--	--
<b>Bangladesh</b>	1,748	--	--	--	--	--	--	--	--	--	--
<b>Zimbabwe</b>	1,003	--	--	--	--	--	--	--	--	--	--
<b>Syria</b>	70	--	--	--	--	--	--	--	--	--	--
<b>Iraq</b>	8	--	--	--	--	--	--	--	--	--	--
<b>Sub-Total</b>	146,358,587	98,881,273	55,426,456	103,811,446	71,013,692	69,298,561	24,944,578	30,058,763	42,458,017	52,565,533	
<b>Total All Countries</b>	146,358,587	98,881,273	55,426,456	103,811,446	71,013,692	69,298,561	24,944,578	30,058,763	42,458,017	52,565,533	

Data Source: Statistics Canada & US Census Bureau

**Date modified:**

2016-04-18

# **TAB 30**

**Canada Exchange Fund Account – Annual Report March 31, 2015**



# Public Services and Procurement Canada



Canada

PSPC Services ▾ Information for ▾ PSPC Resources ▾

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## International Reserves Held in the Exchange Fund Account

This account records the moneys advanced from the Government to the Exchange Fund Account, in Canadian and other currencies, for the purchase of gold, foreign currencies and securities, and special drawing rights (SDRs).

The Exchange Fund Account is operated under the provisions of the *Currency Act*. The financial statements at March 31, 2015 are found at the end of this section.

[Table 8.2](#) shows international reserves held in and advances to the Exchange Fund Account as at March 31, 2015. Gold held by the Account is valued at SDR 35 per fine ounce (\$61.15 Cdn as at March 31, 2015 and \$59.80 Cdn as at March 31, 2014).

In 2014–2015, payments and other charges consisted of advances to the Exchange Fund Account in the amount of \$27,917 million, an adjustment of \$840 million to recognize the net income of the Exchange Fund Account for the period April 1, 2014 to March 31, 2015, and a net valuation adjustment of \$5,397 million. Receipts and other credits consisted of repayments of advances of \$19,558 million.

► [Table Summary](#)

(in millions of dollars)

**Table 8.2**  
International Reserves held in the Exchange Fund Account

	<b>March 31, 2015</b>	<b>March 31, 2014</b>
US dollar cash and cash equivalents	441	391
US dollar marketable securities	60,558	46,636
Euro cash and cash equivalents	189	51
Euro marketable securities	17,685	19,903
British pound sterling cash and cash equivalents	48	2
British pound sterling marketable securities	2,405	199
Japanese yen cash and cash equivalents	17	10
Japanese yen marketable securities	794	316
Short-term deposits		223
Special drawing rights	9,818	9,628
Gold	6	6
Total	91,961	77,365

	<b>March 31, 2015</b>	<b>March 31, 2014</b>
Advances by the Consolidated Revenue Fund were denominated as follows:		
US dollar	63,301	50,846
Euro	16,822	18,725
British pound sterling	2,440	201
Japanese yen	797	317
Special drawing rights (2015, SDR 4,599 million; 2014, SDR 4,599 million)	8,035	7,858
Canadian dollar	(274)	(2,087)
Total advances from the Consolidated Revenue Fund	91,121	75,860
Total net revenue for the year	840	1,505
<b>Total</b>	<b>91,961</b>	<b>77,365</b>

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# **TAB 31**

**Bank Act, s. 600, 628**

*Bank*  
**PART XII.1** Authorized Foreign Banks  
Supervision  
**Sections 600-605**

*Banques*  
**PARTIE XII.1** Banques étrangères autorisées  
Surveillance  
**Articles 600-605**

## Supervision

### Returns

#### Required information

**600** An authorized foreign bank shall provide the Superintendent with any information, at the times and in the form, that the Superintendent may require.

1991, c. 46, s. 600; 1999, c. 28, s. 35.

## Surveillance

### Relevés

#### Demande de renseignements

**600** La banque étrangère autorisée fournit au surintendant, aux dates et en la forme précisées, les renseignements qu'il exige.

1991, ch. 46, art. 600; 1999, ch. 28, art. 35.

*Bank*  
**PART XIII** Regulation of Banks — Superintendent  
**Sections 628-632**

*Banques*  
**PARTIE XIII** Réglementation des banques : surintendant  
**Articles 628-632**

## PART XIII

# Regulation of Banks — Superintendent

## Supervision

### Returns

#### Required information

**628 (1)** A bank shall provide the Superintendent with such information, at such times and in such form as the Superintendent may require.

**(2)** [Repealed, 1997, c. 15, s. 86]

1999, c. 28, s. 36.

## PARTIE XIII

# Réglementation des banques : surintendant

## Surveillance

### Relevés

#### Demande de renseignements

**628 (1)** La banque fournit au surintendant, aux dates et en la forme précisées, les renseignements qu'il exige.

**(2)** [Abrogé, 1997, ch. 15, art. 86]

1999, ch. 28, art. 36.

# TAB 32

**Canada Border Services Agency Act, s2(a), 5(1), 12, 15.1,**



S.C. 2005, c. 38

## An Act to establish the Canada Border Services Agency

[Assented to 3rd November 2005]

L.C. 2005, ch. 38

## Loi constituant l'Agence des services frontaliers du Canada

[Sanctionnée le 3 novembre 2005]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### Short Title

#### Short title

**1** This Act may be cited as the *Canada Border Services Agency Act*.

### Interpretation

#### Definitions

**2** The following definitions apply in this Act.

**Agency** means the Canada Border Services Agency established under subsection 3(1). (*Agence*)

**Minister** means the Minister of Public Safety and Emergency Preparedness. (*ministre*)

**President** means the President of the Agency appointed under subsection 7(1). (*président*)

**program legislation** means any other Act of Parliament or any instrument made under it, or any part of such an Act or instrument,

**(a)** that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to administer and enforce, including the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Immigration and Refugee Protection Act* and the *Special Import Measures Act*;

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

### Titre abrégé

#### Titre abrégé

**1** *Loi sur l'Agence des services frontaliers du Canada*.

### Définitions

#### Définitions

**2** Les définitions qui suivent s'appliquent à la présente loi.

**Agence** L'Agence des services frontaliers du Canada constituée par le paragraphe 3(1). (*Agency*)

**législation frontalière** Tout ou partie d'une autre loi fédérale ou de ses textes d'application :

**a)** dont le ministre, l'Agence, le président ou un employé de l'Agence est autorisé par le Parlement ou le gouverneur en conseil à assurer et contrôler l'application, notamment la *Loi sur les douanes*, le *Tarif des douanes*, la *Loi sur l'accise*, la *Loi de 2001 sur l'accise*, la *Loi sur l'immigration et la protection des réfugiés* et la *Loi sur les mesures spéciales d'importation*;

**b)** dont le ministre, l'Agence, le président ou un employé de l'Agence est autorisé par le Parlement ou le gouverneur en conseil à contrôler l'application, notamment la *Loi sur les sanctions administratives pénauniaires en matière d'agriculture et*

(b) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*;

(c) under which the Minister or another minister authorizes the Agency, the President or an employee of the Agency to administer a program or carry out an activity; or

(d) under which duties or taxes collected and paid pursuant to the *Customs Act* are imposed. (*législation frontalière*)

2005, c. 38, ss. 2, 145.

*d'agroalimentaire, la Loi sur les produits agricoles au Canada, la Loi relative aux aliments du bétail, la Loi sur les engrais, la Loi sur l'inspection du poisson, la Loi sur la santé des animaux, la Loi sur l'inspection des viandes, la Loi sur la protection des végétaux et la Loi sur les semences;*

c) en vertu desquels le ministre ou un autre ministre autorise l'Agence, le président ou un employé de l'Agence à appliquer un programme ou à exercer une activité;

d) en vertu desquels des droits ou des taxes versés et perçus au titre de la *Loi sur les douanes* sont imposés. (*program legislation*)

**ministre** Le ministre de la Sécurité publique et de la Protection civile. (*Minister*)

**président** Le président de l'Agence nommé en application du paragraphe 7(1). (*President*)

2005, ch. 38, art. 2 et 145.

## Establishment and Mandate of the Agency

### Agency established

**3 (1)** The Canada Border Services Agency is established as a body corporate.

### Agent of Her Majesty

**(2)** The Agency is for all purposes an agent of Her Majesty in right of Canada.

### Head office

**4** The head office of the Agency is to be in the National Capital Region described in the schedule to the *National Capital Act*.

### Mandate of Agency

**5 (1)** The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation, by

(a) supporting the administration or enforcement, or both, as the case may be, of the program legislation;

(b) implementing agreements between the Government of Canada or the Agency and a foreign state or a public body performing a function of government in a foreign state to carry out an activity, provide a service or administer a tax or program;

## Constitution et mission de l'agence

### Constitution de l'Agence

**3 (1)** Est constituée l'Agence des services frontaliers du Canada, dotée de la personnalité morale.

### Mandataire de Sa Majesté

**(2)** Elle exerce ses pouvoirs uniquement à titre de mandataire de Sa Majesté du chef du Canada.

### Siège de l'Agence

**4** Son siège est fixé dans la région de la capitale nationale délimitée à l'annexe de la *Loi sur la capitale nationale*.

### Mission de l'Agence

**5 (1)** L'Agence est chargée de fournir des services frontaliers intégrés contribuant à la mise en œuvre des priorités en matière de sécurité nationale et de sécurité publique et facilitant le libre mouvement des personnes et des biens — notamment les animaux et les végétaux — qui respectent toutes les exigences imposées sous le régime de la législation frontalière. À cette fin, elle :

a) fournit l'appui nécessaire à l'application ou au contrôle d'application, ou aux deux, de la législation frontalière;

b) met en œuvre tout accord conclu entre elle ou le gouvernement fédéral et un État étranger ou un

Act, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

*d'agroalimentaire, la Loi sur les produits agricoles au Canada, la Loi relative aux aliments du bétail, la Loi sur les engrains, la Loi sur l'inspection du poisson, la Loi sur la santé des animaux, la Loi sur l'inspection des viandes, la Loi sur la protection des végétaux et la Loi sur les semences.*

### Designation power

**(3)** The President may exercise any power that the Minister has to designate officers under subsection 6(1) of the *Immigration and Refugee Protection Act*.

### Remuneration

**10 (1)** The President and the Executive Vice-president shall be paid the remuneration that is fixed by the Governor in Council.

### Expenses

**(2)** The President and the Executive Vice-president are entitled to be paid reasonable travel and living expenses incurred by them in the course of performing their duties while absent from their ordinary place of work.

### Deemed employment

**(3)** The President and the Executive Vice-president are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act* and to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

2005, c. 38, ss. 10, 144(E).

## Human Resources

### Officers and employees

**11** Officers and employees necessary for the proper conduct of the work of the Agency shall be appointed in accordance with the *Public Service Employment Act*.

## Powers of the Agency

### Exercise of powers conferred on Minister

**12 (1)** Subject to any direction given by the Minister, the Agency may exercise the powers, and shall perform the duties and functions, that relate to the program legislation and that are conferred on, or delegated, assigned or transferred to, the Minister under any Act or regulation.

### Pouvoir de désignation

**(3)** Il peut exercer les pouvoirs de désignation des agents éventuellement conférés au ministre en vertu du paragraphe 6(1) de la *Loi sur l'immigration et la protection des réfugiés*.

### Rémunération

**10 (1)** Le président et le premier vice-président reçoivent la rémunération fixée par le gouverneur en conseil.

### Frais de déplacement et de séjour

**(2)** Ils sont indemnisés des frais de déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu habituel de travail.

### Assimilation

**(3)** Ils sont réputés faire partie de la fonction publique pour l'application de la *Loi sur la pension de la fonction publique* et faire partie de l'administration publique fédérale pour l'application de la *Loi sur l'indemnisation des agents de l'État* et des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*.

2005, ch. 38, art. 10 et 144(A).

## Ressources humaines

### Pouvoir de nomination

**11** Le personnel nécessaire à l'exécution des travaux de l'Agence est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

## Pouvoirs de l'agence

### Exercice de certaines attributions du ministre

**12 (1)** Sous réserve des instructions que peut donner le ministre, l'Agence exerce les attributions relatives à la législation frontalière qui sont conférées, déléguées ou transférées à celui-ci sous le régime d'une loi ou de règlements.

## Officers and employees

**(2)** An officer or employee of the Agency may exercise any power or perform any duty or function referred to in subsection (1) if the officer or employee is appointed to serve in the Agency in a capacity appropriate to the exercise of the power or the performance of the duty or function, and, in so doing, shall comply with any general or special direction given by the Minister.

## Exception

**(3)** Subsection (1) does not include

- (a)** any power, duty or function of the Minister under this Act; or
- (b)** a power to make regulations.

## Non-application of *Statutory Instruments Act*

**(4)** A direction given by the Minister under subsection (1) or (2) is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

## Agreements

**13 (1)** Subject to sections 38 and 38.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the Agency may, with the approval of the Governor in Council, on the recommendation of the Minister and the Minister of Foreign Affairs, enter into an agreement with a foreign state or an international organization, for the purposes of carrying out the mandate of the Agency.

## Arrangements and agreements

**(2)** The Agency may, for the purposes of carrying out its mandate,

- (a)** enter into an arrangement with a foreign state or an international organization; or
- (b)** enter into an agreement or arrangement with the government of a province, a department or agency of the Government of Canada or any person or organization.

2005, c. 38, s. 13; 2006, c. 12, s. 46.

## Agreements to administer a tax

**14 (1)** The Agency may enter into or amend an agreement with a provincial or territorial government to administer a tax or other fiscal measure if the agreement is in accordance with guidelines relating to agreements of that kind established jointly by the Minister and the Minister of Finance.

## Dirigeants et employés

**(2)** Les dirigeants ou employés de l'Agence ayant, au sein de celle-ci, la compétence voulue peuvent exercer les attributions visées au paragraphe (1); le cas échéant, ils se conforment aux instructions générales ou particulières du ministre.

## Exclusion

**(3)** Sont exclus des attributions visées au paragraphe (1) :

- a)** les attributions conférées au ministre par la présente loi;
- b)** le pouvoir de prendre des règlements.

## Statut des instructions

**(4)** Les instructions visées aux paragraphes (1) et (2) ne constituent pas des textes réglementaires au sens de la *Loi sur les textes réglementaires*.

## Accords

**13 (1)** Sous réserve des articles 38 et 38.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*, l'Agence peut dans le cadre de sa mission, avec l'agrément du gouverneur en conseil donné sur recommandation du ministre et du ministre des Affaires étrangères, conclure des accords avec un État étranger ou toute organisation internationale.

## Ententes et accords

**(2)** Dans le cadre de sa mission, l'Agence peut :

- a)** conclure des ententes avec un État étranger ou toute organisation internationale;
- b)** conclure des accords ou des ententes avec le gouvernement d'une province, un ministère ou un organisme fédéral ou toute personne ou organisation.

2005, ch. 38, art. 13; 2006, ch. 12, art. 46.

## Accords pour l'administration d'une taxe

**14 (1)** L'Agence peut conclure des accords avec le gouvernement d'une province ou d'un territoire pour l'administration d'une taxe ou d'une autre mesure fiscale, ou modifier de tels accords, si ceux-ci sont conformes aux directives établies conjointement par le ministre et le ministre des Finances relativement à ce type d'accords.

## **Application of the Federal-Provincial Fiscal Arrangements Act**

**(2)** Parts III and III.1 of the *Federal-Provincial Fiscal Arrangements Act* do not apply to an agreement entered into or amended under subsection (1).

## **Expenditures**

### **Appropriation Acts**

**15** An appropriation Act may provide that the balance of money appropriated by Parliament for the use of the Agency that remains unexpended at the end of the fiscal year, after the adjustments referred to in section 37 of the *Financial Administration Act* are made, lapses at the end of the following fiscal year.

## **Annual Report**

### **Annual report**

**15.1 (1)** The Minister shall, as soon as possible after the end of each fiscal year but no later than the end of the calendar year in which that fiscal year ends, cause to be laid before each House of Parliament a report of the operations and performance of the Agency for that fiscal year.

### **Reports required by Treasury Board**

**(2)** The obligation imposed by subsection (1) may be satisfied by the tabling of any reports of the operations and performance of the Agency required by the Treasury Board that contain the information required by that subsection.

## **Transitional Provisions**

### **Definitions**

#### **Definitions**

**16** The following definitions apply in sections 17 to 19 and 21 to 28.

**former agency** means the portion of the federal public administration known as the Canada Border Services Agency. (*ancienne agence*)

**new agency** means the Canada Border Services Agency established under subsection 3(1). (*nouvelle agence*)

## **Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces**

**(2)** Les parties III et III.1 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* ne s'appliquent pas aux accords visés au paragraphe (1).

## **Utilisation des crédits**

### **Crédits non utilisés**

**15** Une loi de crédits peut prévoir que la partie non utilisée à la fin d'un exercice des crédits affectés par le Parlement à l'usage de l'Agence, après le rapprochement visé à l'article 37 de la *Loi sur la gestion des finances publiques*, est annulée à la fin de l'exercice suivant.

## **Rapport annuel**

### **Rapport au Parlement**

**15.1 (1)** Le ministre dépose devant chaque chambre du Parlement le plus tôt possible après la fin de chaque exercice et avant la fin de l'exercice en cours, un rapport portant sur les activités de l'Agence et les résultats obtenus par celle-ci au cours de l'exercice précédent.

### **Rapports exigés par le Conseil du Trésor**

**(2)** Le dépôt de tout rapport exigé par le Conseil du Trésor sur les activités de l'Agence et les résultats obtenus par celle-ci satisfait à l'obligation prévue au paragraphe (1) si les renseignements visés à ce paragraphe figurent dans le rapport.

## **Dispositions transitoires**

### **Définitions**

#### **Définitions**

**16** Les définitions qui suivent s'appliquent aux articles 17 à 19 et 21 à 28.

**ancienne agence** Le secteur de l'administration publique fédérale appelé Agence des services frontaliers du Canada. (*former agency*)

**décret C.P. 2003-2064** Le décret C.P. 2003-2064 du 12 décembre 2003 portant le numéro d'enregistrement TR/2003-216. (*order P.C. 2003-2064*)

# **TAB 33**

**Financial Administration Act, s.150**

separately, subsections (1) to (5) apply, with such modifications as the circumstances require, in respect of the subsidiary as though

**(a)** the references in subsections (1) to (5) to a parent Crown corporation were references to the subsidiary; and

**(b)** the reference in paragraph (3)(a) to the annual report of the corporation were a reference to the annual report of the parent Crown corporation that wholly owns the subsidiary.

R.S., 1985, c. F-11, s. 148; 1991, c. 24, s. 50(F); 2006, c. 9, s. 268.

## Reports

### Accounts, etc., to Treasury Board or appropriate Minister

**149 (1)** A parent Crown corporation shall provide the Treasury Board or the appropriate Minister with such accounts, budgets, returns, statements, documents, records, books, reports or other information as the Board or appropriate Minister may require.

### Report on material developments

**(2)** The chief executive officer of a parent Crown corporation shall, as soon as reasonably practicable, notify the appropriate Minister, the President of the Treasury Board and any director of the corporation not already aware thereof of any financial or other developments that, in the chief executive officer's opinion, are likely to have a material effect on the performance of the corporation, including its wholly-owned subsidiaries, if any, relative to the corporation's objectives or on the corporation's requirements for funding.

### Report on wholly-owned subsidiaries

**(3)** Each parent Crown corporation shall forthwith notify the appropriate Minister and the President of the Treasury Board of the name of any corporation that becomes or ceases to be a wholly-owned subsidiary of the corporation.

1984, c. 31, s. 11.

### Annual report

**150 (1)** Each parent Crown corporation shall, as soon as possible, but in any case within three months, after the termination of each financial year submit an annual report on the operations of the corporation in that year concurrently to the appropriate Minister and the President of the Treasury Board, and the appropriate Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after he receives it.

**a)** toute mention d'une société d'État mère était une mention de la filiale;

**b)** toute mention à l'alinéa (3)a) du rapport annuel de la société était une mention de celui de la société d'État mère qui détient la filiale.

L.R. (1985), ch. F-11, art. 148; 1991, ch. 24, art. 50(F); 2006, ch. 9, art. 268.

## Rapports

### Comptes, etc. au Conseil du Trésor ou au ministre de tutelle

**149 (1)** Les sociétés d'État mères remettent au ministre de tutelle ou au Conseil du Trésor les comptes, budgets, comptes rendus, états financiers, documents, registres, livres, rapports et autres renseignements que ceux-ci demandent.

### Avis des changements importants

**(2)** Le premier dirigeant d'une société d'État mère avise dans les plus brefs délais possible le ministre de tutelle, le président du Conseil du Trésor et les administrateurs de la société qui ne sont pas déjà au courant des changements, notamment de la situation financière, qui, selon lui, pourraient avoir, par rapport aux objectifs de la société, des conséquences importantes sur les résultats de celle-ci, y compris, le cas échéant, ceux de ses filiales à cent pour cent, ou sur les besoins financiers de la société.

### Rapport sur les filiales à cent pour cent

**(3)** Les sociétés d'État mères indiquent sans délai au ministre de tutelle et au président du Conseil du Trésor les personnes morales qui deviennent ses filiales à cent pour cent ou cessent de l'être.

1984, ch. 31, art. 11.

### Rapport annuel

**150 (1)** Le plus tôt possible, mais de toute façon dans les trois premiers mois suivant chaque exercice, les sociétés d'État mères remettent un rapport annuel de leurs activités pendant l'exercice en même temps au ministre de tutelle et au président du Conseil du Trésor; le ministre de tutelle en fait déposer un exemplaire devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci qui suivent sa réception.

## Reference to committee

**(2)** An annual report laid before Parliament pursuant to subsection (1) stands permanently referred to such committee of Parliament as may be designated or established to review matters relating to the businesses and activities of the corporation submitting the report.

## Form and contents

**(3)** The annual report of a parent Crown corporation shall include

**(a)** the financial statements of the corporation referred to in section 131,

**(b)** the annual auditor's report referred to in subsection 132(1),

**(c)** a statement on the extent to which the corporation has met its objectives for the financial year,

**(d)** such quantitative information respecting the performance of the corporation, including its wholly-owned subsidiaries, if any, relative to the corporation's objectives as the Treasury Board may require to be included in the annual report, and

**(e)** such other information as is required by this Act or any other Act of Parliament, or by the appropriate Minister, the President of the Treasury Board or the Minister of Finance, to be included in the annual report,

and shall be prepared in a form that clearly sets out information according to the major businesses or activities of the corporation and its wholly-owned subsidiaries, if any.

## Idem

**(4)** In addition to any other requirements under this Act or any other Act of Parliament, the Treasury Board may, by regulation, prescribe the information to be included in annual reports and the form in which that information is to be prepared.

R.S., 1985, c. F-11, s. 150; 1991, c. 24, s. 49(E).

## Consolidated quarterly reports

**151 (1)** The President of the Treasury Board shall, as soon as feasible after the end of each fiscal quarter of each fiscal year, make public a consolidated quarterly report on the business and activities of all parent Crown corporations, based on the quarterly financial reports that have been made public under subsection 131.1(3), and the annual reports of those corporations that were laid before Parliament under subsection 150(1), in that fiscal quarter.

## Renvoi en comité

**(2)** Le rapport annuel déposé devant le Parlement en conformité avec le paragraphe (1) est renvoyé automatiquement devant le comité du Parlement désigné ou constitué pour étudier les questions touchant aux activités de la société d'État qui a établi le rapport.

## Présentation matérielle et contenu

**(3)** Le rapport annuel d'une société d'État mère contient notamment les éléments suivants :

**a)** les états financiers de la société visés à l'article 131;

**b)** le rapport annuel du vérificateur visé au paragraphe 132(1);

**c)** un énoncé de la mesure dans laquelle la société a réalisé ses objectifs pour l'exercice en question;

**d)** les renseignements chiffrés qu'exige le Conseil du Trésor sur les résultats de la société et, le cas échéant, ceux de ses filiales à cent pour cent, par rapport à ses objectifs;

**e)** les autres renseignements qu'exigent la présente loi, une autre loi fédérale, le ministre de tutelle, le président du Conseil du Trésor ou le ministre des Finances.

En outre, le rapport annuel doit mettre en évidence les principales activités de la société et de ses filiales à cent pour cent.

## Idem

**(4)** En plus des autres obligations que prévoient la présente loi ou une autre loi fédérale, le Conseil du Trésor peut, par règlement, prévoir les renseignements à porter dans les rapports annuels et la présentation matérielle de ces renseignements.

L.R. (1985), ch. F-11, art. 150; 1991, ch. 24, art. 49(A).

## Rapport trimestriel global

**151 (1)** Dès que possible après la fin de chaque trimestre de chaque exercice, le président du Conseil du Trésor rend public un rapport trimestriel global portant sur les activités de toutes les sociétés d'État mères établi à partir de leurs rapports financiers trimestriels et annuels qui ont été, lors du trimestre en cause, rendus publics aux termes du paragraphe 131.1(3) ou déposés devant le Parlement aux termes du paragraphe 150(1).

# **TAB 34**

**Superintendent of Financial Institutions Consolidated Balance Sheet  
reporting requirements**

## **CONSOLIDATED BALANCE SHEET**

### **PURPOSE**

The purpose of this return is to provide a consolidated balance sheet of the institution as at the last day of each month. The balance sheet categories reflect the information required by the major users - the Office of the Superintendent of Financial Institutions, the Bank of Canada, Canada Deposit Insurance Corporation and Statistics Canada - for purposes of analyzing and monitoring the individual and aggregate financial condition of institutions. The return also requires the separation of assets and liabilities into total and foreign currencies.

### **STATUTORY**

Sections 628 and 600 of the Bank Act and Section 495 of the Trust and Loan Companies Act.

### **APPLICATION**

This return applies to all deposit-taking institutions.

### **PUBLICATION**

Information from this return is available on a total and institution-by-institution basis on the OSFI website at [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca) and is published in the Bank of Canada Banking and Financial Statistics on a total-for-all-institutions basis.

### **FREQUENCY**

Monthly.

### **CONTACT PERSON**

Provide name and phone number of person to contact regarding any questions about this return.

### **REPORTING DATES**

The return is to be completed as of the last day of each month and submitted within 30 days of the reporting date.

### **CONTACT AGENCY**

OSFI.

## **GENERAL INSTRUCTIONS**

The form of the consolidated balance sheet is identical for all institutions regardless of size and type. Consequently, certain balance sheet categories may not be applicable to some institutions because of the nature of their operations.

Where these instructions indicate that a certain category includes particular items, the particular items listed do not limit the generality of the heading but indicate the kind of items that are to be reported there.

Assets under administration are not to be included in the balances reported on the balance sheet.

Assets are to be reported net of the allowance for impairment, if any.

All allowances are to be netted from the appropriate assets in the same currency in which the relevant assets are denominated, regardless of whether the allowances are booked in Canadian or foreign currency. Where allowances for impairment against groups of loans have been established against assets denominated in both Canadian dollars and foreign currency, the allowances should be allocated proportionately according to the gross amounts of the assets outstanding in the various currencies.

Interest should be accrued on loans; the accrual is to be included in Asset 6. Debts purchased at a premium or discount are to be reported net of the premium or discount. The net reported amount of such loans will be increased or decreased as the discounts or premiums are taken into income over the term of the loan. Fixed-term loans on which the interest for the term is pre-computed and added to the principal are to be reported net of the pre-computed interest.

Deposits with regulated financial institutions include all non-interest-bearing balances and interest-bearing balances, including correspondent relationships in Canada and elsewhere placed in the normal course of market trading where the only documentation exchanged is a confirmation of contract and the rates applied are the bid and offer of the market.

Insurance-related Assets comprise certain asset categories from Insurance Subsidiaries that do not readily fall into the asset categories used in institution financial statements. Examples are given in the detailed instructions for Asset 6(a).

Assets of Insurance Subsidiaries such as securities and mortgages that readily fall into the asset categories used by institutions are to be reported in these categories.

All amounts are to be expressed in thousands of Canadian dollar equivalents.

Companies are required to prepare their quarterly and annual financial statements in accordance with IFRSs for fiscal years beginning on or after January 1, 2011. The reporting package has been revised for all filers which are now reporting under IFRS. References to CGAAP have been removed.

## **SECTION I - ASSETS**

### **A 1 Cash and Cash Equivalents**

(a) Gold, bank notes, deposits with Bank of Canada, cheques and other items in transit

Include:

- gold coin;
- gold and silver bullion held in Canada and elsewhere;
- gold and silver certificates held as investments;
- precious metals.
- Bank of Canada notes on hand;
- foreign currency notes;
- Canadian coin on hand;
- foreign coin held in Canada and elsewhere (foreign coin is to be reported as foreign currency, but U.S. coin in circulation in Canada need not be segregated unless amounts are material).
- all completed deposit transactions with Bank of Canada, including Large-Value Transfer System (LVTS), Special Deposit Account (SDA) and Automated Clearing and Settlement System (ACSS) component balances.

Exclude:

- loans repayable in gold and silver bullion.

Other Instructions:

Notes on hand and coin include those in transit between any units of the institution. Units of the institution include any branches or offices of the institution's subsidiaries.

Gold should be valued by translating to a Canadian dollar equivalent (using the month-end rate published by the Bank of Canada) the U.S. dollar value set at the second London gold "fixing".

Component deposit balances used to produce total deposits at the Bank of Canada must agree with the balance reports provided by the Bank of Canada at reporting date.

For items that meet the criteria for offsetting in accordance with IFRS, report the net balance (when that balance is a debit) of all accounts representing outstanding inter-institution and inter-branch entries, settlements and other items in transit.

If the foreign currency items in transit are a credit, although the total transit figure is a debit, report the foreign currency credit amount with a minus sign.

# TAB 35

**Bombay Jewellers Ltd. v. The Queen, 1998 CanLII 320 (TCC)**

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## Bombay Jewellers Ltd. v. The Queen, 1998 CanLII 320 (TCC)

Date: 1998-08-20

Docket: 96-433-GST-G

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Date: 19980820

Docket: 96-433-GST-G

BETWEEN:

BOMBAY JEWELLERS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **Reasons for Judgment**

#### **Margeson, J.T.C.C.**

[1] This appeal is from an assessment of the Minister of National Revenue (Minister) under Part IX of the *Excise Tax Act* (the "Act") for the period January 1, 1991 to December 31, 1992, notice of which bears number 11BU0200374 and is dated April 20, 1993.

[2] By that assessment, the Minister assessed the Appellant in the amounts of \$141,363.22 tax, \$10,194.73 interest and \$8,926.52 in penalties in respect of its goods and services tax ("GST") returns for the period in issue.

#### **Evidence**

[3] Salok Bhatti testified that he was the owner of all of the outstanding shares of the Appellant company, as well as the director and manager. He was a jeweller. The store was operated by the Appellant which sold mostly 22 karat gold jewellery. Most of this was custom made.

[4] He also stated that the company sold 24 karat gold to customers, which the Appellant bought from gold dealers, coin and stamp dealers in Vancouver. This gold was 99 % pure. He cut the bars into smaller portions, sometimes melted these portions and subsequently sold them. The bars were cut for customers according to the weight desired at the current price. They were in rectangular form. The longitudinal measurement was used to measure the desired quantity. This was a very hard measurement to make, which sometimes necessitated further amounts being cut-off of the bar by means of a chisel or other instrument. If the amount cut-off was too light, they fused these amounts onto the unit to be sold to bring it up to the desired weight. They did not charge GST on the gold sold thusly.

[5] The second method used was to cut pieces off of the gold bars and cut them into thinner pieces, which were then rolled by the use of a rolling mill. The thickness would be one to one-half millimetres. In this form, it was easier to cut. Then, the rolled item was cut longitudinally and sold to the customers. No GST was charged upon these amounts.

[6] The third method was to take smaller pieces of gold and pour them into a mould to make another rectangular piece. These rectangular pieces were all of the same purity, being 99.9 %. The mould was cleaned properly and consequently, the resulting product was pure. No GST was charged upon these amounts.

[7] The most common form was the cut form. He admitted that the customers would not be able to sell the gold in that form to banks or otherwise dispose of it readily. Sometimes, he put a mark on the item if the customer wished it.

[8] In cross-examination he admitted that the resulting form was not always perfectly smooth after smaller pieces were fused into the larger pieces, but it would be quite smooth. The product was heated to the "red hot point" before it was fused.

[9] This process was used in order for the Appellant to make money, since the larger bar was purchased more cheaply than the individual pieces, then the mark-up was applied to the product to be sold to the customer.

[10] Exhibit R-1 was admitted by consent and showed the various forms of gold bars minted by Johnson Matthey Limited and Gold Refiners & Bars Worldwide, from Credit Suisse.

[11] According to the witness, this was the same type that the Appellant bought. The Appellants would not necessarily know why the customer bought the gold from it. He admitted that if the gold was in the form as shown in Exhibit R-1, it could be readily sold.

[12] Exhibit R-2 was introduced by consent and contained two photographs; one showing a one-half kilogram bar in its entirety and the other one showing a one-half kilogram bar with a one ounce portion cut away from it. The Appellant said that his company was told by its accountants that if it sold the gold in ingot, bar, or wafer form, no GST would be chargeable thereon. The quantity that was sold was not marked as to purity, but was marked as to weight.

[13] His company melted down gold pieces and also bought some jewellery from customers, then melted it down. Most of the people who purchased their product had it made into jewellery. When this was done, GST was charged on the labour only. Most of the gold they sold was in chunks, very little was rolled and the only amounts that were melted were the "leftovers". It was easier to make rectangular pieces from the smaller units if they were melted first.

[14] Exhibit R-3 was a brochure, admitted into evidence by consent, which showed the type of gold used. If the Appellant could not buy a whole bar, it bought one-half of a bar. He admitted that if a customer returned the portion that had been sold to him, it could not be identified.

[15] He identified certain documents in Exhibit R-4 including the assessment, the Notice of Appeal, the GST registration form for the Appellant, certain financial statements, a letter from Revenue Canada and the monthly sales records. He indicated that his company never sold gold as such and that if a customer did not want to accept the portion that it had cut, they would buy it back and make jewellery out of it.

[16] When he was referred to his examination for discovery it appeared to contradict the statement that the Appellant's company never sold gold as such. His explanation was that he meant to say that he sold it to customers as gold, only after incorporating it into jewellery and they charged GST on the finished product.

[17] In re-direct, the witness said that someone could have brought gold into the Appellant's premises in the same form and it could have used that gold in the same manner. It made approximately \$3.00 to \$5.00 per ounce profit on resale of the gold which cost about \$500.00 per ounce.

[18] Alastair McIntyre was called by the Respondent and objection was taken to the admissibility of his testimony. Counsel for the Appellant argued that his testimony added nothing to the evidence, since his evidence as to what the terms "bar", "ingot" and "wafer" meant was irrelevant, these being common English terms. Therefore it was not necessary to use a technical definition for them, as per *Daniel Oigny v. The Queen*, 96 DTC 1744 (T.C.C.).

[19] Furthermore, it was argued that his evidence as to whether the amounts of gold were precious metals, under the GST provisions of the *Excise Tax Act* is not the subject matter of expert testimony and was for the Court to decide.

[20] Counsel for the Respondent argued that the proposed evidence of this witness did add to the overall evidence as to the meaning of "bar", "ingot" and "wafer", since they have a technical meaning in the industry, whereas in the case cited, the words did not have a technical meaning and the Appellant therein did not follow the rules.

[21] Further, counsel said that this was the first case on this issue, it is very important to the sections of the statute involved here and that the Court needs this type of evidence in order to make a rational decision.

[22] After hearing argument on behalf of both parties, the Court allowed Alastair McIntyre to give evidence as an expert, but restricted his evidence to the issue of whether or not there was a technical meaning for the terms "bar", "ingot" and "wafer" used in the term "precious metal", as defined in section 123(1) of the *Excise Tax Act*.

[23] Alastair McIntyre testified that he was a Director of precious metals for the Bank of Nova Scotia and was resident in Toronto, Ontario. His bank provided risk management services to customers. He was also involved in buying and selling gold. He was a former manager at the Royal Canadian Mint in Ottawa. He was a geologist for Coxheath Gold Holdings in Halifax and acted as underground geologist. In 1985 and 1986 he was employed with Seabright Resources Ltd. in Halifax. He held the degrees of Bachelor of Science, Geology and Bachelor of Commerce and Securities. He was involved in sales and management and concentrated on gold. He was the author of a book called *Gold Resources and Refining* as well as a commentator for the media. In giving his opinions, he looked first at books on the subject and relied upon his experience at the Royal Canadian Mint and his sales experience at the Bank of Nova Scotia.

[24] Insofar as this witness was concerned, bars, coins and wafers, as referred to in section 123(1) of the *Act* are produced or cast at approved mints or smelters and are stamped by an assayer. Each product clearly exhibits its established hallmark, stamp, weight and fineness. These easily recognized and identifiable precious metal products are produced according to international standards. Each approved mint, smelter and assayer must adhere to a strict code of standards prior to its acceptance and in order to retain membership. He referred generally to a bar as a financially tradeable product, with the weight, purity and manufacturer marked upon it. It was his position that the term ingot was a French word for bar.

[25] The 99.5 % standard is the international standard although the Canadian standard was higher at 99.9 %. A wafer is usually of the purity of 99.9 %. Bars are reproduced by recognized refineries who adhere to strict requirements. There are 58 credited refineries world-wide. If the unit was tampered with or altered in any way, one would not consider it to be a marketable instrument. If any of the required elements were missing, it was not acceptable for trading purposes. Granular gold and gold wire were not exempt from GST. The markings upon the items are for the purposes of identifying the refinery that produced it, which attests to its authenticity and to allow a purchaser to be assured that it is receiving what it bargained for. Any item that meets these standards might demand different prices at different times, but it could be sold at any time in its existing form.

[26] He testified that if GST had been applied to gold which qualified as a "precious metal" under the definition contained in the *Act*, the gold market in Canada would have been destroyed. Consequently, it was important for the legislators to exempt those products which met the definition of "precious metal", as contained in the *Act*. Even coins which are not of the required purity range are not considered exempt from GST. Furthermore, GST applies to wire and granular gold because it does not meet all of the requirements of the definition.

[27] He was referred to Exhibit R-2, which showed a cut bar or wafer. He said that this could not be priced. It was not a "bar" or a "wafer" and was not in marketable form.

#### Argument on behalf the Appellant

[28] Counsel for the Appellant said that the Appellant purchases the gold from a dealer to the purity level of 99.5 % and that this purity level was not affected by his actions. Thus, the purity requirements of the definition have been met.

[29] Secondly, the Appellant must show that the items were "bars", "ingots" or "wafers". His position was that the evidence disclosed that the gold objects sold by the Appellant were "bars", "ingots" or "wafers", within the ordinary definition of those terms. Parliament did not intend any industry definition to apply nor did it intend, that in order for the object to meet the definition of "bar", "ingot" or "wafer", that it had to have certain markings placed upon it and be tradeable on an international exchange.

[30] He referred to the various dictionary meanings of the terms "bar", "ingot" and "wafer". In *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, the term bar is described as follows:

(a) a straight piece (as of wood or metal) that is longer than it is wide and has any of the various uses (as for a lever, a support, barrier or fastening); (b) a solid piece or block of material that is usually considerably longer than it is wide (gold).

Further, *Webster's New Twentieth Century Dictionary of the English Language*, Second Edition, defines "bar" as follows:

from old French "barre", from Latin "barra", a bar. An ingot, lump, or wedge of gold or silver from the mines, run in a mould, and unwrought.

Further, the *Oxford English Dictionary*, Second Edition, defines "bar" as:

A narrow four-sided block of metal or material as manufactured, e.g. of iron, or soap, chocolate, etc.; an ingot of precious metal.

[31] Again *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, defines "wafer": a thin crisp cake, candy or cracker. *Webster's New Twentieth Century Dictionary of the English Language, Unabridged*, Second Edition, defines "wafer" as: anything resembling a wafer. The *Oxford English Dictionary*, Second Edition, Volume 1, defines "wafer" as:

A very light thin crisp cake, baked between wafer-irons; formerly often eaten with wine, now chiefly with ices; in later use sometimes rolled, sometimes serving as the under part of a macaroon.

[32] *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, defines "ingot"

as:

a mass of metal cast into a convenient shape for storage or transportation to be later processed.

and *Webster's New Twentieth Century Dictionary of the English Language, Unabridged*, Second Edition, defines "ingot" as: that which is poured in a mold for molten metal. *The Oxford English Dictionary, Second Edition, Volume 1*, defines ingot as:

A mass (usually oblong or brick-shaped) of cast metal, especially of gold or silver, and (in modern use) of steel; these last are of various shapes.

[33] According to counsel for the Appellant, they are generally nothing more than rectangular pieces of metal. Generally, Mr. Bhatti said that the pieces he used were rectangular in shape. In ordinary meaning, they were bars. With respect to the term "wafer", counsel argued that a wafer is something that is very thin. Mr. Bhatti said that the ones that he rolled were one millimetre thick. The ordinary meaning should be attached to such an article and the Court should conclude that they were wafers.

[34] With respect to the term "ingot", we must bear in mind that the dictionary definition of the word ingot need not be a bar, as long as it is cast from molten metal. Mr. Bhatti said that he poured the metal pieces into moulds. Under the definition, according to the ordinary meaning, they were ingots.

[35] He further argued that Parliament did not intend that industry definitions should be applied with respect to this section. If Parliament had so intended, why would they use a word not used by the industry. According to Mr. McIntyre, the term "ingot" was merely the French equivalent of bar. However an "ingot" is different than a bar. Parliament must have intended that the ordinary dictionary meaning be used.

[36] He also referred to [section 160](#) of the *Act* with respect to coin operated devices. He said that in light of that section, for the Court to conclude that Parliament intended that the industry meaning apply, it would have to assume that Parliament intended to use two different definitions, in light of [section 160](#).

[37] However, counsel argued that even if the definitions put forward by the Respondent are accepted in the industry, the Court still should not apply those definitions in this case. He referred to the case of *Unwin v. Hanson*, (1891) 2 QB 115 (Eng. CA) in support of his contention that the Court should not apply the technical meaning as opposed to the ordinary meaning where the *Act* is directed to dealing with matters affecting everybody generally, in which case, common and ordinary language should be used. However, if the *Act* is passed with reference to a particular trade, business or transaction, then everybody conversant with that trade, business or transaction knows and understands the words to have a particular meaning and then the technical meaning should be applied even though it differs from the common or ordinary meaning.

[38] His argument was that the *Excise Tax Act* affects everyone generally, has a broad application, it does not just apply to financial services or industries. Anyone is entitled to buy the articles in question. Even if there is a technical meaning to the words, because of the broad application of the *Act*, the ordinary meaning should be applied in this case.

[39] Further, he argued that stamping and marking of the articles is not required by the "*Act*". Parliament never intended that this be required. If it did, as it does in Schedule II (section 23) - Tax Rate on Tobacco Products, it specifically says so. In that schedule, it specifically sets out how cigarette packages are to be marked. Further, there is an entire act which deals with precious metals, the *Precious Metal Marking Act, RSC 1985, chap. P-9*. There is no reference to this statute in the GST legislation.

[40] Furthermore, there is no reference in the *Act* to any requirement that the articles be transferable on the open market in order to meet the definition of "wafer", "ingot" or "bar".

[41] He said that the Respondent was arguing that in order for the article to be an exempt supply it must be a "financial instrument", under section 123 of the *Act*. But when one looks at that definition, all of the instruments referred to there are not readily marketable and yet a precious metal is included in the list. Therefore, the Court should take judicial notice that some of these "financial instruments" are not tradeable. If Parliament had intended that the object need be tradeable as a prerequisite to meeting the requirements of the definition, it would have said so specifically by indicating a specific exchange or a reference to an exchange.

[42] In summary, the Appellant has shown that the objects that he sold were "bars", "ingots" or "wafers" of a required purity. The choice of words used indicate that the intention of Parliament was that the ordinary meaning should be applied and not a technical meaning.

[43] The lack of positive words requiring stamping, trading and marking in order for the article to meet the requirements of the definition is consistent in light of the other sections of the *Act*, which require specificity. This shows that Parliament did not intend that the technical definition be applied on the facts of this case in order for the article to be exempt.

[44] This appeal should be allowed, with costs.

#### Argument of the Respondent

[45] Counsel for the Respondent took the position that the real issue before the Court is whether or not Bombay Jewellers Ltd. was providing a financial service when it cut a piece from a "wafer", "ingot" or "bar" and resold it. His position was that they were not. Part VII of Schedule V of the *Act* deals with an exempt supply. Section I, "a supply of a financial service that is not included in Part IX of Schedule VI". The supply in question here is not so included.

[46] Section 123(1) provides the following definitions:

"financial service" means

...

(d) the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of a financial instrument;  
 (e) the provision, variation, release or receipt of a guarantee, an acceptance or an indemnity in respect of a financial instrument,

"financial instrument" means

...

(e)...a precious metal,

"precious metal" means 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;

[47] Counsel argued that if one looks at the definition of other financial instruments therein, such as (a) debt equity (b) equity security (c) insurance policy, these are all clearly in the nature of a financial instrument. By merely looking at these types of instruments one can determine what it is. One can determine its tradeable value. Most of these articles are exempt financial services.

[48] With respect to the item that the Appellant in this case purchased in its original form, it was an exempt financial instrument but when it was cut by the Appellant company it no longer qualified as a financial instrument. It is clear from the listing of these type of documents in the definition of "financial instrument", what Parliament intended to have included in the term. If an article is to meet the definition of financial instrument as a precious metal, it must meet all of the requirements of a financial instrument such as being readily identifiable, readily transferable and readily capable of having its value determined.

[49] The general purpose of the *Act* is to tax all goods and services, unless they are specifically exempted. The provisions of the *Act* must be interpreted very restrictively. All of the articles excepted are of the same type, readily identifiable.

[50] It was obvious from the evidence of Mr. Alastair McIntyre that if the gold "bars", "ingots", "coins" or "wafers" met the specifications as set out in the definition were to be taxed in Canada, the gold industry in this country would be destroyed. Therefore, the legislators had a purpose in mind when exempting precious metals which met the definition of "financial instrument" under the said definition. Counsel referred to the case of *Perka et al. v. The Queen*, (1984) 1984 CanLII 23 (SCC), 13 DLR (4th) 1 (SCC) at page 26 in support of her position that technical and scientific terms which appear in a Statute should be given their technical or scientific meaning. It is impossible to use the regular or common definition of "bar", "ingot" or "wafer". Parliament did not intend that this definition should apply.

[51] Counsel also referred to the case of *Unwin v. Hanson, supra*, at pages 117 and 119 arguing that in the case at bar, the technical meaning should be used rather than the general meaning because the sections in issue deal with a particular trade, business or transaction. Further, no one could reasonably expect that Parliament would be intending to rely upon the common meaning of the words in issue even though the *Act* applies to every one. The terms in question were used in a specific section dealing with financial instruments. Therefore, one goes to that particular section of the *Act* in trying to determine Parliament's intention.

[52] These terms are technical, used in the financial industry and one should not resort to the general meaning of these words. What is intended is a reference to investment quality gold and that is all that is meant to be exempt and not pieces of gold of the type that were sold in the case at bar.

[53] Counsel also referred to the **Report On The Technical Paper On The Goods and Services Tax** published by The Standing Committee on Finance and dated November 1989. This technical paper was considering the zero rating of certain forms of precious metals for investment purposes in keeping

with the exempt treatment afforded to investments in financial instruments. It referred to the requirements as to "purity" in the definitions of section 123. The Canadian Association of Numismatic Dealers (CAND) was lobbying to amend the definitions of "investment", "quality" and "precious metals" to include "gold" and "silver coins" with a purity level of 90 % and thus not be taxable. The argument was that otherwise this discriminatory tax treatment would drive much of the investment coin market underground. This was rejected. It is clear that Parliament had various exemptions in mind when they were considering the definition in section 123.

[54] The definition of "financial instrument" found in **The Dictionary of Banking**, Charles J. Woelfel, Irwin Professional Publishing, supports the contention that in order to qualify under this definition the article has to be readily tradeable and almost equivalent to cash. At least that was counsel's interpretation of the definition therein.

[55] Counsel's contention was that once the Appellant altered the form of the "bar", "ingot" or "wafer" this was no longer a financial instrument. Therefore, a delivery of the article in the then existent form was not a financial transaction. The intrinsic value of the item was changed, not merely the ownership, because no one would accept it in its new form as a financial instrument. Counsel did not contend that in order for the article to meet the definition under the *Act* that it had to be tradeable on an international market but it had to be something that kept its tradeability and saleability. Once its form is changed, one is no longer dealing with a financial instrument.

[56] It was counsel's contention that the purpose of the legislation and the exemption was clearly to facilitate the free flow of financial services and instruments so that our economy could function without the restrictions of the economic markets that a tax on every transaction would generate. This exemption applied not only to the gold "bars", "ingots" or "wafers", but to all items which were financial instruments under the definition. Parliament limited the gold included as a financial instrument to gold which met the standards of 99.5% purity in the form of a "bar", "ingot", "coin" or "wafer". These standards are the international standards for the precious metals market in exchanges as the evidence showed. When gold is a financial investment and so used it is GST exempt. Even gold purchased for industry, such as the jewellery business, is tax exempt on purchase, but once processed further and resold, as in the case at bar, GST must be charged.

[57] She likened the actions of the Appellant in this case in cutting the pieces off of the gold bar or wafer, to taking one page from an insurance policy and yet attempting to use it as a financial instrument. This could not be done. It would not be tradeable or saleable. It would not be accepted as such. Likewise once the gold "bar", "wafer" or "coin" is cut into pieces it is no longer a financial instrument and no longer meets the form requirement of the legislation. The fact that the purity level remains the same does not satisfy the requirements.

[58] She argued that the financial community, especially the precious metals market, have specific definitions for "bar", "ingot", "coin" or "wafer". Regular definitions are of no use in determining the correct meaning of a specialised industry term. When Parliament used the term "wafer" they did not mean a "very light, thin, crisp, cake baked between wafer-irons" as defined in the ordinary dictionaries. None of the standard meanings of "wafer" even remotely come close to the requirements in the *Excise Tax Act*.

[59] If the exact format of the gold was not important, Parliament could simply have exempted gold of 99.5% pure. This it did not do.

[60] Mr. McIntyre in his evidence explained the definition of "bar", "ingot", "coin" or "wafer" in the industry. He made it clear that these were technical terms within the industry. The Court should accept this as evidence when determining the correct technical definition.

[61] The Appellant has not met the onus on it of showing that the gold that was sold was still a precious metal and thus a financial instrument and exempt as a financial service. The appeal should be dismissed with costs.

#### Rebuttal

[62] Counsel for the Appellant argued that it was dangerous to refer to the other types of financial instruments and draw a parallel when deciding what the terms "precious metal", "financial instrument" and "financial service" mean in the context of this case. The difference between gold and the other financial instruments referred to in the *Act* is that gold can be used by itself as a commodity. The other articles cannot be so used.

[63] It is not important in this case that the gold be readily saleable, have a readily determinable value or that it be readily negotiable. The Court should not conclude that because the term "precious metal" was included in this list that it need include the same properties.

#### Analysis and decision

[64] The GST provisions of the *Excise Tax Act* require the application of the tax to all goods and services unless the goods and services are exempt. These goods and services may be exempt if they are specifically listed in some exempting provision of the *Act*. If not specifically listed, but are so similar to those specifically listed goods or services that they are the equivalent thereof, the Court may conclude that Parliament had intended that such goods and services also be exempt.

[65] The Court is also satisfied that some of these sections of the *Act* apply generally with respect to all goods and services while other sections of the *Act* are limited in scope and apply to specific goods and services or the equivalent thereof. Often times, it is necessary to consider different divisions, sections and parts of the *Act* in order to determine whether a particular good or service is exempt or not. Such is the case at bar.

[66] What the Appellant sold was obviously a good or service and it was subject to GST unless the Appellant can show on a balance of probabilities that the good or service was exempt. In light of the relevant provisions, the Appellant must show that what he provided was a financial service. He could only provide a financial service if the gold that he sold was a precious metal as defined because the Court is satisfied that what is exempt is not the gold itself but the financial service which results from the sale of the gold.

[67] Evidence was given by a witness qualified as an expert in the financial community, especially in the precious metals market. He testified that there are specific definitions for the term "bar", "ingot", "coin" or "wafer", that they are technical terms and that the pieces of gold used by the Appellant in the case at bar do not qualify as such under the technical definitions used in such markets.

[68] The main issue between the two parties was centred around whether or not the Court should apply the dictionary, general or common meaning of the words "bar", "ingot" and "wafer" or whether it should apply a more technical meaning, such as that suggested by the expert called on behalf of the Respondent.

[69] Interestingly enough, both parties relied upon the same case in support of their position. Counsel for the Appellant argued that the Court should apply the general, ordinary or dictionary meaning of the terms because the GST provisions of the *Excise Tax Act* apply to almost every good and service

in general, (see *Perka et al., supra*). On the other hand, counsel for the Respondent, in applying the same case, argued that the findings in that case supported her position that Parliament was intending to use technical terms and therefore, the Court should not substitute a general meaning for them.

[70] The Court finds that to some extent both parties may be correct. The Court is satisfied that some sections of the GST provisions of the *Excise Tax Act* apply generally to all goods and services and it would be reasonable to apply the general, common or dictionary meaning to the terms in dispute. Likewise, the Court finds that there are sections of the GST provisions of the *Act* that refer to more specific goods and services and it would be reasonable to apply the technical or scientific meaning to the terms in dispute.

[71] The Court finds that in the case at bar the terms in issue are used in the context of a more restrictive section dealing with financial instruments. It is true that all of the terms used in the definition of "financial instrument" do not have the exact same qualities, one with the other, but they are very similar in nature. They are generally readily transferable, have a readily ascertainable value, are readily identifiable and are more or less saleable. The Court is satisfied that in the case at bar it would be more reasonable to apply the technical meaning in reaching its conclusion as to what the intention of Parliament was in creating this definition.

[72] To some extent the Court is aided in its decision by considering the Report **The Technical Paper On The Goods and Services Tax** that was earlier referred to. It is obvious from looking at the final form of the *Act* that Parliament intended a more restrictive definition than that suggested by counsel for the Appellant. Indeed, it refused to change the definition of investment gold to include numismatic coins because their purity level fell below the standards set out in the definition of precious metal. It can be reasonably assumed that any other article which lacked any of the qualities of a "bar", "ingot" or "wafer" would not qualify for exemption under the definition. The Court is satisfied that the intention of Parliament must have been to include only investment quality gold in the definition of financial services and into the exempt category.

[73] The argument of counsel for the Respondent that a piece of "bar", "ingot", "coin" or "wafer", even if rectangular in shape, no longer fits the definition of a financial instrument which would be the equivalent to money, which is no longer negotiable in the form in which it is presented and does not meet the definition, is not without merit. It is obvious that no bank, gold dealer or any customer would accept the pieces as presented without having them assayed and weighed except those who trusted intrinsically the information provided by the person with whom they were dealing.

[74] The only quality of a "bar", "ingot" or "wafer" that these pieces of gold sold by the Appellant maintained was the element of purity, but in each case the recipient would have to rely upon the statement of the Appellant as to the purity of the article being sold. One would not find this happening in the financial market and it would be difficult to conclude that this was indeed a financial instrument.

[75] Finding as the Court does that Parliament intended that the more technical terms be used in the definition of "ingot", "wafer" or "bar", the Court is further satisfied that to accept the dictionary, common or general definition of the terms would lead to an absurd result. The Court would find it hard to conclude that when Parliament used the term "wafer" they meant to include anything even remotely similar to the broad definition of wafer as contained in the dictionary or that when they use the term "ingot" or "bar" that they ever considered that it might include small pieces of gold which were clipped or cut from something which was otherwise readily identifiable, saleable, capable of immediate recognition, valuation and which was commonly used as a financial instrument in the precious metals market.

[76] The Court is not satisfied that the Appellant has met the onus upon him of proving that the items in question fell within the exempt provision of the *Act*. GST should have been charged on these items.

[77] Evidence was given that the Appellant had received advice before deciding to act as he did and not apply GST to the sales. But without a judicial interpretation of the relevant sections; without a technical paper being produced by the department which indicated, as proposed, that the department might interpret this definition the same way; without an advanced ruling by the department, which was favourable to the Appellant's position; it would be dangerous indeed to rely upon such a tenuous interpretation.

[78] The Court is not influenced in its decision by the motive of the Appellant in acting as it did, although it is obvious that it was able to make a profit by buying the bars at a lower price and applying a mark-up when the pieces were sold. However, when it sold the pieces of gold in the form otherwise than that form in which they were purchased, the pieces were no longer financial instruments and were no longer exempt from the application of GST.

[79] The Court is not assisted in its decision by the reference by counsel for the Appellant to section 160 which deals with coin operated devices.

[80] The appeal is dismissed and the Minister's assessment is confirmed, with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of August 1998.

"T.E. Margeson"

J.T.C.C.

# **TAB 36**

**Bank offerings of gold and silver**

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# TAB 37

**Central 1 Credit Union v. UM Financial Inc., 2012 ONSC 889**

**CITATION:** Central 1 Credit Union v. UM Financial Inc., 2012 ONSC 889  
**COURT FILE NO.:** CV-11-9144-CL  
**DATE:** 20120208

**SUPERIOR COURT OF JUSTICE – ONTARIO  
COMMERCIAL LIST**

**RE:** Central 1 Credit Union, Plaintiff  
UM Financial Inc. and UM Capital Inc., Defendants

**BEFORE:** Justice Newbould

**COUNSEL:** Neil Rabinovitch and Gord McGuire, for Grant Thornton Limited, Receiver  
Roger Jaipargas, for the plaintiff  
Joel Levitt, for Joseph Adam

**DATE HEARD:** February 6, 2012

**ENDORSEMENT**

[1] Grant Thornton Limited, in its capacity as Court-appointed receiver pursuant to section 243(1) of the Bankruptcy and Insolvency Act and section 101 of the Courts of Justice Act of all of the assets, undertakings and properties of UM Financial Inc. and UM Capital Inc. (“debtors”) seeks an order finding Joseph Adam in contempt of the order of Wilton-Siegel J. dated November 10, 2011 and the order of Morawetz J. dated December 2, 2011.

[2] The orders were made following the appointment of the receiver in an attempt to recover precious metals consisting of gold bars and silver with a value of approximately \$2.2 million which the debtors obtained just prior to the receivership order. The silver has been returned to the receiver. However the gold has not. The gold consists of 32 gold bars with a value of approximately \$1.85 million.

[3] The order of Wilton-Siegel J. directed that the parties in possession or control of the precious metals deliver possession and control of them by November 14, 2011 to a schedule 1 bank. The order of Morawetz J. directed Mr. Adam and a company said to have been owned by him at the time to immediately provide the receiver with information regarding the location of the precious metals and the contact information for the individuals or entity in possession or in control of them.

[4] The facts surrounding the obtaining and disposal of these precious metals are, to say the least, unusual if not bizarre.

[5] The respondents debtors are federally incorporated companies that provided Shariah compliant residential real estate loans to homeowners secured by property located in Ontario pursuant to “Musharakah Home Financing Agreements – Purchase”. There were approximately 172 of such active financing arrangements in the debtors’ portfolio at the time the receivership order was granted.

[6] Omar Kalair was the president and CEO of the debtors. The debtors’ Shariah Ethics Board, later incorporated as Multicultural Consultancy of Canada Inc. (“MCC”), issued rulings that the MHF Agreements were Shariah compliant. Yusuf Panchbaya was the chairperson of MCC. The transcripts from examinations of Messrs. Kalair and Panchbaya and of Mr. Adams disclose the following:

- (a) On March 16, 2011, Central 1 Credit Union, the principal secured lender to the debtors owed in excess of \$30 million, commenced an application to appoint a receiver of the property of the debtors. The debtors retained counsel and opposed the appointment of the receiver.
- (b) On August 30 in September 2, 2011, Mr. Kalair purchased \$1.867 million worth of gold bars from Bank of Nova Scotia with funds from the debtors' bank account. On September 8, 2011, Mr. Kalair purchased silver the valued at \$322,343. Mr. Kalair says that he stored the precious metals at his office.

- (c) On September 26, 2011 Mr. Kalair, acting on instructions from Mr. Panchbaya, created an invoice for MCC's services to the debtors in the amount of \$2,790,000 for Shariah consulting services from 2004 to 2011.
- (d) Mr. Kalair says that he was purchasing the precious metals in order to pay the professional fees of the ethical scholars at MCC, notwithstanding that the debtors had never received an invoice and were then defending a receivership application. He also stated that Mr. Panchbaya asked him to make the purchases in gold and silver rather than cash because the Shariah Board did not have a bank account.
- (e) On October 4, 2011, by resolution of Mr. Panchbaya as the sole director of the MCC, Mr. Adam was appointed by MCC as Manager-Finance. The resolution was drafted by Mr. Kalair at Mr. Panchbaya's request.
- (f) On October 4, 2011, pursuant to Mr. Panchbaya's instructions, Mr. Kalair says that he delivered the precious metals to Mr. Adam during the night at a Shopper's Drug Mart parking lot at Rexdale and Islington. Mr. Adam in his testimony confirmed receipt of the precious metals.
- (g) The debtors withdrew their opposition to the receivership on October 6, 2011 and the receivership order was made the next day.
- (h) Mr. Kalair said that Mr. Adam returned the silver to him on November 1, 2011 in the parking lot beside his office and later that day Mr. Panchbaya came by and picked it up. Mr. Panchbaya testified that he picked up the silver on November 7, 2011 from Mr. Kalair's office parking lot. He later returned the silver to the receiver.
- (i) Mr. Adam said that on November 7, 2011, he left for Egypt with 32 gold bars in his luggage and that the gold bars were to be used to pay Egyptians who had provided some sharia advice to the debtor through him. He said the Egyptians never rendered any accounts or invoices and had provided four one page rulings to the debtor in 2005.
- (j) Mr. Adam said that on November 8 or 9, 2011, one day before the order of Wilton-Siegel J. requiring the precious metal to be given to the receiver, he gave the gold to his cousin who distributed it to 20 Islamic scholars.

## **Test for contempt of court**

[7] Notwithstanding its civil nature, civil contempt of court is quasi-criminal and the burden of proof is beyond a reasonable doubt. A three-pronged test is required. First, the order that was breached must state clearly and unequivocally what should and should not be done. Second, the party who disobeys the order must do so deliberately and willfully. Third, the evidence must show contempt beyond a reasonable doubt. See *Prescott-Russell Services for Children and Adults v. N.G. et al*, (2006) 82 O.R. (3d) 686 (C.A.) at paras. 26 and 27.

## **Analysis**

### **(a) Order of Wilton-Siegel J.**

[8] Mr. Adam acknowledges having received a copy of the order of Wilton-Siegel J. dated November 10, 2011. There is no question but that the order states clearly and unequivocally what should be done. It directed that the parties in possession or control of the precious metals deliver possession and control of them by November 14, 2011 to a schedule 1 bank chosen by the receiver.

[9] Mr. Adam takes the position that while he took the 32 gold bars to Egypt, he delivered them to his cousin one or two days before the order of November 10, 2011 and thus cannot be said to be in breach of it. The issue therefore is whether it can be said that Mr. Adam is "in possession or control" of the gold bars that he says he delivered to his cousin.

[10] Mr. Adam was examined under oath in Egypt on February 3, 2012. It was done through Skype. While all that is available is a transcript of the examination, it is quite obvious that what Mr. Adam says needs to be looked at with a healthy skepticism, as it is apparent that he is prepared to be untruthful. On his examination, he at first said that he had been in Egypt since November 7, 2011 when he went there with the gold bars. When asked if he accessed his RBC account in Toronto at the end of November and early December 2011, he said that he did not. However, when shown a photograph of him taken by the RBC security cameras on November 26 and December 1, 2011, he admitted that it was he in the photographs and that he was in Toronto

between those dates. He purported not to remember when he had come back to Toronto or when he then returned to Egypt.

[11] Prior to his examination, Mr. Adam was in communication with his counsel Mr. Levitt and was aware of the court order requiring the gold bars to be returned. He said that he had spoken with a family member, who I take to be the cousin to whom says he gave the gold bars, who told him that there were 10 people who had received one gold bar each who were willing to give the gold bars back. When asked directly whether he was prepared to get those 10 gold bars back from the 10 people who said they would return them, and turn that gold over to the receiver, he replied that family members told him they would guarantee to get the gold from the 10 people, but then said "How about me? I need a guarantee from you." What he meant by a guarantee was a release. When asked directly what it was he was asking for in exchange for the 10 gold bars, he said that Mr. Levitt knew and Mr. Levitt said that Mr. Adam proposed providing the 10 gold bars on condition that he be given a release. In other words, in return for a release, he will deliver 10 of the 32 gold bars.

[12] At one point Mr. Adam said on his examination that he had been told by his family member that if he is safe, they will cooperate. It was suggested that this establishes that Mr. Adam does not unconditionally control the 10 gold bars and that the family member will not cooperate unless Mr. Adam is "safe". I do not accept that. Mr. Adams went on to say that family members were asking him "Are you going to be in trouble?" And his reply was "No. If you give me, I will hand it over, and my lawyer will guarantee a letter for my safety. This is my request." I do not read that as saying that the family members are asking for any guarantee for his safety. If any of his family members are truly concerned about Mr. Adam being in trouble, one would expect that they would quickly do what was required in order for Mr. Adam not to be held in contempt of court and subject to a jail sentence in Canada.

[13] In my view assuming that Mr. Adam gave the 32 gold bars to his cousin who gave them to others, as he says, his evidence amounts to an admission that at least with respect to the 10 gold bars, he has "possession or control" of them. Thus he is required by the order of Wilton-Siegel J. to deliver them to a schedule 1 bank to be agreed by the receiver and MCC. He is in

breach of that order, knowingly so, and has no right to demand any release in return for delivering these gold bars to the receiver. In my view, and I so find, Mr. Adam is in contempt of that order.

**(b) Order of Morawetz J.**

[14] Mr. Adam acknowledges having received a copy of the order of Morawetz J. dated December 2, 2011. There is no question but that the order states clearly and unequivocally what should be done. It directs that Mr. Adam immediately provide the receiver with information regarding the location of the precious metals and the contact information for the individuals in possession or in control of them.

[15] Until his examination, Mr. Adam never provided the receiver with the name or contact information for the person to whom he says he gave the 32 gold bars. Thus he was breach of the order. On his examination, he gave the name of the cousin to whom he gave the gold bars and the city in which he lived. He was asked to provide an address and telephone number for the cousin, and while he said he would provide that information to Mr. Levitt on the following day, a Saturday, no such information was provided to Mr. Levitt by the time this matter was argued on Monday, February 6, 2012.

[16] On his examination, Mr. Adam was asked to provide the names of the 20 persons to whom the gold bars were distributed in Egypt. He refused to disclose the names because he said he had been told that these persons were working without government consent. He was advised on the record by Mr. Levitt that he was going to have to provide the information because of the court order. Mr. Adam then said that he would "ask the two family members to push it". Later in the examination he said that because his cousin was close to him, he could get this information for the receiver.

[17] Mr. Adams was also asked for the names and contact information for the 10 persons who were prepared to return the gold. He said he would talk to his cousin about it.

[18] It is clear that Mr. Adam has the information required to be provided to the receiver pursuant to the order of Morawetz J. of December 2, 2011. It is no answer for him to say that

someone else does not want him to provide that information. In my view, and I so find, Mr. Adam is knowingly in contempt of that order.

### **Appropriate punishment**

[19] The receiver requests that a committal order be issued requiring Mr. Adam to be imprisoned in Canada until he purges his contempt by delivering up at least the 10 bars of gold that he says are available and providing the receiver with full contact information with respect to Mr. Adam's cousin to whom he says he gave the 32 gold bars and the 20 persons who are said to have been given the gold bars by his cousin.

[20] As Mr. Adam has been found in contempt, rule 60.11 (5) of the rules of civil procedure sets out the orders that may be made, as follows:

60.11 (5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned if the person fails to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary, and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

[21] One purpose of a sentencing for civil contempt is punishment for a breach of a court order. But the main purpose is coercive: to promote compliance with the court's orders. Unlike a criminal case in which incarceration is imposed exclusively as a punishment for prior criminal conduct, incarceration for a civil contempt serves both as a punishment and as an incentive to purge an ongoing contempt. See *Re Chiang* (2009), 93 O.R. (3d) 483 (C.A.) at para. 117.

[22] The principles to be considered in determining an appropriate sentence for civil contempt of court have recently been thoroughly canvassed by Brown J. in *Cellupica v. Di Giulio* (2011), 105 O.R. (3d) 687, and need not be repeated here.

[23] One of the factors to be considered is the gravity of the conduct. In the case of Mr. Adam, it is non-compliance with two court orders. That is a very serious matter. In *Sussex Group Ltd. v. Fangeat* (2003), 42 C.P.C. (5th) 274 Cumming J. stated the following in discussing willful violation of a court order, the sentiment of which I agree:

50. It is integral to a free and democratic society like Canada that citizens act pursuant to and under the rule of law. Court orders in force must be respected and followed. The deliberate failure to obey a court order strikes at the very heart of the administration of justice. This includes court orders relating to commercial matters such as in the case at hand. If someone can simply ignore or finesse his way around a court order, it will tend to add uncertainties and risks, with their consequential inefficiencies and additional costs, as well as causing unfairness, with its consequential inequities and additional costs, to the commercial marketplace. It is commonly recognized that the rule of law is essential in a democratic society for the protection of civil liberties and human rights. It should be evident that the rule of law is just as essential for the protection of citizens in their commercial affairs. And just as white collar crime is crime, white collar contempt is contempt.

51. If the remedies a court directs to be put in place through its orders can be ignored with impunity, the road to civil anarchy is close at hand. The thin veil of civilization that cloaks our community through the rule of law is fragile and in need of constant protection.

[24] The failure to return the gold bars and the failure to provide information as to whom those gold bars were given is particularly troublesome in a case such as this in which one may be excused for having considerable skepticism as to whether any of the story makes sense. One must remember that the only hard fact is that the gold bars were obtained with the debtors' money shortly before the debtors agreed to the receiving order.

[25] The receiver has offices in Cairo and would be able to speak directly to the 20 persons allegedly given the gold bars. This no doubt would be of considerable assistance in trying to determine what happened and why it happened.

[26] Mitigation is an issue to be considered. If Mr. Adam were to purge his contempt, that would be a factor to take into account. To date he has shown little willingness to do so. As late as last Friday he for the first time said he would provide certain information to the receiver on the following day, yet he failed to do so.

[27] I do not view the suggested excuses given by Mr. Adam last Friday on his examination as being factors in his favour. It is apparent from his examination that he has information and whether others wish him not to disclose it is of no matter. Mr. Adam did not suggest that he would be in some kind of trouble if he disclosed the information.

[28] I see little purpose in ordering Mr. Adam to pay a fine for his contempt. For certain collectability would be a considerable issue. In my view it is appropriate that Mr. Adam be sentenced to imprisonment for a period of time. I am reluctant to make an order of the kind sought by the receiver that Mr. Adam be incarcerated indefinitely until he purges his contempt. Taking into account all the factors relevant to this case and considering other sentencing cases for civil contempt, in my view an appropriate period of incarceration is six months.

[29] The receiver has offices in Cairo where Mr. Adam can deliver whatever gold bars he has access to in Egypt, which would be at least the 10 gold bars that he says he can deliver to the receiver. The contact information for the receiver in Cairo is

Grant Thornton International, Cairo  
Grant Thornton Mohamed Hilal  
87 Ramsis Street (in front of the telecom building), Cairo,  
Contact: Mr. Amr Fathalla, Mobile: 011 20 12-218-2726; Main Office:  
011-20-2-2574-4810

[30] The information required to be provided to the receiver can be provided to the receiver through Mr. Levitt. It can also be provided to the receiver in Cairo.

[31] In the circumstances, the sentence I impose is that Mr. Adam be incarcerated for six months upon his arrival, or being found, in Canada unless within seven days he completely purges his contempt. If he does not so purge his contempt, an appropriate Form 60 L shall be issued directing that he be imprisoned for a period of six months following which he is to be

returned to this Court to appear before me upon his release from custody. Mr. Adam will not be eligible for parole before the conclusion of his six months of imprisonment.

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Newbould J.

**DATE:** February 8, 2012

# **TAB 38**

**RCMP Charges in UM Financial Investigation**



Royal Canadian Mounted Police Gendarmerie royale du Canada

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# Charges laid in UM FINANCIAL Bankruptcy Investigation

**(Toronto, Ontario – February 19, 2014)** – The RCMP's GTA Financial Crime Unit in collaboration with the Ontario Region Special Investigation Unit of the Office of the Superintendent of Bankruptcy (OSB), have charged two Toronto area men with offences under the *Bankruptcy and Insolvency Act* (BIA) and the *Criminal Code* (CC).

Omar Farooq KALAIR, age 38, of Toronto and Yusuf PANCHBHAYA, age 55, of Mississauga have been charged individually and jointly with the following offences:

- s. 198(1)(a) BIA – Fraudulent Disposition of Bankrupt's Property
- s. 198(2) BIA – Failure to Comply with Duties of a Bankrupt
- s. 198(1)(b) BIA – Failure to Answer Fully & Truthfully
- s. 334(a) CC – Theft Over \$5000
- s. 380 CC – Fraud Over \$5000
- s. 462.31(1) CC – Laundering Proceeds of Crime

The charges are in relation to events surrounding the November 2011 bankruptcies of UM CAPITAL INC. and UM FINANCIAL INC. of Toronto.

The allegations relate to the misappropriation of approximately \$ 4.3 million in mortgage payments, the purchase & disappearance of 32kgs of gold bars, and the abuse of the bankruptcy process.

The matter is scheduled for first appearance at the Ontario Court of Justice – Old City Hall courthouse in Toronto on February 21, 2014. The accused parties were instructed to surrender peacefully to authorities. On January 29, 2014, Yusuf PANCHBHAYA turned himself into the RCMP and was later released on conditions.

**Update:** On March 6, 2014, Omar KALAIR turned himself into the RCMP in Toronto. KALAIR was arrested and taken to Old City Hall courthouse for a bail hearing. He was released on conditions and is scheduled for next appearance on April 2, 2014.

If anyone believes they have been a victim of this fraud, or if they know the whereabouts of Omar KALAIR, please call the Ontario RCMP at 1-800-387-0020 or anonymously through Crime Stoppers at 1-800-222-8477.

The RCMP and the OSB Special Investigation Units continue to combine their efforts to investigate allegations of criminal wrongdoing related to bankruptcy and insolvency matters in order to protect the integrity of Canada's financial systems.

-30-

**For further information:**

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# **TAB 39**

**R. v. Kalair, 2015 ONSC 6784 motion**

**CITATION:** R. v. Kalair, 2015 ONSC 6784  
**COURT FILE NO.:** MO41/15  
**DATE:** 20151102

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** HER MAJESTY THE QUEEN

- and -

OMAR KALAIR

**BEFORE:** TROTTER J.

**COUNSEL:** *Martin Kerbel Q.C.* for the Accused/Applicant      *Jeremy Glick* for the Crown/Respondent

**HEARD:** OCTOBER 5, 2015

**ENDORSEMENT**

**INTRODUCTION**

[1] Mr. Kalair has been committed to stand trial on a number of property-related offences under the *Criminal Code* and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”).<sup>1</sup> Mr. Kalair, who has been denied Legal Aid, claims he cannot afford to pay a lawyer and seeks an order in accordance with the decision in *R. v. Rowbotham* (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).

**FACTUAL BACKGROUND**

[2] The charges arise from an investigation of the Office of the Superintendent of Bankruptcy. It is alleged that two Toronto-based companies operated by Mr. Kalair and his co-accused specialized in home mortgage financing arrangements that were compliant with Islamic Sharia law. The main secured creditor of the two companies was Central 1 Credit Union (“Central 1”). In March 2011, Central 1 applied to the Ontario Superior Court to appoint a Receiver/Manager over the affairs of the two companies. At the time, over \$31 million was owed to Central 1. On October 6, 2011, Grant Thornton Limited was appointed as the Receiver of all

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<sup>1</sup> Mr. Kalair is charged with theft over \$5,000 (*Criminal Code*, s. 334) (2 counts); fraud over \$5,000 (s. 380)(2 counts); laundering the proceeds of crime (s. 462.31(1)); fraudulent disposition of a bankrupt’s property (*BIA*, s. 198(1)); failure in the duties of a bankrupt (*BIA*, s. 198(2)); and failure to answer truthfully all questions put to a bankrupt at an examination (*BIA*, s. 198(1)(b)).

assets of the two debtor companies. It filed the assignment into bankruptcy on November 23, 2011. Over the ensuing months, Mr. Kalair submitted to examinations under the *BIA*.

[3] It is alleged that the debtor companies received in excess of \$3.4 million from various mortgagors/homeowners but failed to remit some of these monies to Central 1. It is also alleged that some of these funds were comingled with the funds of the debtor companies and used to purchase silver coins. This occurred as the debtor companies defended the receivership application. Shortly after this transaction, Mr. Kalair made further purchases of gold bars, silver bars and silver coins. While the silver was subsequently recovered, 32 kgs gold valued at \$1.8 million has not been returned and was reportedly given to Muslim scholars in Egypt.

[4] Mr. Kalair was represented by counsel at the preliminary inquiry. He paid just over \$5,300 in legal fees. Mr. Kalair claims to have exhausted all personal funds available to him. He applied for Legal Aid, but his application and all of his appeals have been denied.

[5] Mr. Kalair is 40 years old. He is well-educated. He has a Bachelor of Arts degree from Wilfred Laurier University, as well as a Graduate Business Diploma. At one time he was admitted to an overseas Ph.D. program in economics. However, he never commenced his studies. Mr. Kalair has been a speaker at a number of conferences on Islamic finance in Toronto. He spoke at a conference at Harvard University on one occasion.

[6] Mr. Kalair was in a car accident in March of 2013. He suffered numerous injuries and experiences chronic pain in his neck. He suffers from other muscular-skeletal difficulties, including chronic bilateral carpal tunnel syndrome. This was supported by medical documentation.

[7] Mr. Kalair currently receives government assistance in the amount of just under \$700 per month. He pays rent in the monthly amount of \$750. He receives some assistance from friends. Mr. Kalair is divorced and has 4 children who he is obligated to support in the amount of \$858/month. He has been unable to meet these obligations without the assistance of family.

[8] Mr. Kalair has produced recent bank statements and his Canada Revenue Agency Notices of Assessments for the last few years. He was cross-examined during the hearing of this application. I am satisfied that Mr. Kalair is essentially indigent and that his injuries currently prevent him from being gainfully employed in the field in which he used to work, and for which he has highly specialized training.

## **ANALYSIS**

[9] This case involves a straightforward application of the well-known principles in *Rowbotham*. See also *R. v. Peterman* (2004), 185 C.C.C. (3d) 352 (Ont. C.A.) and *R. v. Rushlow* (2009), 245 C.C.C. (3d) 505 (Ont. C.A.). Mr. Kalair must establish on a balance of probabilities that: (1) he has been denied Legal Aid; (2) because of his present financial circumstances, he is

unable to privately retain counsel; and (3) due to the seriousness of the charges and the complexity of the case, counsel must be appointed in order to guarantee a fair trial.

[10] A *Rowbotham* application is not an appeal from the denial of Legal Aid. However, the refusal of Legal Aid, and the reasons for the refusal, may be helpful in deciding this issue. In the end, however, I must make an independent determination of whether state-funded counsel is necessary to ensure a fair trial: see *Peterman*, at p. 361. Moreover, it is important to bear in mind the following words of Rosenberg J.A. in *Rushlow*, at p. 512:

Because of the pervasiveness of legal aid, it will be the rare and exceptional case that the court will find it necessary to appoint counsel. This does not mean that counsel is only required in exceptional cases. Rather, it is the fact that legal aid is available for accused who cannot afford a lawyer that *Rowbotham* orders are exceptional.

Courts have considered a number of factors in determining whether appointing counsel is essential in view of the complexity and seriousness of the case. Generally, the courts look at the personal abilities of the accused, such as their education and employment background, their ability to read and their facility with the language of the proceedings. The courts will also consider the complexity of the evidence; the procedural, evidentiary and substantive law that applies to the case; the likelihood of especially complex procedures, such as a *voir dire*; the seriousness of the charges; the expected length of the trial; and the likelihood of imprisonment... [citations omitted; emphasis added]

[11] In that case, the Court of Appeal found that the trial judge erred in requiring the applicant to meet a standard that was too high, involving “unique challenges.” As Rosenberg J.A. said at p. 513:

The authorities hold that the case must be of some complexity, but a requirement of unique challenges puts the threshold too high. It is enough that there is a probability of imprisonment and that the case is sufficiently complex that counsel is essential to ensure that the accused receives a fair trial.

[12] Mr. Kalair has established that he has been denied Legal Aid. He appealed the denial and, on three separate occasions, requested that his case be reconsidered. At each stage, he has been unsuccessful.

[13] I am satisfied that, in his present circumstances, Mr. Kalair is essentially indigent and is unable to retain private counsel. I accept that Legal Aid Ontario determined that the materials

that were provided by Mr. Kalair were incomplete and, in some ways, inaccurate. However, assessing his situation on the day that this Application was argued (October 5, 2015), and on the basis of the materials filed and Mr. Kalair's testimony, I am persuaded that he is unable to retain private counsel. I am satisfied that, despite the Respondent's arguments concerning a 2003 Porsche Cayenne, worth approximately \$3,000, Mr. Kalair has no assets to speak of, especially since the dissolution of his marriage.

[14] Mr. Kalair's fluctuating bank balance was a cause for concern for Legal Aid. However, after hearing Mr. Kalair's testimony, I am satisfied that the influx of certain funds came from his family. They are no longer willing to help him. I also note that the financial records filed on this application do not reveal any imprudence, let alone extravagance, in Mr. Kalair's spending habits: see *R. v. Munroe*, 2015 ONSC 4814, at para. 8. Acting prudently, he is unable to currently meet his financial obligations.

[15] I am further satisfied that Mr. Kalair is involuntarily unemployed. He survives on social assistance. Since he was charged, Mr. Kalair has been subject to the following bail condition: "Do not operate a business or hold employment in credit or mortgage industries." This condition has essentially prevented him from working in his area of specialty. In any event, Mr. Kalair's accident in March of 2013 has rendered him unfit for work. This was substantiated by medical documentation filed as part of this Application. It was neither contradicted nor undermined by the Respondent.

[16] The case against Mr. Kalair is very serious. Given the vast sums of money involved, if found guilty, he will face a period of imprisonment, likely in the penitentiary.

[17] There are two components to the complexity analysis in this case: factual complexity and legal complexity. The factual foundation of this case is complex. It will be necessary for the trial judge to consider and evaluate voluminous financial and business records, involving the relationship and transactions between the mortgagors/homeowners, Mr. Kalair's companies and Central 1. The preliminary inquiry took five days to complete, with both accused being represented by counsel. The trial is expected to take roughly four weeks. I am satisfied that Mr. Kalair has the intelligence, education and experience necessary to understand this dimension of the case. Due to his experience with Sharia compliant mortgages, Mr. Kalair will probably have a superior grasp of all aspects of the alleged transactions.

[18] However, I am much more concerned about the legal complexity of this case. Mr. Kalair has no legal training. He has no criminal record and, on his own evidence, and has little exposure to courtrooms. In his evidence, he testified that he has no knowledge of some basic legal concepts (such as hearsay evidence and its exceptions). Moreover, through the questions posed by his counsel, Mr. Kerbel, it was suggested that there will be an application for the production of records held by a third-party (the Receiver), pursuant to s. 278.1 of the *Criminal Code*. Mr. Kalair has no knowledge of this procedure. And this points to another unusual feature of this

case – the relationship between some of the *Criminal Code* offences and the bankruptcy and insolvency proceedings. Indeed, charges under the *BIA* are not prosecuted in this court with any frequency.

[19] In sum, from a procedural and evidentiary perspective, this case is very complex. When Mr. Kalair's medical challenges are added to the mix, he will have a very difficult time defending himself, especially alongside a co-accused who has counsel.

## **CONCLUSION**

[20] On the evidence before me, I am satisfied on a balance of probabilities that, in order to ensure a fair trial, it is necessary that Mr. Kalair be represented by counsel. Accordingly, the proceedings are temporarily stayed until the Crown has a reasonable opportunity to arrange for the funding of counsel to represent Mr. Kalair in these proceedings.

---

TROTTER J.

**Date:** November 2, 2015

# **TAB 40**

**CBC Story about Khaled Nawaya arrest.**

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webpage capture

Saved from <http://www.cbc.ca/news/canada/british-columbia/canadian-border-guards-nab-syrian-w> search  
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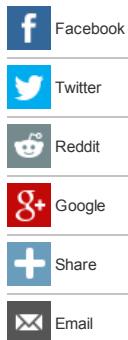
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# Canadian border guards nab Syrian with \$800K in gold

CBC News Posted: Nov 11, 2009 12:42 PM PT | Last Updated: Nov 11, 2009 12:31 PM PT

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A Syrian man is awaiting a detention hearing in Vancouver after he was caught crossing the U.S.-Canada border with nearly \$1 million in gold and several items that could link him to a listed terrorist organization.

When Khaled Nawaya, 35, pulled up to a Surrey, British Columbia, border crossing on Oct. 6, he said he was heading to a new job as a flight instructor at a small B.C. airport. He was already approved to be a permanent resident and had been cleared by the U.S. Federal Bureau of Investigation, Interpol and Canadian immigration.

Nawaya told Canadian Border Service officers he was bringing \$10,000 in cash with him, but when they searched his car and his pockets they found more than \$800,000 in Canadian gold coins and about \$100,000 in cash.

The border guards also discovered a pro-Palestinian scarf, DVDs of 9/11 conspiracy theories and a ring bearing the insignia of Hezbollah, the Lebanon-based entity that Canada has officially listed as a terrorist organization.

## National security threat

Those items, combined with the undeclared money, were apparently enough for Canada

Listed terrorist entities

**'There's nothing illegal about having political leanings — to being pro-Palestinian and anti-Israel.'**

— Lawyer Phil Rankin

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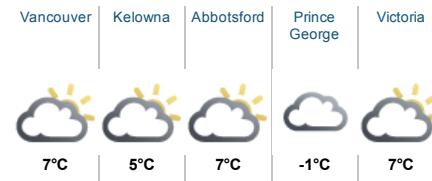


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border guards to detain Nawaya on suspicion of being a security threat.

According to transcripts of a previous detention hearing, the government successfully argued the man should remain detained while authorities investigate the ring's meaning and the source of the money.

Government lawyer Kamal Gill described the RCMP investigation into Nawaya as "a probable national security nexus."

Nawaya has not been charged with a crime. However, RCMP are recommending charges for the failed declaration under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, he said.

Nawaya's next detention review is Thursday. Meanwhile the RCMP said they are tracking down the source of the money.

"At this point in time, we're investigating the source of the money and also its intended use," said Insp. Paul Richards, who heads the Integrated National Security Enforcement team.

## Just a naive lie: lawyer

Nawaya's lawyer, Phil Rankin, said the Syrian is no security threat and the incident is the result of a naive attempt by his client to avoid paying taxes.

"I think he was very concerned about the idea they were going to tax him," said Rankin.

As for the other suspicious materials, Rankin said it is not illegal to have pro-Palestinian or anti-Israel beliefs in Canada.

According to Public Safety Canada:

"The listing of an entity is a very public means of identifying a group or individual as being associated with terrorism.

"The definition of an entity includes a person, group, trust, partnership or fund, or an unincorporated association or organization.

"It is not a crime to be listed. However, one of the consequences of being listed is that the entity's property can be the subject of seizure/restraint and/or forfeiture."

"In addition, institutions such as banks, brokerages, etc. are subject to reporting requirements with respect to an entity's property and must not allow those entities to access the property nor may these institutions deal or otherwise dispose of the property."

"It is an offence to knowingly participate in or contribute to, directly or indirectly, any activity of a terrorist group. This participation is only an offence if its purpose is to enhance the ability of any terrorist group to facilitate or carry out a terrorist activity."

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### ■ Currently listed entities



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- Shaking off the debt addiction as rates rise will be hard on Canadian borrowers: Don Pittis
- Dating apps for the 'elite' reinforce the worst aspects of human nature 358
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"They are significant in that they might show his sentiments or his political leanings, but there's nothing illegal about having political leanings — to being pro-Palestinian and anti-Israel," said Rankin.

"Those feelings are shared by hundreds of millions of people and in Canada by tens of thousands of people," said Rankin.

"If you really were a professional you would sanitize yourself. You wouldn't have anything that would remotely raise eyebrows. He didn't seem to be making attempts to hide it, so that's why I think there's quite a bit of naiveté in his approach to it," he said.

## Money from legitimate income

Rankin said the money isn't linked to terrorism and every penny can be accounted for. Some came from a civil lawsuit and some from Nawaya's own earnings, while the gold coins were bought on Nawaya's behalf by his brother in Texas, Rankin said.

Rankin is concerned that if Nawaya is deemed inadmissible, he's likely to be deported to Syria, where there is a prospect he'll face torture.

Rankin said Nawaya likely piqued the department's interest because he is a flight instructor and because he is of Middle Eastern descent.

Nawaya was born in Saudi Arabia but holds Syrian citizenship. Upon moving to the U.S. at the age of 17, he earned two degrees, in professional aeronautics and management.

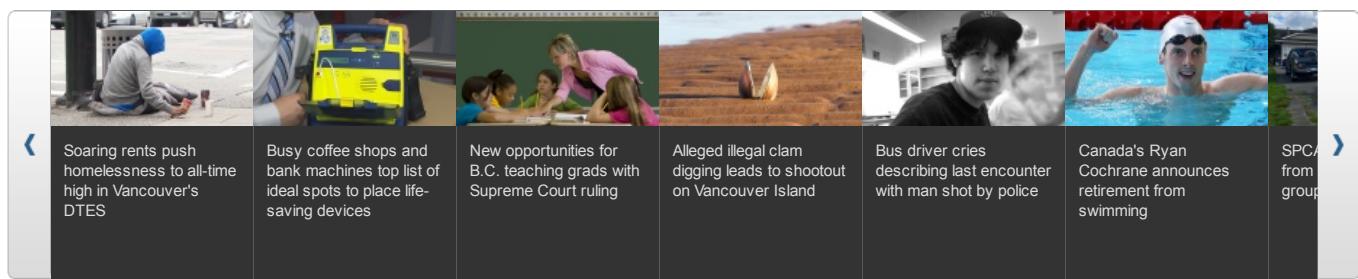
He's being held in a Vancouver-area detention centre, and his lawyer describes his mood as "depressed and anxious."

With files from The Canadian Press



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## Don't Miss



# TAB 41

**CBC report about Nawaya freed, gold returned.**

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# Man carrying \$800K in gold freed

CBC News Posted: Nov 12, 2009 5:18 PM PT | Last Updated: Nov 12, 2009 6:51 PM PT



Saudi man carrying \$800K in gold freed  
2:27

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A man held on suspicion of being a national security threat after trying to bring nearly \$1 million into Canada secretly has been released from custody and now says he's the victim of profiling.

Agents with the Canada Border Services Agency said that when Khaled Nawaya arrived at the Canada-U.S. border south of Vancouver last month, he told them he was carrying \$10,000 cash.

But a search of his vehicle found more than \$800,000 in

Canadian gold coins, \$80,000 cash and other paraphernalia that agents deemed suspicious. The money has been confiscated.

Officers said the search also turned up a pro-Palestinian scarf, DVDs about Sept. 11 conspiracy theories and a ring featuring the insignia of Hezbollah.

Hezbollah is a Shia Islam group based in Lebanon and is listed as a terrorist organization in Canada.

An Immigration and Refugee Board adjudicator released Nawaya on Thursday on the condition that he provide documentation on the source of his money.

## 'Money from lawsuit'

Nawaya, who was born in Saudi Arabia and holds Syrian citizenship, said most of the money came from a lawsuit he won in the United States, where he had lived since 1993.



Some of the gold coins seized CBSA agents say they found with Khaled Nawaya at a border crossing south of Vancouver. ((RCMP))

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No carry-on laptops, tablets on U.S. and U.K.-bound jets from Mideast, North Africa

"I'm still in a shock and trying to digest everything and thanks God for everything," Nawaya, 35, told reporters later.

Nawaya declined to comment on the politically related items the CBSA found or his decision to mislead border guards about the money.

"I want to tell everyone who's suspicious [of me] there's no reason to be suspicious, and not everyone who comes from the Middle East is a bad person."

Nawaya's Canadian lawyer admitted Nawaya's behaviour at the border did not serve him well. "He raised their alarm bells, needlessly," Phil Rankin said.

Nawaya's conditions for release require that he provide an address to authorities and check in monthly with the CBSA.

Rankin said Nawaya still faces the possibility of charges for not declaring the money, which he may never get back.



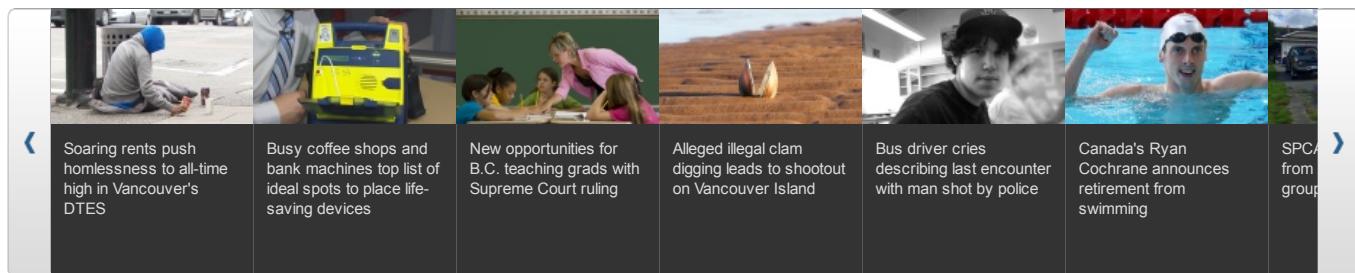
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# TAB 42

**Seizure Report of CBSA for Nawaya gold coins (October 6, 2009)**

TODO: Subpoena CBSA for this doc before trial.

# TAB 43

**Narrative report of seizing officer in Nawaya case (October 6, 2009)**

TODO: Subpoena this doc from CBSA before trial.

# **TAB 44**

**Canada Gazette – SOR/93-106 “Proclamation Authorizing the Issue and  
Prescribing the Composition, Dimensions and Designs of Certain Precious  
Metal Coins”**

Registration  
SOR/93-106 25 February, 1993

ROYAL CANADIAN MINT ACT

**Proclamation Authorizing the Issue and Prescribing the Composition, Dimensions and Designs of Certain Precious Metal Coins**

R. J. HNATYSHYN  
[L.S.]

Canada

Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

To All to Whom these Presents shall come or whom the same may in anyway concern,

*Greeting:*

JOHN C. TAIT  
*Deputy Attorney General*

A Proclamation

Whereas, pursuant to subsection 5.1(1) and paragraph 5.1(2)(a) of the Royal Canadian Mint Act, as enacted by section 4 of chapter 35 of the 3rd Supplement to the Revised Statutes of Canada, 1985, it is provided that the Governor in Council may, by proclamation, authorize the issue of precious metal coins of a description, and of the standards, margin of tolerance and least current weight applicable to that description, that are specified in Part I of the schedule to that Act, and prescribe the dimensions and designs of any precious metal coins;

Now Know You that We, by and with the advise of Our Privy Council for Canada, do by this Our Proclamation authorize the issue and prescribe the dimensions and designs of the following precious metal coins;

(a) a one dollar coin

- (i) the composition of which shall be gold and the standards, margin of tolerance and least current weight of which shall be as specified in Part I of the schedule to that Act,
- (ii) the diameter of which shall be 14.10 mm,
- (iii) the design of the obverse impression of which shall be the approved effigy of Her Majesty Queen Elizabeth II, with the inscription "ELIZABETH II" at the top and the words "1 DOLLAR 1993" at the bottom of the coin, and

Enregistrement  
DORS/93-106 25 février 1993

LOI SUR LA MONNAIE ROYALE CANADIENNE

**Proclamation autorisant l'émission et prescrivant la composition, les dimensions et les dessins de certaines pièces de métal précieux**

R. J. HNATYSHYN  
[L.S.]

Canada

Elizabeth Deux, par la Grâce de Dieu, REINE du Royaume-Uni, du Canada et de ses autres royaumes et territoires, Chef du Commonwealth, Défenseur de la Foi.

À tous ceux à qui les présentes parviennent ou qu'icelles peuvent de quelque manière concerner,

*Salut :*

*Sous-procureur général*  
JOHN C. TAIT

Proclamation

Attendu qu'en vertu du paragraphe 5.1(1) et de l'alinéa 5.1(2)a) de la Loi sur la Monnaie royale canadienne, édictés par l'article 4 du chapitre 35 du 3<sup>e</sup> supplément des Lois révisées du Canada (1985), le gouverneur en conseil peut, par proclamation, autoriser l'émission de pièces de métal précieux ayant les caractéristiques—désignation, normes, marge de tolérance et poids faible—précisées à la partie I de l'annexe de cette loi et fixer les dimensions et le dessin des pièces de métal précieux,

Sachez que, sur et avec l'avis de Notre Conseil privé pour le Canada, Nous, par Notre présente proclamation, autorisons l'émission et fixons les dimensions et le dessin des pièces de métal précieux suivantes :

a) une pièce de un dollar :

- (i) dont la composition est l'or et dont les normes, la marge de tolérance et le poids faible sont précisés à la partie I de l'annexe de cette loi,
- (ii) dont le diamètre est de 14,1 mm,
- (iii) dont le dessin gravé sur l'avers est l'effigie approuvée de Sa Majesté la Reine Elizabeth II avec l'inscription «ELIZABETH II» au-dessus et la mention «1 DOLLAR 1993» au dessous,

- (iv) the design of the reverse impression of which shall depict a Canadian maple leaf, with the inscription "CANADA" at the top, "FINE GOLD 1/20 OZ OR PUR" at the bottom and "9999" on each side of the coin;
- (b) a two dollar coin
- (i) the composition of which shall be gold and the standards, margin of tolerance and least current weight of which shall be as specified in Part I of the schedule to that Act,
  - (ii) the diameter of which shall be 15.0 mm,
  - (iii) the design of the obverse impression of which shall be the approved effigy of Her Majesty Queen Elizabeth II, with the inscription "ELIZABETH II" at the top and the words "2 DOLLARS 1993" at the bottom of the coin, and
  - (iv) the design of the reverse impression of which shall depict a Canadian maple leaf, with the inscription "CANADA" at the top, "FINE GOLD 1/15 OZ OR PUR" at the bottom and "9999" on each side of the coin;
- (c) a one dollar coin
- (i) the composition of which shall be platinum and the standards, margin of tolerance and least current weight of which shall be as specified in Part I of the schedule to that Act,
  - (ii) the diameter of which shall be 14.10 mm,
  - (iii) the design of the obverse impression of which shall be the approved effigy of Her Majesty Queen Elizabeth II, with the inscription "ELIZABETH II" at the top and the words "1 DOLLAR 1993" at the bottom of the coin, and
  - (iv) the design of the reverse impression of which shall depict a Canadian maple leaf, with the inscription "CANADA" at the top, "FINE PLATINUM 1/20 OZ PLATINE PUR" at the bottom and "9995" on each side of the coin;
- (d) a two dollar coin
- (i) the composition of which shall be platinum and the standards, margin of tolerance and least current weight of which shall be as specified in Part I of the schedule to that Act,
  - (ii) the diameter of which shall be 15.0 mm,
  - (iii) the design of the obverse impression of which shall be the approved effigy of Her Majesty Queen Elizabeth II, with the inscription "ELIZABETH II" at the top and the words "2 DOLLARS 1993" at the bottom of the coin, and
  - (iv) the design of the reverse impression of which shall depict a Canadian maple leaf, with the inscription "CANADA" at the top, "FINE PLATINUM 1/15 OZ PLATINE PUR" at the bottom and "9995" on each side of the coin.

Of All Which Our Loving Subject and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

(iv) dont le dessin gravé au revers représente une feuille d'érable canadienne avec l'inscription «CANADA» au-dessus, la mention «FINE GOLD 1/20 OZ OR PUR» au-dessous et «9999» de chaque côté;

b) une pièce de deux dollars :

- (i) dont la composition est l'or et dont les normes, la marge de tolérance et le poids faible sont précisés à la partie I de l'annexe de cette loi,
- (ii) dont le diamètre est de 15 mm,
- (iii) dont le dessin gravé sur l'avers est l'effigie approuvée de Sa Majesté la Reine Elizabeth II avec l'inscription «ELIZABETH II» au-dessus et la mention «2 DOLLAR 1993» au-dessous,
- (iv) dont le dessin gravé au revers représente une feuille d'érable canadienne avec l'inscription «CANADA» au-dessus, la mention «FINE GOLD 1/15 OZ OR PUR» au-dessous et «9999» de chaque côté;

c) une pièce de un dollar :

- (i) dont la composition est le platine et dont les normes, la marge de tolérance et le poids faible sont précisés à la partie I de l'annexe de cette loi,
- (ii) dont le diamètre est de 14,1 mm,
- (iii) dont le dessin gravé sur l'avers est l'effigie approuvée de Sa Majesté la Reine Elizabeth II avec l'inscription «ELIZABETH II» au-dessus et la mention «1 DOLLAR 1993» au-dessous,
- (iv) dont le dessin gravé au revers représente une feuille d'érable canadienne avec l'inscription «CANADA» au-dessus, la mention «FINE PLATINUM 1/20 OZ PLATINE PUR» au-dessous et «9995» de chaque côté;

d) une pièce de deux dollars :

- (i) dont la composition est le platine et dont les normes, la marge de tolérance et le poids faible sont précisés à la partie I de l'annexe de cette loi,
- (ii) dont le diamètre est de 15 mm,
- (iii) dont le dessin gravé sur l'avers est l'effigie approuvée de Sa Majesté la Reine Elizabeth II avec l'inscription «ELIZABETH II» au-dessus et la mention «2 DOLLAR 1993» au-dessous,
- (iv) dont le dessin gravé au revers représente une feuille d'érable canadienne avec l'inscription «CANADA» au-dessus, la mention «FINE PLATINUM 1/15 OZ PLATINE PUR» au-dessous et «9995» de chaque côté;

De ce qui précède, Nos fâux sujets et tous ceux que les présentes peuvent concerner sont par les présentes requis de prendre connaissance et d'agir en conséquence.

In Testimony Whereof, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness: Our Right Trusty and Well-beloved Ramon John Hnatyshyn, a Member of Our Privy Council for Canada, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, One of Our Counsel learned in the law, Governor General and Commander-in-Chief of Canada.

At Our Government House, in Our City of Ottawa, this twenty-fourth day of February in the year of Our Lord one thousand nine hundred and ninety-three and in the forty-second year of Our Reign.

By Command,  
JANET R. SMITH  
*Deputy Registrar General of Canada*

En Foi de Quoi, Nous avons fait émettre Nos présentes lettres patentes et à icelles fait apposer le grand sceau du Canada. Témoin : Notre très fidèle et bien-aimé Ramon John Hnatyshyn, Membre de Notre Conseil privé pour le Canada, Chancelier et Compagnon principal de Notre Ordre du Canada, Chancelier et Commandeur et de Notre Ordre du Mérite militaire, l'un de Nos conseillers juridiques, Gouverneur général et Commandant en chef du Canada.

À Notre Hôtel du Gouvernement, en Notre ville d'Ottawa, ce vingt-quatrième jour de février en l'an de grâce mil neuf cent quatre-vingt-treize, le quarante-deuxième de Notre règne.

Par ordre,  
*Sous-registraire général du Canada*  
JANET R. SMITH

# **TAB 45**

**Canada Gazette SOR/2012-126 “Order Authorizing the Issue of Circulation  
Coins of Two Dollars, One Dollar and Twenty-five cents, Specifying Their  
Characteristics and Determining Their Design”**

Registration  
SOR/2012-126 June 15, 2012

ROYAL CANADIAN MINT ACT

**Order Authorizing the Issue of Circulation Coins of Two Dollars, One Dollar and Twenty-five cents, Specifying Their Characteristics and Determining Their Design**

P.C. 2012-803 June 14, 2012

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to sections 6.4<sup>a</sup> and 6.5<sup>a</sup> of the *Royal Canadian Mint Act*<sup>b</sup>,

(a) authorizes the issue of a two dollar circulation coin, the characteristics of which are to be as specified in item 1<sup>c</sup> of Part 2 of the schedule to that Act and the diameter of which shall be 28.03 mm, and determines the design of that coin to be as follows, namely,

(i) the obverse impression is to depict, on the inner core of the coin, the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline and, on the outer ring, the inscriptions "ELIZABETH II", "2012 CANADA" and "2 DOLLARS" and the symbol of the Government of Canada's commemorative program for the War of 1812 to the left, top, right and bottom of the effigy, respectively, and

(ii) the reverse impression is to depict, on the inner core of the coin and overlapping to the outer ring, the HMS Shannon leading her prize, the American frigate Chesapeake, into Halifax Harbour with Citadel Hill (Fort George) in the background and, on the outer ring, two virtual images of a maple leaf at the top of the coin, the inscriptions "The War of" and "La guerre de" to the left of the virtual images, the year "1812", the artist's initials "BR" and the inscription "HMS SHANNON" to the right of the virtual images and two lasermark maple leaves, each within a circle and on either side of the figurehead of the Shannon, at the bottom of the coin;

(b) authorizes the issue of two one dollar circulation coins, the characteristics of which are to be as specified in item 2.1<sup>d</sup> of Part 2 of the schedule to that Act and the diameter of which shall be 26.5 mm, and determines the design of the coins to be as follows, namely,

(i) a one dollar coin

(A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "D•G•REGINA" and "2012" to the left, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

Enregistrement  
DORS/2012-126 Le 15 juin 2012

LOI SUR LA MONNAIE ROYALE CANADIENNE

**Décret autorisant l'émission de pièces de monnaie de circulation de deux dollars, de un dollar et de vingt-cinq cents, précisant leurs caractéristiques et fixant leur dessin**

C.P. 2012-803 Le 14 juin 2012

Sur recommandation du ministre des Finances et en vertu des articles 6.4<sup>a</sup> et 6.5<sup>a</sup> de la *Loi sur la Monnaie royale canadienne*<sup>b</sup>, Son Excellence le Gouverneur général en conseil :

a) autorise l'émission d'une pièce de monnaie de circulation de deux dollars dont les caractéristiques sont précisées à l'article 1<sup>c</sup> de la partie 2 de l'annexe de cette loi et dont le diamètre est de 28,03 mm et fixe le dessin de cette pièce de la manière suivante :

(i) à l'avers sont gravés, sur la partie centrale de la pièce, l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB » et, sur l'anneau extérieur, à gauche, en haut, à droite et en bas, respectivement, les inscriptions « ELIZABETH II », « 2012 CANADA », « 2 DOLLARS », ainsi que le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada,

(ii) au revers sont gravés, sur la partie centrale de la pièce et s'étendant au-delà sur l'anneau extérieur, un représentation du HMS Shannon menant sa prise, la frégate américaine Chesapeake, dans le port d'Halifax avec la Citadelle (Fort George) en arrière-plan et, sur l'anneau extérieur, deux images virtuelles d'une feuille d'érable dans le haut de la pièce, les inscriptions « The War of » et « La guerre de », à gauche de ces images et, à droite, l'année « 1812 », les initiales de l'artiste « BR » et l'inscription « HMS SHANNON » et, dans le bas de la pièce, deux feuilles d'érable exécutées au laser, chacune dans un cercle et séparées par la figure de proue du Shannon;

b) autorise l'émission de deux pièces de monnaie de circulation de un dollar dont les caractéristiques sont précisées à l'article 2.1<sup>d</sup> de la partie 2 de l'annexe de cette loi et dont le diamètre est de 26,5 mm et fixe le dessin de ces pièces de la manière suivante :

(i) une pièce de un dollar :

(A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « D•G•REGINA » et « 2012 », ainsi qu'un grênetis qui souligne le pourtour de la pièce,

<sup>a</sup> S.C. 1999, c. 4, s. 3

<sup>b</sup> R.S., c. R-9

<sup>c</sup> S.C. 1999, c. 4, s. 8

<sup>d</sup> SOR/2007-177

<sup>a</sup> L.C. 1999, ch. 4, art. 3

<sup>b</sup> L.R., ch. R-9

<sup>c</sup> L.C. 1999, ch. 4, art. 8

<sup>d</sup> DORS/2007-177

- (B) the reverse impression of which is to depict a loon preparing for flight, with a lasermark maple leaf within a circle above the loon, the Canadian Olympic Committee symbol and the artist's initials "ED" to the left of the loon and the inscriptions "CANADA" and "DOLLAR" at the top and bottom of the coin, respectively, and
- (ii) a one dollar coin
- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "D•G•REGINA" and "2012" to the left, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and
- (B) the reverse impression of which is to depict the Grey Cup, with a lasermark maple leaf within a circle and the inscription "100<sup>e</sup> th COUPE GREY CUP" to the left of the Grey Cup, the inscriptions "CANADA" and "DOLLAR" separated by a maple leaf at the top of the coin and with beading around the circumference of the coin; and
- (c) authorizes the issue of eight twenty-five cent circulation coins, the characteristics of which are to be as specified in item 4.1<sup>e</sup> of Part 2 of the schedule to that Act and the diameter of which shall be 23.88 mm, and determines the design of the coins to be as follows, namely,
- (i) a twenty-five cent coin
- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2012" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and
- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Sir Isaac Brock, with the inscription "Brock" and the symbol of the Government of Canada's commemorative program for the War of 1812 to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin;
- (ii) a twenty-five cent coin
- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2012" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and
- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Sir Isaac Brock, with the inscription "Brock" and the symbol of the Government of Canada's commemorative program for the War of 1812 in red colour to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin;
- (B) au revers sont gravés la représentation d'un huard prêt à prendre son envol, avec au-dessus, une feuille d'érable exécutée au laser dans un cercle, à gauche du huard, le symbole du Comité olympique canadien et les initiales de l'artiste « ED » et, dans le haut et dans le bas de la pièce, respectivement, les inscriptions « CANADA » et « DOLLAR »,
- (ii) une pièce de un dollar :
- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « D•G•REGINA » et « 2012 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,
- (B) au revers sont gravés une représentation de la Coupe Grey avec, à sa gauche, une feuille d'érable exécutée au laser dans un cercle et l'inscription « 100<sup>e</sup> th COUPE GREY CUP », dans le haut de la pièce, les inscriptions « CANADA » et « DOLLAR » séparées par une feuille d'érable, ainsi qu'un grènetis qui souligne le pourtour de la pièce;
- c) autorise l'émission de huit pièces de monnaie de circulation de vingt-cinq cents dont les caractéristiques sont précisées à l'article 4.1<sup>e</sup> de la partie 2 de l'annexe de cette loi et dont le diamètre est de 23,88 mm et fixe le dessin de ces pièces de la manière suivante :
- (i) une pièce de vingt-cinq cents :
- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2012 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,
- (B) au revers sont gravés une représentation de Sir Isaac Brock avec, à sa gauche, l'inscription « Brock » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,
- (ii) une pièce de vingt-cinq cents :
- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2012 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,
- (B) au revers sont gravés une représentation de Sir Isaac Brock avec, à sa gauche, l'inscription « Brock » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, en rouge, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan

(iii) a twenty-five cent coin

- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2012" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and
- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Tecumseh, with the inscription "Tecumseh" and the symbol of the Government of Canada's commemorative program for the War of 1812 to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin,

(iv) a twenty-five cent coin

- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2012" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Tecumseh, with the inscription "Tecumseh" and the symbol of the Government of Canada's commemorative program for the War of 1812 in red colour to the left of the image, the artist's initials "BR" to the right of the effigy and the inscription "25 cents" at the top of the coin,

(v) a twenty-five cent coin

- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2013" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Laura Secord, with the inscription "Secord" and the symbol of the Government of Canada's commemorative program for the War of 1812 to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin,

(vi) a twenty-five cent coin

- (A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2013" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

- (B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Laura Secord, with the inscription "Secord" and the symbol of

de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(iii) une pièce de vingt-cinq cents :

- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2012 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

- (B) au revers sont gravés une représentation de Tecumseh avec, à sa gauche, l'inscription « Tecumseh » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(iv) une pièce de vingt-cinq cents :

- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2012 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

- (B) au revers sont gravés une représentation de Tecumseh avec, à sa gauche, l'inscription « Tecumseh » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, en rouge, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(v) une pièce de vingt-cinq cents :

- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2013 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

- (B) au revers sont gravés une représentation de Laura Secord avec, à sa gauche, l'inscription « Secord » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(vi) une pièce de vingt-cinq cents :

- (A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et

the Government of Canada's commemorative program for the War of 1812 in red colour to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin,

(vii) a twenty-five cent coin

(A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2013" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

(B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Charles de Salaberry, with the inscription "de Salaberry" and the symbol of the Government of Canada's commemorative program for the War of 1812 to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin, and

(viii) a twenty-five cent coin

(A) the obverse impression of which is to depict the effigy of Her Majesty Queen Elizabeth II by Susanna Blunt, with the initials "SB" on the bottom left-hand corner of the neckline, the inscriptions "ELIZABETH II", "CANADA", "D•G•REGINA" and "2013" to the left, top, right and bottom of the effigy, respectively, and with beading around the circumference of the coin, and

(B) the reverse impression of which is to depict, against a wallpaper background depicting the words "The War of 1812" and "La guerre de 1812", an image of Charles de Salaberry, with the inscription "de Salaberry" and the symbol of the Government of Canada's commemorative program for the War of 1812 in red colour to the left of the image, the artist's initials "BR" to the right of the image and the inscription "25 cents" at the top of the coin.

« 2013 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

(B) au revers sont gravés une représentation de Laura Secord avec, à sa gauche, l'inscription « Secord » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, en rouge, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(vii) une pièce de vingt-cinq cents :

(A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2013 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

(B) au revers sont gravés une représentation de Charles de Salaberry avec, à sa gauche, l'inscription « de Salaberry » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, à droite de la représentation, les initiales de l'artiste « BR » et, en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 »,

(viii) une pièce de vingt-cinq cents :

(A) à l'avers sont gravés l'effigie de Sa Majesté la Reine Elizabeth II réalisée par Susanna Blunt, dans le coin inférieur gauche à côté de la ligne de démarcation du cou, les initiales « SB », à gauche, en haut, à droite et en bas de l'effigie, respectivement, les inscriptions « ELIZABETH II », « CANADA », « D•G•REGINA » et « 2013 », ainsi qu'un grènetis qui souligne le pourtour de la pièce,

(B) au revers sont gravés une représentation de Charles de Salaberry avec, à sa gauche, l'inscription « de Salaberry » et le symbole du programme commémoratif de la guerre de 1812 du gouvernement du Canada, en rouge, à droite de la représentation, les initiales de l'artiste « BR » et en haut de la pièce, l'inscription « 25 cents », contre un arrière-plan de papier peint composé des mots « The War of 1812 » et « La guerre de 1812 ».

## REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Order.)*

### 1. Background

The commemorative circulation coin program assists in the promotion of Canada, Canadian values, culture and history to Canadians. These special coins raise awareness of celebrations and anniversaries of importance to Canadians and create engagement with the Canadian public.

## RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

*(Ce résumé ne fait pas partie du Décret.)*

### 1. Contexte

Le programme de pièces commémoratives contribue à la promotion du Canada, de ses valeurs, de sa culture et de son histoire auprès des habitants du pays. Ces pièces uniques permettent de sensibiliser la population aux célébrations et aux anniversaires d'importance nationale, en plus de créer un lien avec le public canadien.

## 2. Issue

The Royal Canadian Mint (Mint) wishes to produce 11 circulation coins as part of a Multi-Year Commemorative Circulation Coin Program to celebrate the bicentennial of the War of 1812, Canada's participation in the 2012 Olympic Summer Games and the 100th anniversary of the playing of the Grey Cup. Pursuant to sections 6.4 and 6.5 of the *Royal Canadian Mint Act*, the Governor in Council may, by order, authorize the issue of circulation coins of a denomination listed in Part 2 of the schedule and determine the design of any circulation coin to be issued. Thus, this Order authorizes the Royal Canadian Mint to produce coins with the proposed new designs.

## 3. Objectives

The overall objective of this proposal is to use circulation coinage to commemorate, celebrate or promote events of national significance or interest, which has proven to be very popular with the general public.

The events to be commemorated and promoted are

- **The bicentennial of the War of 1812:** In accordance with the Government of Canada's initiative to commemorate this historically significant event (see [www.1812.gc.ca](http://www.1812.gc.ca)), this will provide Canadians with an exciting program to celebrate the history of the nation and commemorate our ancestors who fought and won against enormous odds.
- **The 2012 Olympic Summer Games:** This will be the fifth Lucky Loonie circulation coin. This coin will serve to celebrate our Canadian athletes participating in the 2012 Olympic Summer Games and provide all Canadians with a memento.
- **The 100th anniversary of the playing of the Grey Cup:** This coin will commemorate the 100th anniversary of the playing of the Grey Cup. The Grey Cup is a uniquely Canadian event and is the largest single sporting event in the country. The Mint is working in conjunction with the Canadian Football League to help support and promote this milestone event.

## 4. Description

This proposal approves the issuance of 11 circulation coins: \$2 — HMS Shannon; 25¢ — Tecumseh, 25¢ — Sir Isaac Brock, 25¢ — Charles de Salaberry, 25¢ — Laura Secord; \$1 — 2012 Lucky Loonie; and \$1 — 100th anniversary of the playing of the Grey Cup. The four 25¢ coins will be produced in two versions, coloured and non-coloured. All circulation coin designs will feature artistic renderings based on the themes.

### *The bicentennial of the War of 1812*

The \$2 coin design will depict the legendary HMS Shannon leaving the Halifax Harbour. The four 25¢ coin designs will feature celebrated figures of the War of 1812 — Tecumseh, Sir Isaac Brock, Charles de Salaberry and Laura Secord — in a portrait view along with a Canadian maple leaf, which is part of the visual identity of the Government of Canada's 1812 commemorative program. Some coins will feature coloured maple leaves while others will not.

To reflect the period of time during which the events will be commemorated, the three-year duration of the War of 1812 and specific historical events and battles, the first three coins in the

## 2. Enjeu

La Monnaie royale canadienne (Monnaie) souhaite produire 11 pièces de circulation dans le cadre du programme pluriannuel de pièces de circulation commémoratives afin de célébrer le bicentenaire de la guerre de 1812, la participation du Canada aux Jeux olympiques d'été de 2012 et le centenaire de la Coupe Grey. En vertu des articles 6.4 et 6.5 de la *Loi sur la Monnaie royale canadienne*, le gouverneur en conseil peut, par décret, autoriser l'émission de pièces de monnaie de circulation pour les valeurs nominales énumérées à la partie 2 de l'annexe et choisir le motif de la pièce de circulation à émettre. Par conséquent, le présent décret autorise la Monnaie royale canadienne à produire les pièces selon les nouveaux motifs proposés.

## 3. Objectifs

L'objectif global de cette proposition consiste à utiliser des pièces de circulation pour commémorer, célébrer et promouvoir des événements nationaux d'importance et d'intérêt, une approche qui s'est révélée très populaire auprès du grand public.

Voici les événements que l'on souhaite commémorer et promouvoir :

- **Bicentenaire de la guerre de 1812 :** Conformément à l'initiative du gouvernement du Canada visant à commémorer cet événement historique (voir [www.1812.gc.ca](http://www.1812.gc.ca)), nous proposons aux Canadiens un programme intéressant afin de célébrer l'histoire de la nation et de commémorer nos ancêtres qui se sont battus pour finalement remporter la victoire, contre toute attente.
- **Jeux olympiques d'été de 2012 :** Cette pièce constituera le cinquième dollar porte-bonheur. Elle vise à célébrer nos athlètes canadiens qui participent aux Jeux olympiques d'été de 2012 et à offrir un souvenir à tous les Canadiens.
- **Centenaire de la Coupe Grey :** Cette pièce nous permettra de commémorer le centenaire de la Coupe Grey. Cet événement purement canadien représente le plus important affrontement sportif de ce type au pays. La Monnaie collabore avec la Ligue canadienne de football au soutien et à la promotion de cet événement marquant.

## 4. Description

Ce projet approuve l'émission de 11 pièces de circulation, soit une pièce de 2 \$ sur le HMS Shannon; une pièce de 25 ¢ sur Tecumseh; une pièce de 25 ¢ sur Sir Isaac Brock; une pièce de 25 ¢ sur Charles de Salaberry; une pièce de 25 ¢ sur Laura Secord; un dollar porte-bonheur 2012 et une pièce de 1 \$ sur le centenaire de la Coupe Grey. Les quatre pièces de 25 ¢ seront produites en deux versions : une colorée et une non colorée. Le motif artistique de chacune de ces pièces sera inspiré des thèmes choisis.

### *Bicentenaire de la guerre de 1812*

Le motif de la pièce de 2 \$ illustrera le légendaire HMS Shannon au départ du port de Halifax. Les quatre motifs des pièces de 25 ¢ seront à l'effigie de quatre personnages célèbres de la guerre de 1812 : Tecumseh, Sir Isaac Brock, Charles de Salaberry et Laura Secord. Les pièces comporteront également une feuille d'érable canadienne, qui fait partie de l'identité visuelle du programme commémoratif de la guerre de 1812 du gouvernement du Canada. Certaines pièces présenteront des feuilles d'érable colorées.

Afin de tenir compte de la période durant laquelle ces événements seront commémorés, des trois années de la guerre de 1812 et d'événements et de batailles historiques en particulier, les trois

series — the HMS Shannon, Tecumseh and Sir Isaac Brock — will be issued in 2012 and will be dated 2012. The last two coins in the series, Charles de Salaberry and Laura Secord, will be issued in 2013 and will be dated 2013.

#### *The 2012 Olympic Summer Games*

The \$1 coin design will depict a Canadian loon preparing for flight along with the Canadian Olympic Committee logo.

#### *The 100th anniversary of the playing of the Grey Cup*

The \$1 coin design will depict the Grey Cup along with the Grey Cup logo, provided by the Canadian Football League, to commemorate the 100th anniversary of the playing of the Grey Cup.

#### **5. Consultation**

Market research was conducted with Canadian consumers to assist in gauging the appeal of this coin series as well as the proposed theme for the series. Based on the results of the market research, the above mentioned themes were selected as an interesting series for which there was a strong interest and for which people would feel the desire to collect the coins. Generally, themes that prove to be extremely popular among consumers and score high on key attributes are Canadian heritage, values and culture.

#### **6. Rationale**

Because these coins are available at face value and circulate widely, public demand is high with many coins being collected and taken out of circulation. Commemorative circulation coin programs create important benefits by contributing to the overall success of the event being celebrated as well as generating additional revenue for the Government.

The Royal Canadian Mint has had success with previously issued coins featuring the “Lucky Loonie” and sports-themed coins. For example, \$1 coins celebrating the 100th anniversaries of the Montréal Canadiens hockey club (2009) and the Saskatchewan Roughriders football club (2010) proved to be especially popular and sought after by Canadians.

#### **7. Implementation, enforcement and service standards**

The Mint will regularly inform the minister responsible for the Royal Canadian Mint of its plans and timing for launch events and the posting of press releases to promote each coin. The coins will be distributed via financial institutions throughout Canada.

#### **8. Contact**

Marguerite F. Nadeau, Q.C.  
Vice-President, General Counsel and Corporate Secretary  
Corporate and Legal Affairs  
Royal Canadian Mint  
320 Sussex Drive  
Ottawa, Ontario  
K1A 0G8  
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premières pièces de la série, soit celles sur le HMS Shannon, Tecumseh et Sir Isaac Brock, seront millésimées 2012 et émises en 2012. Les deux dernières pièces de cette série, rendant hommage à Charles de Salaberry et à Laura Secord, porteront le millésime 2013 et seront émises en 2013.

#### *Jeux olympiques d'été de 2012*

La pièce de 1 \$ sur les Jeux olympiques d'été de 2012 illustrera un huard canadien prenant son envol et le logo du Comité olympique canadien.

#### *Centenaire de la Coupe Grey*

Cette pièce de 1 \$ commémorant le centenaire de la Coupe sera au motif de la Coupe Grey et de son logo, fourni par la Ligue canadienne de football.

#### **5. Consultation**

Une étude de marché a été menée auprès des consommateurs canadiens afin d'évaluer l'intérêt suscité par cette série de pièces et des thèmes proposés pour cette série. À la suite des résultats de cette étude de marché, les thèmes mentionnés précédemment ont été jugés intéressants et ont semblé susciter un intérêt marqué, notamment pour la collection de pièces. En général, les valeurs, la culture et le patrimoine canadiens sont des thèmes qui s'avèrent très populaires auprès des consommateurs, et leurs attributs clés obtiennent de très bons résultats.

#### **6. Justification**

Puisque ces pièces sont offertes à leur valeur nominale et qu'elles circulent largement, la demande du public est forte. Les gens collectionnent bon nombre de pièces, ce qui a pour effet de les retirer de la circulation. Les programmes de pièces de circulation commémoratives engendrent des retombées importantes, car ils contribuent à la réussite globale de l'événement célébré, et ils génèrent également des revenus supplémentaires pour le gouvernement du Canada.

La Monnaie royale canadienne a obtenu du succès auparavant avec des pièces porte-bonheur et aux thèmes sportifs. Par exemple, les pièces de 1 \$ célébrant le centenaire du club de hockey des Canadiens de Montréal (2009) et de l'équipe de football des Roughriders de la Saskatchewan (2010) se sont avérées populaires et très courues auprès des Canadiens.

#### **7. Mise en œuvre, application et normes de service**

La Monnaie va informer régulièrement le ministre responsable de la Monnaie royale canadienne de ses plans, du calendrier des événements de lancement et de la diffusion des communiqués de presse visant la promotion de chaque pièce. Les pièces seront distribuées partout au Canada par l'intermédiaire des institutions financières.

#### **8. Personne-ressource**

Marguerite F. Nadeau, c. r.  
Vice-présidente, avocate générale et secrétaire de la Société  
Division des affaires générales et juridiques  
Monnaie royale canadienne  
320, promenade Sussex  
Ottawa (Ontario)  
K1A 0G8  
Téléphone : 613-993-1732  
Télécopieur : 613-990-4665  
Courriel : [nadeau@monnaie.ca](mailto:nadeau@monnaie.ca)

# TAB 46

**Ebay completed auction for 8 “war of 1812” quarters**



## Description

eBay item number: 31181029832

Seller assumes all responsibility for this listing.

Last updated on Feb 28, 2017 09:16:17 PST [View all revisions](#)

### Item specifics

Circulated/Uncirculated: Uncirculated

### Coins And Collectables Hut

mahin888 (16536)  100% [Sign up for newsletter](#)Visit Store: [Coins And Collectables Hut](#)

## Categories

### Description:

[Canadian Coins](#)

LADIES & GENTLEMEN THIS IS A BEAUTIFUL SET OF 8 MINT CONDITION COMPLETE SET OF CANADA WAR OF 1812 COMMEMORATIVE 25 CENT COINS A GREAT SET TO OWN WHICH INCLUDES COLOURED AND PLAIN 25 CENT COINS COMMEMORATING THE BRAVERY CANADIAN GREAT WAR HEROES SIR ISAAC BROCK, TECUMSEH, CHARLES-MICHEL DE SALABERRY AND LAURA SECORD.

[US coins](#)

A GREAT PIECE OF HISTORY AND A GREAT GIFT IDEA WILL DEFINETLY ADD BEAUTY TO ANY COIN COLLECTION.

[World Coins](#)

THANKS FOR LOOKING AND HAVE A GREAT TIME!

[Collectables](#)[Paper money](#)

IF YOU ARE LOOKING FOR ANY CANADIAN COINS,SETS,ROLLS,RCM PRODUCTS, PLEASE LET ME ASSIST YOU AND THE CHANCES ARE GOOD THAT I MAY FIND IT FOR YOU AT A PRICE WHICH WILL BEAT THE MARKET TREND PRICE.I HAVE HUGE INVENTORY OF CANADIAN COINS OF ALL DENOMINATIONS LIKE SMALL CENTS,LARGE CENTS,TOKENS,5 CENT SILVERS,FIVE CENT NICKEL COINS,TEN CENTS THE SAME WAY AND 25 CENT AND 50 CENT AND DOLLARS THE SAME WAY ALSO GOT LOTS IN PROOFLIKE SETS,ROYAL CANADIAN MINT PRODUCTS AND SETS,COMMEMORATIVE CANADIAN SETS OF COINS AND HAVE SOME COIN SUPPLIES AND ALBUMS TOO FOR PRESERVING YOUR COINS.

[NEW FOUNDLAND OLD COINS](#)

I HAVE BEEN SERVING MY VALUED CUSTOMERS SINCE 1995 AND I TRY MY BEST TO PROVIDE THEM TOP QUALITY SERVICE AND EXCELLENT PRODUCTS AT A FAIR PRICE.PLEASE KEEP IN TOUCH AND IF ANYTHING IN CANADIAN COINS IS ON YOUR LIST,PLEASE LET ME KNOW AND I WILL GLADLY WORK ON IT.

[CHRISTMAS GIFTS](#)

PLEASE KEEP CHECKING MY EBAY STORE AND ADD ME TO YOUR FAVOURITE AND FOLLOW STORES AS I OFFER SALE ON MANY ITEMS ON A REGULAR BASIS TO CLEAR THE EXCESS INVENTORY.

[HAPPY HOLIDAYS GIFTS](#)

FOR USA DESTINATIONS,PLEASE NOTE THAT SOMETIMES POSTAL DELIVERY IS UNUSUALLY SLOW AND MAY TAKE ANYTIME FROM 2 TO 4 AND IN RARE CASES EVEN 5 WEEKS.

[YEAR SETS UNCIRCULATED](#)

THE SAME IS THE CASE EVEN LONGER WAIT TIMES FOR DELIVERY TO OVERSEAS DESTINATIONS.ITEMS MORE THAN \$50 VALUE TO OVERSEAS DESTINATIONS ARE SHIPPED THROUGH SECURE SHIPPING WHICH COST ANYTHING \$35 AND UP.

[TOP COINS FOR COLLECTORS](#)

I AM BUSINESS ACCOUNT HOLDER ON EBAY AND CHARGE TAX TO MY CANADIAN CUSTOMERS ACCORDING TO TAX TABULATION OF CANADA REVENUE AGENCY.

[Newfoundland rare coins](#)

IF YOU HAVE ANY PROBLEM REGARDING YOUR PURCHASE FROM ME PLEASE CONTACT ME AND I WILL TRY MY BEST TO SOLVE IT UPTO YOUR SATISFACTION.I WILL ALSO OFFER THE BEST SHIPPING OPTIONS IF YOU NEED YOUR ITEM IN URGENT WHICH I HAVE TO USE SPECIAL SHIPPING SOURCES AND MAY COST QUITE LOT.I TRY TO SHIP AS SOON AS POSSIBLE BUT THERE MAYBE SOME UNEXPECTED EVENTS IN LIFE ROUTINE BECAUSE OF WHICH I MAYBE COMPELLED TO DELAY BUT THAT CASE IS RARE.

[Coins supplies and Accessories](#)

PLEASE LEAVE ME A 5 STAR POSITIVE FEEDBACK ONE YOU RECEIVE YOUR ITEM AND 100% SATISFIED,THAT WILL HELP ME SERVE YOU BETTER BECAUSE OF MY GOOD RATING.

[Royal Canadian Mint products](#)

THANKS FOR LOOKING AND HAVE A GREAT TIME!

[Mint sets](#)[Error and Extra Ordinary Coins](#)[Other](#)

# **TAB 47**

**Admasu v. Canada 2012 FC 451**

Federal Court



Cour fédérale

Date: 20120418

Docket: T-2022-10

Citation: 2012 FC 451

Ottawa, Ontario, April 18, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

TADELE WOROTA ADMASU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

Respondent

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks judicial review of a decision of the Minister of Public Safety and Emergency Preparedness (MPSEP) refusing to grant relief from forfeiture pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (Act). For the reasons that follow the application is dismissed.

**Facts**

[2] On April 2, 2009, the applicant was stopped by a Canada Border Services Agency (CBSA) officer as he was boarding a flight bound for Amsterdam and onwards to Ethiopia. The officer explained that individuals carrying currency in excess of \$10,000 Canadian must report it to customs officials. According to the officer the applicant reported he did not have currency in excess of that amount. However, a subsequent search revealed that he was carrying Canadian, US and Euro currency, with the equivalent value of \$14,277.44 CDN. The officer concluded there were grounds to suspect that the currency was the proceeds of crime and therefore seized the currency. In reaching this conclusion, the officer noted:

- a. The applicant's failure to report the currency;
- b. His deceptive behaviour and failure to hand over all currency when asked;
- c. His inability to explain where the money came from and what it was for;
- d. His vague and contradictory explanation of his travel plans and the fact that the plane ticket was purchased by a third party the week before;
- e. The fact that the amount of currency in the applicant's possession was not in keeping with his income and savings.

[3] On April 6, 2009, the applicant requested Ministerial review of the forfeiture pursuant to section 25 of the *Act*. He explained that he had been heavily medicated due to his disability (a serious injury to his arm from a workplace accident), which explained why he had not been more careful about the currency or able to explain its origins. Medication consistent with this explanation was uncovered in the search, although the officer did not consider this in reaching her conclusion.

He also explained that most of the money was from friends who asked him to carry it to their relatives in Ethiopia. In his request for review the applicant attached medical notes together with letters from his friends in Vancouver that purported to account for portions of the seized currency.

[4] The adjudicator wrote to the applicant explaining the reasons for the seizure and invited him to send further information and documentation which would establish the legitimate origin of the seized currency. The letter explained that he must identify the link between the currency and its origins, and establish its legality.

[5] Over the course of several months the applicant and the adjudicator communicated with one another as the adjudicator tried to obtain the necessary information. Despite requests for further documentation the applicant did not identify to the satisfaction of the adjudicator the legitimate source of all the currency. The applicant also failed to provide any evidence to support his claim that some of the currency was from his savings.

[6] The adjudicator provided a case synopsis and recommendation to the Minister's Delegate, dated August 17, 2010. The adjudicator summarized the history of events and found that a contravention of the *Act* had clearly occurred. The adjudicator reviewed the information and documentation submitted by the applicant. Since this information did not establish the legitimate origin of all of the currency, the adjudicator recommended that the seized currency be held as forfeit.

[7] By letter dated November 4, 2010, the Minister's Delegate informed the applicant of her decision that a contravention of the *Act* occurred and that the currency would be held as forfeit. The letter reviewed the facts and the grounds upon which the currency was seized. The letter also summarized the submissions made by the applicant in support of returning the seized currency.

[8] The Minister's Delegate noted that the applicant had failed to provide evidence of the legitimate origin of all the seized currency. She also explained that as the applicant's bank statements had never shown any savings and his credit line was used to the maximum, he had failed to explain how over \$3000CND of the currency could have come from his savings. As a result, the Minister's Delegate declined to return the seized currency.

### ***Standard of Review and Issue***

[9] The issue raised by this application is whether the Minister's decision is reasonable: *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1267 (CA) at para 25.

[10] The standard of review is informed or framed, in part, by the statutory provision allowing the Minister to grant relief from forfeiture. Section 29(1)(a) of the *Act* does not allow for partial relief in respect of seized currency:

**29. (1)** If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,

(a) decide that the currency or monetary instruments or, subject to

**29. (1)** S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :

a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la

subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

[...]

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;

[...]

c) soit confirmer la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

[11] Section 29(1)(b) stands in contrast to section 29(1)(a), which allows for partial relief in respect of a penalty:

**29. (1)**

[...]

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

[...]

**29. (1)**

[...]

b) soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);

[...]

[12] The applicant suggests that since he provided evidence of the legitimate origin of some of the currency, that portion should be returned to him. As the respondent submits, the *Act* does not contemplate return of a portion of the seized currency. Section 29(1)(a) states that the Minister may decide “that the currency or monetary instruments...be returned” or “confirm that the currency or monetary instruments are forfeited”. In contrast, that section 29(1)(b) permits the Minister to remit “any penalty or portion of any penalty” [emphasis added].

[13] The Minister's decision is, therefore, an all or nothing proposition. There is no middle ground of partial relief from forfeiture. The reasonableness of the decision must be considered in the light of this statutory constraint.

### ***Analysis***

[14] Most of the applicant's submissions to the Court relate to the treatment he received by the CBSA officers when the currency was seized at the airport. As to the central question as to whether the Minister's decision was unreasonable, the applicant reiterates his allegation that the currency was given to him by friends to deliver to their relatives upon arrival in Ethiopia. The applicant also notes that while the adjudicator accepted that \$5000 CND of the currency had a legitimate origin, none of the currency was returned to him.

[15] The discretion to return seized currency under section 29 only arises once the Minister has concluded that a contravention of section 12 of the *Act* has occurred. Therefore, as the Federal Court of Appeal stated in *Sellathurai* at para 34: "the starting point for the exercise of the Minister's discretion is that the forfeited currency...is, for all legal purposes, property of the Crown".

[16] The *Act* does not stipulate the factors that the Minister must consider in exercising his discretion. Given the objectives of the *Act* and the provisions governing forfeiture, it is evident that the applicant must persuade the Minister that the currency is not the proceeds of crime. As stated in *Sellathurai* at para 50:

The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this

issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.

[17] The Court of Appeal also emphasized, at para 53, that there may be various approaches to this exercise of discretion, but so long as the discretion was reasonably exercised, there is no basis to intervene: see *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1321 (CA); *Qasem v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1489 (CA) for applications of this principle.

[18] In light of the principles articulated by the Federal Court of Appeal I find that the Minister's decision in this case is reasonable. As the respondent submits, the applicant was unable to satisfy the Minister that the currency had a legitimate source and therefore it was open to the Minister to decline to exercise his discretion to grant relief from forfeiture.

[19] The adjudicator made it clear to the applicant what was required of him. He had to identify the source of all the currency and provide evidence to link the currency to its legitimate origin (for example, income from employment). It was insufficient to supply only statements from the individuals or to substantiate the source of only portions of the currency. While evidence was provided in respect of \$7,200 USD and \$1,200 CND, the origin of all funds was not explained to the satisfaction of the Minister. In this regard, it must be remembered that \$9,908 USD, \$1,500 CND and €150 EUR was seized. The refusal to give relief from forfeiture was, in circumstances such as this where a significant percentage of the funds could not be explained, reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be and is hereby dismissed.

---

"Donald J. Rennie"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2022-10

**STYLE OF CAUSE:** TADELE WOROTA ADMASU v MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** April 2, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J.

**DATED:** April 18, 2012

**APPEARANCES:**

Mr. Tadele Worota Admasu FOR THE APPLICANT

Ms. Sarah-Dawn Norris FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

FOR THE APPLICANT  
Myles J. Kirvan  
Deputy Attorney General of Canada  
Vancouver, BC FOR THE RESPONDENT

# **TAB 48**

**Sellathurai v Canada (Minister of Public Safety and Emergency  
Preparedness), 2008 FCA 255**

**Sellathurai v. Canada (Public Safety and Emergency Preparedness), 2007  
FC 208**

**Gowrkumaran Sellathurai (Appellant)**

v.

**Minister of Public Safety and Emergency Preparedness (Solicitor General of Canada) (Respondent)**

**INDEXED AS: SELLATHURAI v. CANADA (MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (F.C.A.)**

Federal Court of Appeal, Nadon, Pelletier and Ryer J.J.A.—Toronto, June 17; Ottawa, September 9, 2008.

*Customs and Excise — Proceeds of Crime (Money Laundering) and Terrorist Financing Act — Appeal from Federal Court decision dismissing application for judicial review of Minister's delegate's decision declining to return undeclared currency seized by customs officer — Act, s. 12 requiring all persons entering or leaving Canada with more than prescribed amount of currency to report amount to nearest customs office upon arriving in or leaving Canada — Act, s. 18 authorizing seizure in event of breach of s. 12 — No terms of release offered pursuant to Act, s. 18(2), as reasonable grounds at time of seizure to suspect funds proceeds of crime within meaning of Criminal Code, s. 462.3(1), or used in funding terrorism — Ministerial review of customs officer's decision finding evidence as to origin of funds neither verifiable nor supporting legitimacy of seized currency — Per Pelletier J.A. (Nadon J.A. concurring): Once breach of Act, s. 12 confirmed by Minister, only issue remaining for Act., s. 29 decision, whether Minister persuaded to grant relief from forfeiture — Must be satisfied seized funds not proceeds of crime — Minister mischaracterizing nature of problem — Decision, affidavit suggesting Minister considering grounds for suspicion identified by customs officer, deciding whether grounds still legitimate — Applications Judge thus concluding Minister adopted test imposed on customs officer by Act, s. 18(2) — Affidavit inappropriate and without weight, as impermissibly improving upon reasons given — Minister's decision under Act, s. 29, reviewable on standard of reasonableness — Not unreasonable for Minister to decline to accept unverifiable evidence at face value — Appeal dismissed — Per Ryer J.A. (concurring): Minister's delegate adopting reasonable grounds to suspect test in Act, s. 18(2) — As credible, objectively ascertainable evidence sought as basis upon which to ground s. 29(1) decision, Minister's delegate correctly understanding appropriate legal standard underpinning s. 18(2) test — Reasonable inference criminality reasonably suspected of being associated with undeclared funds constituting designated indictable offence within meaning of Criminal Code, s. 462.3(1), as required by test in Act, s. 18(2).*

This was an appeal from a Federal Court decision dismissing an application for judicial review of the Minister's delegate's decision declining to return approximately \$123 000 of undeclared currency seized by a customs officer as the appellant was about to depart for Sri Lanka from Pearson International Airport.

The funds were seized and forfeited because the appellant failed to declare them to a customs officer as required by section 12 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Act). Section 12 of the Act requires all persons entering or leaving Canada with more than a prescribed amount of currency to report that amount to the nearest customs office upon arriving in or leaving Canada, while section 18 of the Act authorizes seizure in the event of a breach of section 12. As there were reasonable grounds at the time of seizure to suspect that the funds were proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or were to be used in the funding of terrorism, no terms of release pursuant to subsection 18(2) of the Act were offered. Upon review, the Minister's delegate confirmed the forfeiture of undeclared funds and found that the

evidence submitted as to the source of the funds was not verifiable and did not support the legitimate origin of the seized currency.

The issue was whether the Minister's delegate properly exercised his discretion, under subsection 29(1).

*Held*, the appeal should be dismissed.

*Per Pelletier J.A. (Nadon J.A. concurring)*: (1) Once the breach of section 12 of the Act is confirmed by the Minister, the only issue remaining for the section 29 decision is whether the Minister can be persuaded to grant relief from forfeiture. He must be satisfied that the seized funds are not proceeds of crime. The Minister mischaracterized the nature of the problem by indicating that "reasonable suspicion still exists". This suggested that the Minister considered the reasonable grounds for suspicion identified by the customs officer and decided whether those grounds were still legitimate. In her reasons, the applications Judge equated this exercise with the adoption, by the Minister, of the test imposed on the customs officer by subsection 18(2) of the Act.

The affidavit filed by the Minister's delegate, in which he restated and reviewed the grounds for suspicion identified by the customs officer, and indicated why he believed they remained unanswered, may have led the applications Judge to that conclusion. This form of affidavit is inappropriate and should not have been given any weight at all. The Federal Court has previously stated that a tribunal or a decision maker cannot improve upon the reasons given to the applicant by means of the affidavit filed in the judicial review proceedings.

(2) The standard of proof that an applicant must meet in order to satisfy the Minister that the seized funds are not proceeds of crime is resolved by the issue of standard of review. The Minister's decision under section 29 of the Act is reviewable on a standard of reasonableness. It was not unreasonable for the Minister to decline to accept the appellant's unverifiable evidence at face value.

*Per Ryer J.A. (concurring)*: This appeal had to proceed on the basis that the Minister's delegate adopted the reasonable grounds to suspect test in subsection 18(2) of the Act and that the issue was whether the Minister's delegate properly applied that test. The question of whether the reasonable grounds to suspect element of subsection 18(2) was properly interpreted by the Minister's delegate in making the subsection 29(1) decision was reviewable on the standard of correctness. The record indicated that credible and objectively ascertainable evidence was sought as the basis upon which to ground the subsection 29(1) decision. As such, the subsection 29(1) decision was unassailable in terms of whether it was based upon a correct understanding of the appropriate legal standard that underpins the reasonable grounds to suspect test.

The application of the legal test for reasonable grounds to suspect by the Minister's delegate to the facts that were before him was reviewable on the standard of reasonableness. The Minister's delegate concluded that it was reasonable to suspect that the undeclared funds were proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*. This demonstrated that the Minister's delegate determined that it was reasonable to suspect that the undeclared funds were the proceeds of a designated indictable offence under subsection 462.3(1) of the Code. The fact that the undeclared funds consisted of C\$119 000 in mixed denominations that were out of order and held together with elastics, supported a reasonable inference that the criminality reasonably suspected of being associated with the undeclared funds was a designated indictable offence.

#### STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

*Criminal Code*, R.S.C., 1985, c. C-46, ss. 2 "terrorist activity" (as enacted by S.C. 2001, c. 41, s. 2), 462.3(1) (as enacted by R.S.C., 1985 (4th Supp.), c. 42, s. 2; S.C. 2001, c. 32, s. 12), "designated offence" (as enacted by S.C. 1996, c. 19, s. 68; S.C. 2001, c. 32, s. 12), "proceeds of crime" (as enacted by R.S.C., 1985 (4th Supp.), c. 42, s. 2; S.C. 2001, c. 32, s. 12).

*Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412, s. 2.

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

*Excise Act*, R.S.C., 1985, c. E-14.

*Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1.

*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, ss. 1 (as am. by S.C. 2001, c. 41, s. 48), 12 (as am. *idem*, s. 54), 18 (as am. *idem*, s. 134), 22 (as am. *idem*, s. 60), 23, 24, 25 (as am. *idem*, s. 61), 26, 27 (as am. *idem*, s. 62), 28, 29, 30 (as am. *idem*, s. 139).

*Regulations Excluding Certain Indictable Offences from the Definition of “Designated Offence”*, SOR/2002-63, s. 1.

#### CASES JUDICIALLY CONSIDERED

##### APPLIED:

*Dag v. Canada (Minister of Public Safety and Emergency Preparedness)* (2008), 70 Admin. L.R. (4th) 214; 377 N.R. 212; 2008 FCA 95; *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] 1 F.C.R. 311; (2007), 284 D.L.R. (4th) 356; 223 C.C.C. (3d), 267; 367 N.R. 148; 2007 FCA 186; *The King v. Central Railway Signal Co.*, [1933] S.C.R. 555; [1933] D.L.R. 737; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; (2008), 329 N.B.R. (2d) 1; 291 D.L.R. (4th) 577; 69 Admin. L.R. (4th) 1; 64 C.C.E.L. (3d) 1; [2008] CLLC 220-020; 69 Imm. L.R. (3d) 1; 170 L.A.C. (4th) 1; 95 L.C.R. 65; 372 N.R. 1; 2008 SCC 9; *R. v. Kang-Brown*, [2008] 1 S.C.R. 456; (2008), 432 A.R. 1; 293 D.L.R. (4th) 99; [2008] 6 W.W.R. 117; (2008), 87 Alta. L.R. (4th) 1; 230 C.C.C. (3d) 289; 55 C.R. (6th) 240; 169 C.R.R. (2d) 61; 373 N.R. 67; 2008 SCC 18.

##### CONSIDERED:

*R. v. Pilarinos*, 2001 BCSC 1690; *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2; (1982), 137 D.L.R. (2d) 558; 44 N.R. 354; *Simmonds v. M.N.R.* (2006), 289 F.T.R. 15; [2006] 2 C.T.C. 261; [2006] D.T.C. 6083; 2006 FC 130.

##### REFERRED TO:

*Dag v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 65 Admin. L.R. (4th) 31; 318 F.T.R. 269; 2007 FC 427; affd (2008), 70 Admin. L.R. (4th) 214; 377 N.R. 212; 2008 FCA 95; *Dupre v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177; *Hamam v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 314 F.T.R. 151; 2007 FC 691; *Yang v. Canada (Minister of Public Safety and Emergency Preparedness)* (2008), 79 Admin. L.R. (4th) 168; 324 F.T.R. 22; 2008 FC 158; *Lyew v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 317 F.T.R. 234; 2007 FC 1117; *Dang v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 312 F.T.R. 134; 2007 FC 454; *Yusufov v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 312 F.T.R. 122; 2007 FC 453; *Majeed v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1082; *Qasem v. M.N.R.*, [2008] 3 F.C.R. 385; (2008), 322 F.T.R. 47; 2008 FC 31; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; (1999), 174 D.L.R. (4th) 193; 14 Admin. L.R. (3d) 173; 1 Imm. L.R. (3d); 243 N.R. 22; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; (1998), 160 D.L.R. (4th) 193; 11 Admin. L.R. (3d) 1; 43 Imm. L.R. (2d) 117; 226 N.R. 201; amended reasons [1998] 1 S.C.R. 1222; (1998), 11 Admin. L.R. (3d) 130; *Kalra v. Canada (Minister of Citizenship and Immigration)* (2003), 29 Imm. L.R. (3d) 208; 2003 FC 941; *Yue v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 717; *Abdullah v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1185; *Molson Breweries v. John Labatt Ltd.*, [2000] 3 F.C. 145; (2000), 5 C.P.R. (4th) 180; 252 N.R. 91 (C.A.); *R. v. Shah*, [1992] B.C.J. No. 2716 (Prov. Ct.) (QL); *R. v. Clymore* (1992), 74 C.C.C. (3d) 217 (B.C.S.C.); *R. v. Hicks*, [2000] B.C.J. No. 2653 (Prov. Ct. (Crim. Div.)) (QL).

APPEAL from the decision of the Federal Court ((2007), 63 Admin. L.R. (4th) 161; 309 F.T.R. 114; 2007 FC 208) dismissing an application for judicial review of the Minister’s delegate’s decision declining to return approximately \$123 000 of undeclared currency seized from the appellant by a customs officer. Appeal dismissed.

#### APPEARANCES:

*Louis P. Strezos* for appellant.

*Jan E. Brongers* for respondent.

#### SOLICITORS OF RECORD:

*Louis P. Strezos*, Toronto, for appellant.

*Deputy Attorney General of Canada* for respondent.

*The following are the reasons for judgment rendered in English by*

Pelletier J.A.:

## INTRODUCTION

[1] This is an appeal from the decision of Simpson J. of the Federal Court, reported at (2007), 63 Admin. L.R. (4th) 161, dismissing Mr. Sellathurai's application for judicial review of the Minister's decision (made on his behalf by his delegate) declining to return approximately \$123 000 which were seized from him by a customs officer as he was about to depart for Sri Lanka from Pearson International Airport.

[2] The funds were seized and forfeited because Mr. Sellathurai failed to declare them to a customs officer as he was required to do by section 12 [as am. by S.C. 2001, c. 41, s. 54] of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 [s. 1 (as am. *idem*, s. 48)] (the Act) and, as conceded by his counsel, at the time of seizure there were reasonable grounds to suspect that the funds were proceeds of crime or were to be used in the funding of terrorism. The issue in this appeal is whether the Minister properly exercised his discretion in refusing to return the funds to Mr. Sellathurai.

## THE FACTS

[3] The following statement of the facts surrounding the seizure is taken from the case synopsis and reasons for decision prepared by the Canada Border Services Agency (formerly the Canada Customs and Revenue Agency) (the Agency) in response to Mr. Sellathurai's request for a ministerial review of the seizure of his funds (appeal book, at pages 227-228):

. . . on November 10, 2003, Mr. Sellathurai was questioned by Customs officials at Pearson International Airport, Toronto, Ontario outbound from Canada. He reported \$4,000.00 in Canadian currency and \$400.00 in American currency. He was asked the purpose of his trip. Mr. Sellathurai responded that he was to attend the funeral of his father and would be absent from Canada one week. The officer examined his passport noting that he had exited the United Arab Emirates on October 13, 2003. The officer asked to verify his currency. Mr. Sellathurai provided an envelope that contained several bills. The officer requested that he present the American currency, which he stated was in his carry-on. The officer questioned why he was taking \$4,000.00 for a week-long trip. He advised the officer that he was an importer of clothing and a grocer as well as a salesman. Examination of his carry-on revealed two gold bars. When asked the value, he stated "\$20,000.00". A receipt was provided from a Canadian jewellery store indicating that gold jewellery had been exchanged for the two gold bars. In his front pant pocket was more money. Mr. Sellathurai was moved to a private area for further examination. Mr. Sellathurai had, in total, eight envelopes of currency, the gold bars and some American currency. The officer asked him what the money was intended for. He stated that he was going to buy jewellery. At this time, the officer reminded him that he had stated he was a salesman, grocer and importer of clothing. Mr. Sellathurai stated that he is also a wholesaler of jewellery. He provided a business card. The name on the card was the same as the business name on the receipt for the gold bars. The officer advised Mr. Sellathurai that the currency was under seizure. While the paperwork was being prepared, Mr. Sellathurai stated that \$90,000.00 was a loan from a jeweller in Montreal. He stated that \$47,000.00 was from one individual and another \$45,000.00 was from another person. He was unsure of their names at first. He stated that he intended to purchase jewellery for the two on this trip. He had no contract to substantiate this and no documents to support a withdrawal from a banking institution. As the officer had reasonable grounds to suspect that the currency was proceeds of crime, no terms of release were offered. The officer returned his documents, his two gold bars and other jewellery.

[4] The seizure was made under the authority of sections 12 and 18 [as am. by S.C. 2001, c. 41, s. 134] of the Act: section 12 requires all persons entering or leaving Canada with more than a prescribed amount of currency to report that amount to the nearest customs office upon arriving in or leaving Canada, while section 18 authorizes seizure in the event of a breach of section 12:

**12.** (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

(3) Currency or monetary instruments shall be reported under subsection (1)

(a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;

**18.** (1) If an officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments.

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities.

[5] The prescribed amount is \$10 000: see section 2 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412.

[6] In accordance with paragraph 18(3)(a) of the Act, the officer gave Mr. Sellathurai written notice of the seizure and of his recourse under sections 25 [as am. by S.C. 2001, c. 41, s. 61] and 30 [as am. *idem*, s. 139] of the Act:

**25.** A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

**30.** (1) A person who requests a decision of the Minister under section 25 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

[7] Mr. Sellathurai exercised his right to request a ministerial review of the officer's decision. In a letter dated January 12, 2004, an officer of the Agency set out the circumstances surrounding the seizure. The officer then went on to request further information (appeal book, at page 63):

Please submit evidence to support where you obtained the money such as withdrawal from a bank account or other such evidence that would support that the money was legitimately obtained. [Emphasis added.]

[8] No specific grounds for suspicion are identified in this letter and no specific explanations are requested. The only proof requested is proof that the funds were legitimately obtained.

[9] In response to this request, Mr. Sellathurai supplied three affidavits and three letters of reference. The

affidavits were provided by Sathi Sathananthan, Shudhir Chawla, and George Montgomery Pathinather. Sathi Sathananthan, Mr. Sellathurai's bookkeeper, produced bank statements and cancelled cheques showing withdrawals from Mr. Sellathurai's business account between September 19, 2003 and November 10, 2003, in the amount of \$37 000 by way of cheques drawn in favour of Mr. Sellathurai's wife.

[10] Shudhir Chawla deposed that he is Mr. Sellathurai's business associate and that he loaned him \$47 000 in cash to purchase 22 carat gold jewellery for him in Dubai. The \$47 000 was the product of the sale of 93 ounces of gold bullion in various cash transactions. George Montgomery Pathinather deposed that he is in the jewellery business in Montréal and has known Mr. Sellathurai for three and a half years. He further deposed that he provided the latter, from funds kept in his office safe, \$45 000 in cash, generated by cash transactions.

[11] The officer responded to these elements of proof in a letter to Mr. Sellathurai's counsel dated March 15, 2004. The material parts of that letter are as follows (appeal book, at pages 103-104):

The affidavits from George Pathinather and Shudhir Chawla *do not substantiate the legitimacy of their portion of the seized currency*. Legitimate businesses wish to maintain records of their funds and expenses to ensure records for tax purposes and maintain internal audit controls. . . They will require documentary evidence *to support the legitimacy of the seized currency*.

. . .

Having broken the law and failed to declare, a person cannot regain currency seized as forfeit, on a reasonable suspicion under the *Act*, by merely telling a story that could be true. *An innocent explanation as to the origin of the funds must be proven* in sufficient detail and with enough credible, reliable and independent evidence to establish that no other reasonable explanation is possible. . . [Emphasis added.]

[12] When counsel objected to the dismissal of the evidence provided on Mr. Sellathurai's behalf, the officer responded as follows in a letter dated May 3, 2004 (appeal book, at page 107):

I would like to re-state that the affidavits from George Pathinather and Shudhir Chawla *do not substantiate the legitimacy of their portion of the seized currency*. They will require documentary evidence to support *the legitimacy of the seized currency*. [Emphasis added.]

[13] In a letter dated June 18, 2004, the officer responded to a further inquiry by Mr. Sellathurai's counsel by re-stating the position taken in her letter of March 15, 2004, and insisting upon production of documentary evidence to support the legitimacy of the seized currency: appeal book, at pages 108-109.

[14] The Minister (by his delegate) advised Mr. Sellathurai of his decision by letter dated October 6, 2005. The reasons given for the decision are contained in the following two paragraphs (appeal book, at pages 116-117):

The evidence submitted has confirmed that you were specifically questioned by a Customs officer at Pearson International Airport on November 10, 2003, and you advised the officer that you did not have currency in excess of \$10,000.00 CAD. Examination revealed \$435.00 USD currency and \$123,000.00 Canadian currency. Consequently, by virtue of section 12 and 18 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act; [*sic*] the currency was lawfully subject to seizure. No terms of release were offered for the currency as the officer had reasonable suspicion to suspect proceeds of crime [*sic*].

Although your solicitor's representations have been considered, mitigation has not been granted in this case. The evidence

provided is not verifiable and *does not substantiate the origin of the currency*. Based on the totality of the evidence and the lack of verifiable evidence *to support the legitimate origin of the currency*, reasonable suspicion still exists. As such the currency has been held as forfeit. . . .

## THE FEDERAL COURT'S DECISION

[15] Mr. Sellathurai sought judicial review of this decision in the Federal Court. The application Judge reviewed the facts and addressed the question of standard of review. She concluded that the Minister's decision should be reviewed on a standard of reason- ableness, except "when dealing with the burden of proof faced by an applicant who wishes to dispel 'reasonable grounds to suspect'. On that issue, correctness will be the standard of review", at paragraph 60.

[16] Counsel for Mr. Sellathurai argued that the Minister's delegate used the wrong test in deciding whether to confirm the forfeiture of Mr. Sellathurai's funds. This is apparent from the application Judge's statement of the issues (at paragraph 61):

The Applicant has raised the following issues. The headings are mine.

**No reasonable grounds?**

I. The Minister erred in his decision that the funds in question are forfeit insofar as there exists no reasonable grounds to suspect that the funds in question are the proceeds of crime.

**An improper test?**

II. The Minister erred in his decision insofar as he improperly reversed the burden of proof, finding, in effect, that the Applicant failed to prove that the funds in question were not the proceeds of crime.

**A contradictory decision?**

III. The Minister erred in his decision insofar as his decision is, on its face, contradictory and therefore unreasonable.

[17] The application Judge dealt with the second issue, that of the reversal of the onus of proof, in the following terms (at paragraph 63):

Section 29 of the Act is silent about the principles to be used by a Minister's Delegate in deciding whether to confirm a currency forfeiture. However, the Decision makes it clear that, in this case, the Minister's Delegate was determining whether a reasonable suspicion still existed. In other words, the Minister's Delegate adopted for the Decision the test the Customs Officer at the airport was required to use when she declined to return the Forfeited Currency, pursuant to subsection 18(2) of the Act. That subsection provides that she must have had "reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the Criminal Code or funds for use in the financing of terrorist activities". In my view, the Decision stated the correct test when it indicated that the Minister's Delegate was determining whether such reasonable grounds still existed.

[18] The application Judge found no merit in the first issue and then analyzed the issue of standard of proof applicable to an applicant who sought to recover funds seized as forfeit. After a discussion of the authorities, she concluded as follows (at paragraphs 72-74):

With regard to the burden of proof on an applicant who wishes to dispel a suspicion based on reasonable grounds, it is my view that such an applicant must adduce evidence which proves beyond a reasonable doubt that there are no reasonable grounds for suspicion. Only in such circumstances will the evidence be sufficient to displace a reasonable suspicion.

I have reached this conclusion because, if a Minister's Delegate were only satisfied on the balance of probabilities that there were no reasonable grounds for suspicion, it would still be open to him to suspect that forfeited currency was proceeds of crime. The civil standard of proof does not free the mind from all reasonable doubt and, if reasonable doubt exists, suspicion survives.

In this case, the adjudicator required proof beyond all doubt and I am satisfied that this constituted an error in law because proof beyond a reasonable doubt is sufficient to defeat reasonable grounds for suspicion.

[19] The application Judge concluded that the adjudicator (the Agency officer) required proof in excess of proof beyond a reasonable doubt because of the statement, quoted earlier in these reasons, that proof that there was no other reasonable explanation as to the source of the funds, was required. However, the application Judge went on to conclude that the error was not material because Mr. Sellathurai's evidence fell below the standard of proof beyond a reasonable doubt. Since the Minister's error could not have affected the outcome, the application for judicial review could not succeed and was therefore dismissed.

## THE POSITIONS OF THE PARTIES

[20] In the memorandum of fact and law filed on Mr. Sellathurai's behalf, his counsel defined the issue in the appeal as follows (appellant's memorandum, at paragraph 15):

The Appellant respectfully submits that Justice Simpson erred in law in finding that, in order to dispel a reasonable suspicion that funds seized and held as forfeit are the proceeds of crime under section 18(2) of the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* and to thereby obtain the return of the currency under section 29(1)(a) of the Act, the Appellant had to establish **beyond a reasonable doubt** that the funds were legitimately obtained. It is submitted that the standard of proof required to dispel a reasonable suspicion properly lies between the civil standard of proof on a balance of probabilities and the criminal standard of proof beyond a reasonable doubt. [Emphasis in the original.]

[21] The balance of the memorandum discussed the nuances of standard of proof, proof beyond a reasonable doubt and proof required to dispel a reasonable doubt. In the course of that discussion, counsel for Mr. Sellathurai conceded that (appellant's memorandum, at paragraph 16):

. . . reasonable suspicion existed *at the time of the forfeiture* by the CBSA officer. [Emphasis in the original.]

[22] The substance of the appellant's argument was that since the evidence submitted by Mr. Sellathurai was uncontradicted and was relevant to the source and the legitimacy of the funds, it ought to have been accepted as sufficient to dispel the reasonable suspicion which existed at the time of the seizure of the currency. Counsel argued that the requirement of proof beyond a reasonable doubt is misplaced since that standard is used only in the criminal context where the liberty of the subject is at stake. In this case, the Act makes no reference to proof beyond a reasonable doubt. According to counsel for Mr. Sellathurai, the appropriate standard of proof required to dispel reasonable suspicion lies between the civil standard of proof and the criminal standard of proof beyond a reasonable doubt. In taking this position, counsel relies on a quotation from Bennett J. in *R. v. Pilarinos*, 2001 BCSC 1690, at paragraph 143, dealing with proof of a reasonable apprehension of bias:

In summary, there is a strong presumption of judicial integrity that may only be displaced by cogent evidence establishing a real likelihood of bias. It is trite to note that this burden is higher than a simple balance of probabilities, but lower than proof

beyond a reasonable doubt. The burden lies with the person alleging a reasonable apprehension of bias. A reasonable apprehension of bias is determined by the well-informed, right-minded individual who is aware of all of the circumstances, including the nature of the case, its surrounding circumstances and the presumption of judicial integrity.

[23] Counsel for Mr. Sellathurai concluded his argument by suggesting (appellant's memorandum, at paragraph 26):

At the very least, when the material was being submitted by the Appellant to the Recourse Directorate, some effort should have been made by the Recourse Directorate or the Minister's Delegate to put the Appellant on notice as to the standard that was being applied so that he could meet it. . . .

[24] The Minister's position is that the application Judge's conclusion is reasonable and therefore, no intervention is justified.

## ANALYSIS

### Standard of Review

[25] The question of the standard of review of the Minister's decision under section 29 was settled by this Court in *Dag v. Canada (Minister of Public Safety and Emergency Preparedness)* (2008), 70 Admin. L.R. (4th) 214, at paragraph 4 (*Dag*), where it was held that the standard of review of the Minister's decision under section 29 was reasonableness. Consideration of the issue of the standard of review of the decision as to the standard of proof to be met by the applicant will, for reasons which will become apparent, be deferred to a later point in these reasons.

### Review of the Jurisprudence

[26] Simpson J.'s decision in this case was followed in a number of subsequent cases in the Federal Court which adopted her endorsement of the Minister's statement of the basis on which he was exercising his discretion under section 29 of the Act: see *Dag v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 318 F.T.R. 269, at paragraph 31; affd (2008), 70 Admin. L.R. (4th) 214 (F.C.A.); *Dupre v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177, at paragraph 22 (*Dupre*); *Hamam v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 314 F.T.R. 151, at paragraph 24; *Yang v. Canada (Minister of Public Safety and Emergency Preparedness)* (2008), 79 Admin. L.R. (4th) 168, at paragraph 11 (*Yang*); *Lyew v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 317 F.T.R. 234, at paragraph 31 (*Lyew*); *Dang v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 157, at paragraph 29; *Ondre v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 312 F.T.R. 134, at paragraph 46 (*Ondre*); *Yusufov v. Canada (Minister of Public Safety and Emergency Preparedness)* (2007), 312 F.T.R. 122, at paragraph 42 (*Yusufov*); *Majeed v. Canada (Minister of Public Safety)*, 2007 FC 1082, at paragraph 47 (*Majeed*); *Qasem v. M.N.R.*, [2008] 3 F.C.R. 385, at paragraph 14 (*Qasem*).

[27] On the other hand, there has been a certain divergence of opinion as to the standard of proof to be met by the applicant. Some judges have adopted Simpson J.'s position that the appropriate standard is proof beyond a reasonable doubt: see *Ondre*, at paragraph 19; *Yusufov*, at paragraph 20; *Majeed*, at paragraph 50. Other judges have framed the issue in terms of the evidentiary burden on the applicant to dispel the Minister's suspicions: see *Dupre*, at paragraphs 37-38; *Yang*, at paragraphs 20-21; *Qasem*, at paragraph 18. Some judges have been critical of the use of language taken from the criminal context to describe the burden upon the applicant: *Qasem*, at paragraph 21; *Lyew*, at paragraph 32.

[28] It appears from this that Simpson J.'s decision in this case has, to some extent, framed the terms of the debate with respect to the operation of section 29. Two themes have emerged from the jurisprudence, namely the basis on which the Minister exercises his discretion under section 29 and the standard of proof to be met by an applicant.

Before examining these in more detail, it is necessary to examine the nature of the Minister's decision under section 29.

### The Nature of the Section 29 Decision

[29] To understand what the Minister is required to do under section 29, it is necessary to understand the status of the seized currency at the time the section 29 decision is taken.

[30] The forfeiture of currency under section 18 is effective as of the time of the breach of section 12 [see section 23 of the Act]:

**23.** Subject to subsection 18(2) and sections 25 to 31, currency or monetary instruments seized as forfeit under subsection 18(1) are forfeited to Her Majesty in right of Canada from the time of the contravention of subsection 12(1) in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

[31] Not only is the forfeiture effective as of the date of the breach of section 12, it is also final, subject only to judicial review of the finding that section 12 has been breached [see section 24 of the Act]:

**24.** The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by sections 25 to 30.

[32] As this Court pointed out in *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] 1 F.C.R. 331 (*Tourki*), that which is the subject of review under sections 25 to 30 is the conclusion that there has been a breach of section 12, not the consequences of that breach: see paragraphs 16-18. Of course, the applicant's only interest in challenging the finding under section 12 is to attempt to obtain the return of the funds seized or the penalty paid. And since the only way to access the discretion vested in the Minister under section 29 is to request a review under section 25, such an application is, in effect, an application for relief from forfeiture.

[33] The only means by which a decision under section 29 may be challenged is by means of judicial review: see *Tourki*, at paragraph 18. The jurisprudence suggests that the question raised in such an application for judicial review is the relationship between the Minister's decision under section 29 and that of the customs officer under subsection 18(2). Does section 29 call for the Minister to review or to repeat the exercise undertaken by the customs officer in coming to the conclusion to seize the funds?

**29.** (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, subject to the terms and conditions that the Minister may determine,

(a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (a) or (b) on being informed of it.

[34] The Minister is only called upon to exercise his discretion under section 29 where he concludes, pursuant to a request made under section 25, that there has in fact been a breach of section 12. Consequently, the starting point for

the exercise of the Minister's discretion is that the forfeited currency, which is now in the hands of the Minister of Public Works pursuant to section 22 [as am. by S.C. 2001, c. 41, s. 60], is, for all legal purposes, property of the Crown: see *The King v. Central Railway Signal Co.*, [1933] S.C.R. 555, at pages 557-558, where the following appears:

Some question was raised on the argument as to the effect of the seizure of the 4th July and as to its character as well. The point was not raised in the courts below and the evidence on the point is quite sufficient. It is not open to question on that evidence, that the goods were seized, and "seized as forfeited" for violation of the *Excise Act*. Nor is there any room for doubt as to the effect of such a seizure. It proceeds upon the assumption that the goods, having been forfeited *ipso jure*, in consequence of the violation of the Act, are at the time of seizure, and not as a consequence of it, the property of the Crown. There are several provisions of the statute under which forfeiture supervenes upon the commission of the offence, as a legal consequence of the offence, independently of any act on the part of the officers of excise or any conviction or other judgment of a court.

[35] The logic which applies under the *Excise Act*, R.S.C., 1985, c. E-14, also applies to the *Customs Act*, R.S.C., 1985 (2nd Supp.), c. 1, as well as to the Act under consideration here: see *Tourki*, at paragraph 17.

[36] It seems to me to follow from this that the effect of the customs officer's conclusion that he or she had reasonable grounds to suspect that the seized currency was proceeds of crime is spent once the breach of section 12 is confirmed by the Minister. The forfeiture is complete and the currency is property of the Crown. The only question remaining for determination under section 29 is whether the Minister will exercise his discretion to grant relief from forfeiture, either by returning the funds themselves or by returning the statutory penalty paid to secure the release of the funds.

[37] In this case, the Minister recognized the nature of the discretion he was being called upon to exercise when he advised Mr. Sellathurai, in his letter of October 6, 2005, that "mitigation has not been granted in this case": appeal book, at page 117. Mitigation of the consequences of forfeiture is, in effect, relief from forfeiture. While the Minister's characterization of the decision he makes under section 29 is not conclusive, I find confirmation of my position in the Minister's response to Mr. Sellathurai's request.

### The Basis of the Exercise of the Minister's Discretion

[38] This leads to the question as to how the Minister will exercise his discretion. As this Court recognized in *Tourki*, at paragraph 29, the Act does not stipulate the basis on which the Minister is to exercise his discretion. The jurisprudence on the exercise of a statutory discretion requires, among other considerations, that the discretion be exercised to further the objects of the statute which confers the discretion (*Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2, at pages 7-8 (*Maple Lodge Farms*)).

It is, as well, a clearly-established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

[39] While the basis upon which courts will intervene with respect to discretionary decisions has evolved since *Maple Lodge Farms*, consideration of the statutory purpose remains a key element of the analysis: see *Baker v.*

*Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraphs 67-68; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paragraph 36.

### The Exercise of the Minister's Discretion

[40] How did the Minister exercise his discretion in this case? The answer to that question requires a review of what the Minister did, as well as what the Minister said he did. In my view, they are not the same thing.

[41] From his first contact with Mr. Sellathurai, the Minister (acting through the Agency and through his delegate) asked him for one thing only: to demonstrate to him that the seized funds came from a legitimate source. A review of the exchange of correspondence between the Agency and Mr. Sellathurai's counsel, set out in the first part of these reasons, shows that Mr. Sellathurai was repeatedly and consistently asked to provide proof that the seized funds came from a legitimate source. When Mr. Sellathurai did provide such proof in the form of the affidavits of Sathananthan, Chawla, and Pathinather, the Minister was not persuaded because the affidavits provided explanations which were unverifiable. It seems clear from a fair reading of the record that what the Minister actually did was to insist upon proof of the legitimacy of the source of the funds as a condition of exercising his discretion in favour of Mr. Sellathurai.

[42] What the Minister said he did is slightly different. In his letter to Mr. Sellathurai explaining why he was refusing his request for "mitigation", the Minister wrote as follows (appeal book, at page 117):

Although your solicitor's representations have been considered, mitigation has not been granted in this case. The evidence provided is not verifiable and does not substantiate the origin of the currency. Based on the totality of the evidence and the lack of verifiable evidence to support the legitimate origin of the currency, *reasonable suspicion still exists*. As such the currency has been held as forfeit. . . . [Emphasis added.]

[43] There is logic in the Minister's reasoning that if the applicant cannot show that the seized funds come from a legitimate source, the customs officer's reasonable grounds for suspicion that the funds are proceeds of crime still remain. However, to cast the issue in these terms is to see the section 29 decision in terms of reassessing the customs officer's decision. As noted above, once the breach of section 12 is confirmed, the only issue remaining is whether the Minister will grant relief from forfeiture. Thus while the Minister's statement appears reasonable, it mischaracterizes the nature of the problem confronting the Minister.

[44] The reference to "reasonable suspicion still exists" suggests that the Minister considered the reasonable grounds for suspicion identified by the customs officer and, in light of the information provided by Mr. Sellathurai, decided whether those grounds for suspicion were still legitimate. In her reasons, the application Judge equated this exercise with the adoption of the test imposed on the customs officer by subsection 18(2): see paragraph 63.

[45] The application Judge may have been led to that conclusion by the nature of the affidavit filed by the Minister's delegate. While the letter setting out the reasons for the refusal of Mr. Sellathurai's request deals only with the evidence of the legitimacy of the source of the seized funds, the Minister's delegate filed an affidavit in which he restated and reviewed the grounds for suspicion identified by the customs officer, and indicated why he believed they remained unanswered. In my view, this form of affidavit is inappropriate and ought not to have been given any weight at all.

[46] The judges of the Federal Court have previously stated that a tribunal or a decision maker cannot improve upon the reasons given to the applicant by means of the affidavit filed in the judicial review proceedings. In *Simmonds v. M.N.R.* (2006), 289 F.T.R. 15, Dawson J. wrote, at paragraph 22 of her reasons:

I observe the transparency in decision-making is not promoted by allowing decision-makers to supplement their reasons after the fact in affidavits.

[47] See to the same effect *Kalra v. Canada (Minister of Citizenship and Immigration)* (2003), 29 Imm. L.R. (3d) 208 (F.C.), at paragraph 15; *Yue v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 717, at paragraph 3; *Abdullah v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1185, at paragraph 13. Any other approach to this issue allows tribunals to remedy a defect in their decision by filing further and better reasons in the form of an affidavit. In those circumstances, an applicant for judicial review is being asked to hit a moving target.

[48] Quite apart from its admissibility on the issue of the reasons for the decision, the Minister's delegate's affidavit raises issues of credibility because the factual issues identified in the affidavit were never raised with Mr. Sellathurai, nor was he ever asked for any explanation of any of the facts which were identified as giving rise to reasonable grounds for suspicion. One would have thought that if the Minister's delegate was examining the facts identified as the grounds for suspicion, he would have made inquiries about them.

[49] Where the Minister repeatedly asks for proof that the seized currency has a legitimate source, as he did in this case, it is a fair conclusion that he made his decision on the basis of the applicant's evidence on that issue. The underlying logic is unassailable. If the currency can be shown to have a legitimate source, then it cannot be proceeds of crime.

[50] If, on the other hand, the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. The distinction is important because it goes directly to the nature of the decision which the Minister is asked to make under section 29 which, as noted earlier in these reasons, is an application for relief from forfeiture. The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.

### The Standard of Proof

[51] This leads to the question which was argued at length before us. What standard of proof must the applicant meet in order to satisfy the Minister that the seized funds are not proceeds of crime? In my view, this question is resolved by the issue of standard of review. The Minister's decision under section 29 is reviewable on a standard of reasonableness. It follows that if the Minister's conclusion as to the legitimacy of the source of the funds is reasonable, having regard to the evidence in the record before him, then his decision is not reviewable. Similarly, if the Minister's conclusion is unreasonable, then the decision is reviewable and the Court should intervene. It is neither necessary nor useful to attempt to define in advance the nature and kind of proof which the applicant must

put before the Minister.

[52] On the facts of this case, Mr. Sellathurai put before the Minister evidence which was essentially unverifiable. It was not unreasonable for the Minister to decline to accept this evidence at face value. As was pointed out in the correspondence between the Agency and counsel for Mr. Sellathurai, businesses are bound to retain books and records sufficient to allow the Agency to verify their compliance with their obligations under the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1. The failure to do so is not evidence that such businesses are breaking the law, but it does not assist them in demonstrating that their income is legitimately derived. As a result, I see no basis for intervening and I would dismiss the appeal.

## CONCLUSION

[53] The nature of the discretion to be exercised by the Minister under section 29 is whether to relieve an applicant, whose breach of section 12 he has just confirmed, from the consequences of that breach. The Minister's discretion must be exercised within the framework of the Act and the objectives which Parliament sought to achieve by that legislation. Within that framework, there may be various approaches to the exercise of the Minister's discretion but so long as the discretion is exercised reasonably, the courts will not interfere. In this case, the Minister proceeded by asking Mr. Sellathurai to demonstrate that the funds which were seized came from a legitimate source. The Minister concluded that the evidence provided by Mr. Sellathurai did not satisfy him that the funds came from a legitimate source. It was not unreasonable of the Minister, in those circumstances, to decline to exercise his discretion so as to grant relief from forfeiture.

[54] As a result, I would dismiss the appeal with costs.

NADON J.A.: I agree.

\* \* \*

*The following are the reasons for judgment rendered in English by*

[55] RYER J.A.: I have reviewed the reasons of my colleague, Pelletier J.A., and concur with his decision that the appeal should be dismissed. However, since I have reached that conclusion by a different path, concurring reasons are warranted.

[56] This is an appeal from a decision of Simpson J. (the application Judge) of the Federal Court ((2007), 63 Admin. L.R. (4th) 161) dated February 23, 2007, dismissing the application of Mr. Gowrkumaran Sellathurai (the appellant) for judicial review of a decision of the Minister of Public Safety and Emergency Preparedness (the Minister), pursuant to paragraph 29(1)(c) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act), confirming the forfeiture of certain funds seized from the appellant. Unless otherwise indicated, all statutory references in these reasons are to the corresponding provisions of the Act.

[57] While the appellant concedes that there were valid grounds for the forfeiture at the time of the seizure of the funds, the appellant contends that the evidence that was provided to the Minister subsequent to the seizure was sufficient to dispel these grounds, thereby necessitating the return of the funds to him.

## BACKGROUND

[58] The appellant and his wife operated a wholesale jewellery business in Scarborough, Ontario. He has frequently travelled internationally on business. In the course of his departure from Canada on November 10, 2003, when questioned by an officer (the officer) of the Canada Border Services Agency (the CBSA) as to the amount of funds that he was travelling with, the appellant declared that he was carrying C\$4000 and US\$400 (collectively, the declared funds). An examination of his luggage and his person revealed that, in addition to the declared funds, the appellant was carrying C\$119 000 and US\$35 (collectively, the undeclared funds). The appellant was also found to be carrying two gold bars that he valued at approximately C\$20 000. These items were left with the appellant, as they are not considered to be currency for the purposes of the Act.

[59] After having discovered the undeclared funds, the officer determined that there were reasonable grounds for her to believe that the appellant had contravened subsection 12(1), which by reference to section 2 of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412, requires the disclosure of any amount of currency or monetary instruments in excess of C\$10 000 (or its equivalent in a foreign currency) that is being taken out of Canada. As a result, pursuant to subsection 18(1), the officer seized the declared funds and the undeclared funds as forfeit. Subsections 12(1) and 18(1) read as follows:

**12.** (1) Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

**18.** (1) If an officer believes on reasonable grounds that subsection 12(1) has been contravened, the officer may seize as forfeit the currency or monetary instruments

[60] The appellant indicated to the officer that the reason for his trip was to attend the funeral of his father. He stated that he would be absent from Canada for one week and would be spending two of those days in Dubai. The appellant told the officer that his father had died on November 8, 2003, and that he purchased his tickets on November 10, 2003, because the ticket office was closed on November 8, 2003. However, an examination of the tickets revealed that they had, in fact, been purchased by the appellant prior to the date of his father's death. The officer examined the passport of the appellant and found that he had exited the United Arab Emirates on October 13, 2003.

[61] When questioned by the officer as to the use of the declared funds and the undeclared funds, the appellant stated that \$92 000 had been loaned to him by two jewellers in Montréal for whom he intended to purchase jewellery on his trip. The appellant did not have any documentation confirming these arrangements and initially was unsure of the names of the two jewellers. Additionally, he did not have any documentation to support a withdrawal from a banking institution of any portion of the funds. Moreover, the officer observed that the funds were not wrapped according to the method used by financial institutions. Instead, they were in mixed denominations that were out of order and were held together with elastics.

[62] Having regard to the circumstances surrounding the seizure of the declared funds and the undeclared funds, the officer determined that the normal requirement that the seized funds be returned to the person from whom they were seized, subject to a prescribed penalty, was not appropriate. Rather, the officer maintained the forfeiture of the seized funds, as permitted by subsection 18(2), on the basis that she had reasonable grounds to suspect that the seized funds were proceeds of crime or funds for use in the financing of terrorist activities. Subsection 18(2) reads as follows:

**18. (1) . . .**

(2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities

[63] Subsection 462.3(1) of the *Criminal Code* defines “proceeds of crime” [as enacted by R.S.C., 1985 (4th Supp.), c. 42, s. 2; S.C. 2001, c. 32, s. 12] to mean “any property obtained directly or indirectly as a result of the commission of a designated offence”. That same provision defines “designated offence” [as enacted by S.C. 1996, c. 19, s. 68; 2001, c. 32, s. 12] (a designated indictable offence) as “any indictable offence under the *Criminal Code* and other federal statutes, other than indictable offences” enumerated in section 1 of the *Regulations Excluding Certain Indictable Offences from the Definition of “Designated Offence”*, SOR/2002-63. A list of excluded indictable offences is reproduced in Schedule “A” to the decision of the application Judge. The definitions of “proceeds of crime” and “designated offence” in subsection 462.3(1) of the *Criminal Code* read as follows:

“designated offence” means

- (a) an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
  - (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);
- . . .

“proceeds of crime” means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence, or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

## DECISION OF THE MINISTER

[64] On November 19, 2003, the appellant made a request, pursuant to section 25, for a decision of the Minister as to whether he had contravened subsection 12(1). Section 25 reads as follows:

**25.** A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

[65] In response to the appellant’s request, a written notice (the notice of reasons for action) of the circumstances of the seizure of the declared funds and the undeclared funds, as required by subsection 26(1), was provided to the appellant. Subsection 26(1) read as follows:

**26. (1)** If a decision of the Minister is requested under section 25, the Commissioner shall without delay serve on the person who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

[66] The notice of reasons for action described the events leading up to the maintenance of the forfeiture of the declared funds and the undeclared funds by the officer pursuant to subsection 18(2) and concluded with a request for evidence to be submitted to demonstrate that these funds had been legitimately obtained.

[67] As permitted by subsection 26(2), the appellant submitted evidence to the Minister, consisting of four

affidavits and three character reference letters. In addition, counsel for the appellant made submissions in relation to the seizure of the funds. Subsection 26(2) reads as follows:

**26. (1) . . .**

(2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

[68] The evidence provided by the appellant, as permitted by subsection 26(2), contradicted the information with respect to the sources of the declared funds and the undeclared funds that he had given to the officer and sought to establish that \$92 000 of these funds was actually provided by two different business associates, only one of whom was from Montréal, and that the balance came from several withdrawals from the bank account of the appellant's jewellery business.

[69] The three character references did not address the issue of the legitimacy of the origin of the declared funds and the undeclared funds.

[70] The affidavits of the two business associates stated that they had provided the appellant with \$92 000 in cash, from the cash sales of jewellery, for the purchase of jewellery in Dubai on their behalf. These affidavits did not contain any information with respect to the sales which allegedly generated the cash that was provided to the appellant.

[71] An affidavit provided by the bookkeeper for the appellant's jewellery business indicated that \$37 000 of the seized funds (the balance of the seized funds after deducting the portion that had allegedly been loaned to the appellant) had been withdrawn from the bank account of the business through a series of cheques that were payable to the appellant's wife. In his affidavit, the appellant stated that these cheques were issued for business purposes and that he received the money when the cheques were cashed.

[72] In correspondence dated March 15, 2004 (the first notice), a CBSA official (the first adjudicator) advised the appellant that the affidavits of the two business associates did not demonstrate the legitimacy of the portion of the seized funds that those persons allegedly loaned to the appellant and invited further submissions. The first notice contained the following statement:

Having broken the law and failed to declare, a person cannot regain currency seized as forfeit, on a reasonable suspicion under the *Act*, by merely telling a story that could be true. An innocent explanation as to the origin of the funds must be proven in sufficient detail and with enough credible, reliable and independent evidence to establish that no other reasonable explanation is possible. Otherwise reasonable doubts remain and the forfeiture stands.

[73] On April 27, 2004, counsel for the appellant replied to the first notice indicating that, in his view, an independent RCMP investigation demonstrated that the seized funds could not be linked to any terrorist financing.

[74] By correspondence dated May 3, 2004, the first adjudicator indicated that inquiries would be made with respect to the RCMP investigation. In addition, this correspondence reiterated the CBSA's view (the second notice) that the affidavits of the two business associates did not adequately substantiate the legitimacy of the funds that allegedly had been loaned to the appellant and requested documentary evidence to support the legitimacy of the seized currency.

[75] In correspondence dated June 18, 2004, the first adjudicator advised the appellant that the RCMP investigation did not include a consideration of whether the seized funds were proceeds of crime, within the

meaning of subsection 18(2). Once again, the appellant was put on notice (the third notice) that documentary evidence was needed in order to corroborate the affidavits of the two business associates in relation to the alleged loans.

[76] Notwithstanding the requests contained in the first notice, the second notice and the third notice, the appellant did not provide any documentary evidence establishing the source of the funds that had allegedly been loaned by the two business associates to the appellant. Instead, counsel for the appellant asked the Minister to render the decision that had been requested by the appellant pursuant to section 25.

[77] Subsections 27(1) and (3) obligate the Minister to make a decision as to whether a contravention of subsection 12(1) has occurred and to provide written notice of the decision, including reasons, to the person who has made the request for the decision. Subsections 27(1) and (3) read as follows:

**27.** (1) Within 90 days after the expiry of the period referred to in subsection 26(2), the Minister shall decide whether subsection 12(1) was contravened.

. . .

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

[78] In the circumstances of this case, the Minister delegated her responsibility to make the decisions contemplated by sections 25, 27 [as am. by S.C. 2001, c. 41, s. 62] and 29 to a manager in the Recourse Directorate, Admissibility Branch of the CBSA (the Minister's delegate). In reaching the decision required by subsection 27(1), the Minister's delegate relied, in part, on the file that had been initially prepared by the first adjudicator and completed by another CBSA official (the second adjudicator).

[79] After having reviewed the evidence and submissions that had been provided by the appellant's counsel, as well as other available materials, including the officer's report, the second adjudicator prepared a document (the case synopsis and reasons for the decision) that was signed by her on September 25, 2005 and by the Minister's delegate on October 3, 2005. That document contained the statement from the first notice that is reproduced in paragraph 72 of these reasons.

[80] By correspondence dated October 6, 2005, the Minister's delegate advised the appellant of his decision that there had been a contravention of subsection 12(1) by the appellant, in accordance with subsections 27(1) and (3). Having reached that decision, the Minister's delegate, as required by subsection 29(1), also addressed the issue of whether the seized funds were to be returned to the appellant. The provisions of subsection 29(1) read as follows:

**29.** (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, subject to the terms and conditions that the Minister may determine,

(a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;

(b) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

The Minister of Public Works and Government Services shall give effect to a decision of the Minister under paragraph (a) or (b) on being informed of it.

[81] The decision of the Minister's delegate under subsection 27(1) is not in dispute in this appeal. Rather, the focus of the appellant is on the decision that was made by the Minister's delegate under subsection 29(1).

[82] The Minister's delegate decided to return the declared funds to the appellant pursuant to paragraph 29(1)(a) and to confirm the forfeiture of the undeclared funds pursuant to paragraph 29(1)(c). The Minister's delegate provided the following reasons in respect of his decision under subsection 29(1) [at paragraph 42]:

Although your solicitor's representations have been considered, mitigation has not been granted in this case. The evidence provided is not verifiable and does not substantiate the origin of the currency. Based on the totality of the evidence and the lack of verifiable evidence to support the legitimate origin of the currency, reasonable suspicion still exists. As such the currency has been held as forfeit. However, it has been decided that the declared currency (\$4,000.00 Canadian and \$400.00 USD) should be returned to you. [Emphasis added.]

[83] The appellant brought an application in the Federal Court for judicial review of the decision of the Minister confirming the forfeiture of the undeclared funds pursuant to paragraph 29(1)(c) (the subsection 29(1) decision).

#### DECISION OF THE FEDERAL COURT

[84] The application Judge held that section 29 is silent with respect to the principles that the Minister, or her delegate, must apply in deciding whether to confirm a forfeiture of funds that have been seized under Part 2 of the Act. The application Judge found that, in this case, the Minister's delegate decided to base his subsection 29(1) decision upon a determination of whether the test in subsection 18(2), which was applied by the officer, would still be met, that is to say, whether reasonable grounds to suspect that the seized currency or monetary instruments are "proceeds of crime" within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities (reasonable grounds to suspect) still existed at the time of the subsection 29(1) decision.

[85] The application Judge referred to the cross- examination of the Minister's delegate on the affidavit that he had sworn as indicating that because of his reliance on the case synopsis and reasons for the decision and the standard of proof referred to therein, he may have thought that to dispel reasonable grounds to suspect, the appellant was obligated to prove an innocent explanation beyond all doubt.

[86] The application Judge determined that the standard of proof that is necessary to establish reasonable grounds to suspect requires more than a subjective suspicion or a hunch. Instead, the application Judge held that evidence to substantiate reasonable grounds to suspect must be credible and objective.

[87] The application Judge then went on to state that the standard of proof referred to in the case synopsis and reasons for the decision, namely, proof beyond all doubt, was erroneous and that to dispel reasonable grounds to suspect, only proof beyond a reasonable doubt is required.

[88] In the circumstances, the application Judge found that this error on the part of the Minister's delegate was immaterial, stating, at paragraph 75:

[The appellant's] evidence failed to displace, beyond a reasonable doubt, the objective and credible evidence supporting the Minister's Delegate's suspicion that the Undeclared Currency was proceeds of crime.

Accordingly, the application Judge held that the error in the specification of the requisite standard of proof to dispel reasonable grounds to suspect was insufficient to allow the application for judicial review to succeed.

[89] The application Judge also found no merit in the appellant's argument that there are no reasonable grounds to suspect that the undeclared funds are proceeds of crime. Moreover, the application Judge found that the return of the declared funds did not contradict the confirmation of the forfeiture of the undeclared funds so as to render the decision of the Minister unreasonable.

[90] Accordingly, the application Judge dismissed the application for judicial review.

## ISSUE

[91] The issue in this appeal is whether the Minister's delegate erred in making the subsection 29(1) decision, in which the forfeiture of the undeclared funds was confirmed pursuant to paragraph 29(1)(c).

## ANALYSIS

### The Nature of the Subsection 29(1) Decision

[92] Subsection 29(1) provides the Minister with broad discretionary powers to determine the monetary sanction, if any, that is to be imposed on a person who has been determined, pursuant to subsection 27(1), to have contravened subsection 12(1). In particular, paragraph 29(1)(a) empowers the Minister to reverse a forfeiture of seized funds, with or without a penalty, paragraph 29(1)(b) empowers the Minister to remit all or a portion of any penalty imposed under subsection 18(2) and paragraph 29(1)(c) empowers the Minister to confirm a forfeiture of seized funds. As correctly observed by the application Judge, the basis upon which the Minister is to exercise her discretion under subsection 29(1) is not spelled out in that provision or elsewhere in the Act. Moreover, the Minister is under no obligation to provide reasons for a decision made pursuant to subsection 29(1) (see *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] 1 F.C.R. 331 (C.A.)).

### The Decision Under Review

[93] It is at this point that I must respectfully diverge from the reasons of my colleague, Pelletier J.A.

[94] The application Judge, at paragraph 63 of her reasons, acknowledges the absence of guiding principles with respect to the basis for a decision under subsection 29(1) but goes on to find that the Minister's delegate adopted the test in subsection 18(2) as the basis for his subsection 29(1) decision. That paragraph reads as follows:

Section 29 of the Act is silent about the principles to be used by a Minister's Delegate in deciding whether to confirm a currency forfeiture. However, the Decision makes it clear that, in this case, the Minister's Delegate was determining whether a reasonable suspicion still existed. In other words, the Minister's Delegate adopted for the Decision the test the Customs Officer at the airport was required to use when she declined to return the Forfeited Currency, pursuant to subsection 18(2) of the Act. That subsection provides that she must have had "reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the Criminal Code or funds for use in the financing of terrorist activities". In my view, the Decision stated the correct test when it indicated that Minister's Delegate was determining whether such reasonable grounds still existed.

[95] At the hearing of the appeal, counsel for the respondent confirmed that the Minister's delegate exercised the discretion provided in subsection 29(1) in accordance with this finding by the application Judge. This confirmation is consistent with the position taken by counsel for the respondent in paragraphs 67 and 68 of his memorandum of fact and law. Those paragraphs are as follows:

In order to respond to this argument, it is important to first understand the nature of the ministerial review conducted by the Respondent, which is not a criminal prosecution. It is an administrative review of an *in rem* property seizure where the sole issue is whether there are reasonable grounds to suspect that the currency is proceeds of crime, not whether the person who failed to declare the currency has committed a crime. Similarly, currency may be seized and forfeited whether or not it is in fact associated with money laundering or terrorism. The test, as set out in the *PCMLTFA*, is only that there are reasonable grounds to suspect that the currency is proceeds of crime.

The exercise conducted by the Respondent decision-maker in the case at bar was to review the totality of the factual record before him and to reach a conclusion on whether or not reasonable grounds existed to suspect that the currency is proceeds of crime. This flows from the fact that the Respondent was reviewing the Customs officer's determination that she had reasonable grounds to suspect that the currency was proceeds of crime and therefore could not return the currency to the Applicant pursuant to s. 18(2) of the *PCMLTFA*.

[96] The adoption by the Minister's delegate of the reasonable grounds to suspect test in subsection 18(2) is further evident from paragraphs 14 and 24 of his affidavit, the relevant portions of which read as follows:

In my view, this material demonstrated that there were reasonable grounds to suspect that the undeclared currency seized from the Applicant on November 10, 2003 was proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*. . .

. . .

In sum, on the basis of all of the material that was before me, with particular emphasis on the grounds set out above and taken as a whole, I concluded that it was reasonable to suspect that the unreported currency in the amount of \$119,000 (Canadian) and \$35 (US) was proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*.

[97] At no stage in the proceedings has it been argued that the Minister's delegate did not, in fact, adopt the reasonable grounds to suspect test, in subsection 18(2), as the basis upon which he exercised his discretion under subsection 29(1). Moreover, there has been no argument that the adoption of that test was an improper exercise of the discretion given to the Minister's delegate under subsection 29(1).

[98] I would hasten to add that, in my view, the Minister's delegate was not required to adopt the reasonable grounds to suspect test as the basis upon which to make his subsection 29(1) decision. That test is not the only basis upon which a subsection 29(1) decision can be made. Indeed, by choosing to adopt that test, it may be that the Minister's delegate has set a higher standard for himself than he needed to.

[99] Accordingly, unlike my colleague Pelletier J.A., I am of the view that this appeal must proceed on the basis that the Minister's delegate, in fact, adopted the reasonable grounds to suspect test in subsection 18(2) and that the issue is whether the Minister's delegate properly applied that test.

[100] In concluding that the Minister's delegate applied the subsection 18(2) test by considering whether reasonable grounds to suspect "still existed", the application Judge, in effect, found that the Minister's delegate was reviewing the decision of the officer to impose the forfeiture in light of the evidence and submissions that had been provided by the appellant subsequent to the seizure of the funds. This explains the approach of the application Judge in determining the standard of proof that was required of the appellant to "dispel" the reasonable grounds to suspect, as found by the officer.

[101] Indeed, this approach is also adopted by the appellant who takes issue with the application Judge only to the extent that she determined the requisite standard of proof to be beyond a reasonable doubt. According to the appellant, a lower standard of proof, namely, one that lies “midway between the civil standard of proof on a balance of probabilities and the criminal standard of proof beyond a reasonable doubt”, is sufficient to “dispel” the reasonable grounds to suspect that the officer found to be present at the time of the seizure of the funds.

[102] The respondent argues that the focus on the standard of proof required to “dispel” the reasonable grounds to suspect that were found by the officer is misguided. According to the respondent, the exercise that was undertaken by the Minister’s delegate in making the subsection 29(1) decision was in the nature of a *de novo* consideration by the Minister’s delegate of the question of whether reasonable grounds to suspect existed at the time of the *de novo* consideration.

[103] I am inclined to accept the respondent’s characterization of the nature of the decision that was undertaken by the Minister’s delegate. This characterization is supported by the following excerpt from the October 6, 2005, correspondence of the Minister’s delegate:

Based on the totality of the evidence and the lack of verifiable evidence to support the legitimate origin of the currency reasonable suspicion still exists.

Further support is contained in paragraph 24 of the affidavit of the Minister’s delegate, which is produced in paragraph 45 of the reasons of the application Judge and reads as follows:

24. In sum, on the basis of all of the material that was before me, with particular emphasis on the grounds set out above and taken as a whole, I concluded that it was reasonable to suspect that the unreported currency in the amount of \$119,000 (Canadian) and \$35 (US) was proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*.

[104] In my view, where the Minister exercises the discretion provided in subsection 29(1) by adopting the reasonable grounds to suspect test in subsection 18(2) as the basis upon which to decide upon the monetary sanction that is to be imposed upon a person whose funds have been subject to forfeiture and who has been determined by the Minister to have contravened subsection 12(1), the Minister is then required to make a fresh consideration of whether, at the time of her decision, there are reasonable grounds to suspect. This obligates the Minister to come to her own conclusion as to the existence of reasonable grounds to suspect. In that regard, the Minister’s decision must be based upon the entirety of the record before her, which would include the evidence that was available to the officer at the time of the seizure of the funds, as well as any evidence and submissions that are provided to the Minister after that time. As such, the consideration by the Minister is not a *de novo* review in the sense of a trial *de novo*, in which the case is decided only on the new record and without regard to evidence adduced in prior proceedings (see *Molson Breweries v. John Labatt Ltd.*, [2000] 3 F.C. 145 (C.A.), at paragraph 46). Thus, in such circumstances, the Minister’s *de novo* consideration would necessarily entail a determination of the legal test for reasonable grounds to suspect and thereafter, an application of that test to the facts before her.

[105] In view of the misconception, on the part of the application Judge, of the approach that was required to be taken, and was in fact taken, by the Minister’s delegate in rendering his subsection 29(1) decision, that decision was not appropriately reviewed by the application Judge. Accordingly, I will undertake that review.

#### The Standard of Review

[106] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, Justices Bastarache and LeBel provided the following guidance, at paragraph 62:

In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[107] In *Dag v. Canada (Minister of Public Safety and Emergency Preparedness)* (2008), 70 Admin. L.R. (4th) 214, this Court held that the applicable standard of review of a decision of the Minister under subsection 29(1) is reasonableness. In *Dag*, as in this case, the Minister made the determination that the decision as to the monetary sanction that was to be imposed in light of a contravention of subsection 12(1) would be made on the basis of the application of the reasonable grounds to suspect test in subsection 18(2). This is evident from paragraph 5 of the decision, which reads as follows:

With respect to the substantive issue which was before Blais J., we are of the view, applying this standard, that he committed no error when he held that the record allowed the Minister to conclude in the present case that there were “reasonable grounds to suspect” that the currency was “proceeds from crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities”.

[108] It is apparent that in *Dag*, no issue was taken with respect to the proper interpretation of the reasonable grounds to suspect element of the test in subsection 18(2).

[109] While the question posed by subsection 18(2) is one of mixed fact and law, the proper interpretation of the reasonable grounds to suspect element of that question may be seen as a legal question. In that regard, *Dunsmuir* informs that where a legal issue that is intertwined with factual issues can nonetheless be easily separated from those factual issues and where the legal issue is one of general law, the standard of correctness will apply in relation to that issue. In my view, both of those requirements are present with respect to the proper interpretation of reasonable grounds to suspect as found in subsection 18(2). Accordingly, the issue of the proper interpretation of that phraseology not having arisen in *Dag*, I am of the view that the question of whether that phraseology was properly interpreted by the Minister’s delegate in making the subsection 29(1) decision must be reviewed on the standard of correctness.

[110] The application of the legal test for reasonable grounds to suspect by the Minister’s delegate to the facts that were before him is, in accordance with *Dag*, required to be reviewed on the standard of reasonableness.

#### The Legal Test for Reasonable Grounds to Suspect

[111] The application Judge analysed the issue of the standard of proof that is required to establish reasonable grounds to suspect. She found that there must be more than a mere subjective suspicion. Instead, the application Judge found that to substantiate reasonable grounds to suspect, there must be objective and credible evidence.

[112] This finding of the application Judge is consistent with the conclusion of the Supreme Court of Canada in its recent decision in *R. v. Kang-Brown*, [2008] 1 S.C.R. 456. In that case, the standard of proof that is required to establish a “reasonable suspicion” is described, in paragraph 75, as one that requires objectively ascertainable facts that are capable of judicial assessment. In my view, there is little to differentiate a “reasonable suspicion” from “reasonable grounds to suspect”. Accordingly, I am of the view that the standard of proof described in *Kang-Brown* is an appropriate one to be applied to the determination of whether reasonable grounds to suspect may be said to exist. I would hasten to add that I see no material difference between that standard of proof and the standard of proof as formulated by the application Judge.

[113] The record does not demonstrate a clear and specific enunciation by the Minister’s delegate of the appropriate standard of proof required to establish reasonable grounds to suspect. However, a review of both the case synopsis and reasons for the decision and the affidavit of the Minister’s delegate indicates that credible and objectively ascertainable evidence was sought as the basis upon which to ground the subsection 29(1) decision. It is clear to me that the Minister’s delegate was looking for more than a subjective suspicion or a “hunch” as the basis

for that decision. Moreover, the requests in the first notice, the second notice and the third notice, for additional documentary support with respect to the origin of the portion of the seized funds that were allegedly loaned to the appellant, clearly demonstrate that the first adjudicator sought credible and objectively ascertainable evidence from the appellant to include in the record upon which the Minister's delegate based his subsection 29(1) decision. Accordingly, I am of the view that the record demonstrates a sufficient awareness on the part of the Minister's delegate of the legal standard that is necessary to establish reasonable grounds to suspect. As such, the subsection 29(1) decision is unassailable in terms of whether it was based upon a correct understanding of the appropriate legal standard that underpins the reasonable grounds to suspect test.

[114] In light of the standard of proof that has been determined, reasonable grounds to suspect may be found where there are objectively ascertainable facts indicating that the seized funds are for use in the financing of terrorist activities. "Terrorist activity" [as enacted by S.C. 2001, c. 41, s. 2] is defined in section 2 as having "the same meaning as in subsection 83.01(1)" of the *Criminal Code*. Alternatively, reasonable grounds to suspect may be found where objectively ascertainable facts indicate that the seized funds are "proceeds of crime", within the meaning of subsection 462.3(1) of the *Criminal Code*. Both of these possibilities were considered by the Minister's delegate, as indicated in paragraph 9 of his affidavit, but the subsection 29(1) decision was ultimately based upon a reasonable suspicion that the seized funds were proceeds of crime.

[115] The definition of "proceeds of crime" provides an expansive, although not unlimited, scope as to what may be considered a criminally acquired asset. The designated indictable offences which may give rise to proceeds of crime include a number of the more serious offences under the *Criminal Code* and other federal statutes, such as illegal drug trafficking, bribery, fraud, robbery, counterfeit money, stock manipulation and money laundering (where the Crown proceeds by way of indictment).

[116] It is clear that not all crimes or offences are designated indictable offences. Importantly, it is only those crimes and offences that are designated indictable offences that have the requisite degree of criminality that will permit seized funds to be characterized as proceeds of crime for the purposes of the reasonable grounds to suspect test in subsection 18(2).

[117] Thus, the record before the Minister or her delegate may indicate that the seized funds are associated with crime, albeit not necessarily a designated indictable offence. In my view, the determination of whether there are reasonable grounds to suspect that seized funds are "proceeds of crime" within the meaning of subsection 462.3(1) of the *Criminal Code* can be approached, where it is helpful to do so, by breaking the analysis into two parts. Viewed in this manner, the analysis involves a consideration of whether there is a reasonable suspicion that the seized funds are associated with criminality, and that such criminality is a designated indictable offence. I would add that this approach is equally applicable to an officer who is obligated to consider the reasonable grounds to suspect test in subsection 18(2) as it is to the Minister, or her delegate, where that test is adopted for the purposes of a subsection 29(1) decision.

[118] It is apparent that the second part of this approach is the more difficult of the two. Evidence linking the seized funds to criminality in general is likely to be available. However, evidence indicating a linkage between the seized funds and a particular designated indictable offence is less likely to be available.

[119] In my view, requiring an officer or the Minister to establish a direct linkage between the seized funds and

the commission of a specific designated indictable offence, in order to meet the reasonable grounds to suspect test, imposes too onerous a standard. In the context of forfeitures of funds under certain provisions of the *Criminal Code*, it has been observed that where the Crown is unable to directly establish a specific offence as the source of alleged proceeds of crime, a forfeiture of the funds may nonetheless be upheld where an appropriate inference that the funds are connected to the particular offence or class of offences can be drawn from the facts. See for example *R. v. Shah*, [1992] B.C.J. No. 2716 (Prov. Ct.) (QL); *R. v. Clymore* (1992), 74 C.C.C. (3d) 217 (B.C.S.C.); *R. v. Hicks*, [2000] B.C.J. No. 2653 (Prov. Ct. (Crim. Div.)) (QL).

[120] In my view, it is entirely appropriate to rely upon properly drawn inferences that seized funds that have been derived from some type of criminality have been derived from a designated indictable offence, as required by the reasonable grounds to suspect test in subsection 18(2).

#### Application of the Legal Test

[121] The question at this point is whether, in accordance with *Dag*, the subsection 29(1) decision of the Minister's delegate is reasonable.

[122] As stated in the October 6, 2005 correspondence, in the subsection 29(1) decision the Minister's delegate determined that a reasonable suspicion existed since the evidence provided by the appellant after the seizure of the funds was not verifiable and did not point to a legitimate origin of the seized funds. The Minister's delegate expanded upon this reasoning in paragraph 24 of his affidavit that is reproduced in paragraphs 96 and 103 of these reasons, wherein the Minister's delegate stated that he had concluded, based on all of the material in the record, that it was reasonable to suspect that the undeclared funds were "proceeds of crime" within the meaning of subsection 462.3(1) of the *Criminal Code*.

[123] As explained in his affidavit, the relevant portions of which are reproduced in paragraph 45 of the reasons of the application Judge, the following facts relied on by the Minister's delegate in arriving at the subsection 29(1) decision pointed to a reasonable suspicion that the undeclared funds were associated with criminality, in accordance with the first stage of the analysis as described above:

- (a) the appellant had attempted to export a large amount of funds and had chosen to report a small fraction of this amount to the officer;
- (b) the appellant had provided vague answers in response to the officer's questions;
- (c) further to his request for a ministerial decision, the appellant provided an explanation as to the origin of the seized funds that differed from that originally given to the officer; and
- (d) the ultimate explanation provided by the appellant in respect of the origin of the seized funds was not corroborated by sufficient supporting documentation.

[124] With respect to the first ground, the Minister's delegate was of the view that the appellant's behaviour in choosing not to report the undeclared funds, when explicitly questioned by the officer as to the amount of funds that he was travelling with, was suspicious, particularly since the appellant was a frequent inter-national traveller who would have been aware of currency reporting requirements. The Minister's delegate pointed to the fact that individuals wishing to transfer large amounts of legitimate funds between countries usually prefer to use the services of financial institutions because such transactions are faster, cheaper and more secure than bulk cash transportation. Additionally, the Minister's delegate commented that, unlike American currency, Canadian currency is not readily used or accepted in many other countries. For that reason, the Minister's delegate found it implausible that large quantities of legitimate Canadian currency would have been brought by a traveller to a country such as the United

Arab Emirates in order to conduct legitimate business.

[125] With respect to the second ground, the Minister's delegate referred to the fact that when asked by the officer to explain the origin of the declared funds and the undeclared funds, the appellant initially advised that he was unsure of the identities of the individuals who had given him the currency and only later produced the names of two business associates in Montréal who had provided him with \$92 000 to purchase jewellery. Furthermore, when questioned by the officer, the appellant had "sweat pouring down his face" and was visibly nervous. According to the Minister's delegate, for the rare international traveller who transports large sums of legitimately earned currency destined for legal purposes it can be expected that he or she will be able to clearly explain both the source and intended use of that currency, whereas an inability to clearly provide such an explanation suggests an awareness that the currency was not earned through legitimate means or is intended for illicit use.

[126] With respect to the third ground, the Minister's delegate referred to the fact that four months after the seizure of the declared funds and the undeclared funds, the appellant provided an explanation for the origin of the funds that contradicted the explanation that he had given to the officer. The appellant sought to establish that \$92 000 had actually been provided by two individuals that differed from those initially identified and only one of whom was from Montréal, and, for the first time, the appellant explained that the balance of the seized funds had been withdrawn from the bank account of his jewellery business. The Minister's delegate was of the view that the fact that the appellant provided a new explanation for the origin of the seized funds which differed from that provided at the time of the forfeiture raised a suspicion that the funds were illicit.

[127] With respect to the fourth ground, the Minister's delegate referred to the fact that while the affidavits of the two business associates maintained that they had provided the appellant with \$92 000 to purchase certain vaguely described jewellery in the United Arab Emirates on their behalf, neither had provided contracts, receipts or any other documentation to support the existence of such a significant financial obligation. The Minister's delegate did not find it plausible that legitimate businesses seeking to purchase \$92 000 worth of jewellery in a foreign country would do so by entrusting another person with currency in that amount without documenting this arrangement in some form and by providing vague instructions about the type and quantity of jewellery to buy. Moreover, while copies of cheques and bank statements were provided in the affidavit of the bookkeeper to show that six cheques totalling \$37 000 made payable to the appellant's wife were drawn against the bank account of the jewellery business in September and early November 2003, the Minister's delegate stated that there was no indication that the balance of the seized funds had indeed originated from these withdrawals. According to the Minister's delegate, the fact that the appellant chose to provide an implausible and unsubstantiated explanation for the origin of the seized funds rendered it reasonable to suspect that the currency was in fact illicit.

[128] As previously indicated, it is not sufficient to simply establish a reasonable suspicion that the undeclared funds were associated with criminality. The test for reasonable grounds to suspect in subsection 18(2) also requires a reasonable suspicion that such criminality is a designated indictable offence.

[129] In this case, the Minister's delegate concluded that it was reasonable to suspect that the undeclared funds were "proceeds of crime" within the meaning of subsection 462.3(1) of the *Criminal Code*. This demonstrates that the Minister's delegate determined that it was reasonable to suspect that the undeclared funds were the proceeds of a designated indictable offence. In my view, the fact that the undeclared funds consisted of C\$119 000 in mixed denominations that were out of order and held together with elastics, supports a reasonable inference that the criminality reasonably suspected of being associated with the undeclared funds was not a minor offence but rather an indictable offence that constituted a designated indictable offence. The reasonableness of such an inference is supported by the failure of the appellant to provide any credible and objective evidence of any legitimate source for the undeclared funds.

[130] In my view, the record before the Minister's delegate was sufficient for him to reach his decision that there are reasonable grounds to suspect that the undeclared funds are proceeds of crime. Accordingly, I am satisfied that the subsection 29(1) decision of the Minister's delegate, upholding the forfeiture of the undeclared funds, is reasonable.

#### DISPOSITION

[131] For the foregoing reasons, I would dismiss the appeal with costs.

**T-155-06**

**Citation: 2007 FC 208**

**Ottawa, Ontario, February 23, 2007**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**GOWRKUMARAN SELLATHURAI**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**(SOLICITOR GENERAL OF CANADA)**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

- [1] This application for judicial review concerns \$123,000.00 CAD and \$435.00 USD seized from the Applicant and forfeited at Pearson Airport in Toronto on November 10, 2003 (the Forfeited Currency). The forfeiture was undertaken pursuant to the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act*, S.C. 2000, c. 17 (the Act).

[2] The Forfeited Currency consists of the sums the Applicant declared, \$4,000.00 CAD and \$400.00 USD (the Declared Currency) and the amounts he did not declare \$119,000.00 CAD and \$35.00 USD (the Undeclared Currency).

## **THE APPLICATION**

[3] The application is brought with respect to a decision by the Minister of Public Safety and Emergency Preparedness (the Minister) of October 6, 2005 in which he confirmed the forfeiture of the Undeclared Currency under paragraph 29(1)(c) of the Act.

## **THE APPLICANT AND OTHERS**

[4] The Applicant is Mr. Gowrkumaran Sellathurai (the Applicant). Since its incorporation in 1994, he has operated a wholesale jewellery business in Scarborough, Ontario called Jayasaji Jewellers (the Business). His wife Palarani Gowrkumaran is listed in the company's articles of incorporation as its sole officer and director and the Applicant's lawyer, T. Jegatheesan, in his letter of March 2, 2004, describes her as the owner of the business. However, the Applicant's affidavit of March 1, 2004 (the Applicant's Affidavit) indicates that he has signing authority over the Business accounts and that he and his wife run the Business as "complete partners". The Applicant has lived in Toronto with his wife and three children for thirteen years. He came to Canada in 1986 and became a Canadian citizen in 1991.

[5] Mr. George Montgomery Pathinather and Mr. Shudhir Chawla are the Applicant's business associates. Their affidavits of January 29, 2004 (the Pathinather Affidavit) and February 5, 2004 (the Chawla Affidavit) state that they provided the Applicant \$45,000.00 and \$47,000.00 respectively for business purposes. Those amounts are said to be included in the Forfeited Currency.

[6] Mr. Sathi Sathananthan is the bookkeeper for the Business. He swore an affidavit dated February 16, 2004 (the Bookkeeper's Affidavit) which describes a series of withdrawals from the account of the Business totaling \$37,000.00. This amount is also said to be included in the Forfeited Currency.

## **THE HEARING**

[7] This application was set down for a one-day hearing but more time was needed. Since counsel were not available to conclude the hearing the next day, it was agreed that counsel for the Applicant would complete his reply by filing written submissions on or before December 18, 2006 and that counsel for the Respondent could, if he wished, file written observations thereon on or before January 12, 2007. Reply submissions were filed and the Respondent delivered a Sur-Reply dated January 10, 2007.

## THE LEGISLATIVE FRAMEWORK APPLIED TO THIS CASE

[8] The export of large amounts of currency from Canada is not prohibited but there is a mandatory reporting requirement. Subsections 12(1) and (3)(a) of the Act, together with subsection 2(1) of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412, obligate a person leaving Canada to report currency and monetary instruments on their person or in their accompanying luggage if they have a value equal to or greater than \$10,000.00 CAD.

[9] Subsection 18(1) of the Act provides that, if currency and instruments are not reported, they may be seized and forfeited. Subsection 18(2) provides that, instead of returning the seized items upon payment of a penalty, a customs officer may decide to maintain the forfeiture, as was done in this case (the Forfeiture). The Applicant concedes that the officer had reasonable grounds to maintain the Forfeiture. The relevant subsection reads as follows:

18. (2) The officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities.

[my emphasis]

18. (2) Sur réception du paiement de la pénalité réglementaire, l'agent restitue au saisi ou au propriétaire légitime les espèces ou effets saisis sauf s'il soupçonne, pour des motifs raisonnables, qu'il s'agit de produits de la criminalité au sens du paragraphe 462.3(1) du *Code criminel* ou de fonds destinés au financement des activités terroristes.

[je souligne]

[10] With respect to proceeds of crime, subsection 462.3(1) of the *Criminal Code* provides:

"proceeds of crime" means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence, or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

«produits de la criminalité » Bien, bénéfice ou avantage qui est obtenu ou qui provient, au Canada ou à l'extérieur du Canada, directement ou indirectement :

- a) soit de la perpétration d'une infraction désignée;
- b) soit d'un acte ou d'une omission qui, au Canada, aurait constitué une infraction désignée.

[11] A "designated offence" is essentially an indictable offence and is defined as follows:

- (a) any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation, or
- (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a);

- a) Soit toute infraction prévue par la présente loi ou une autre loi fédérale et pouvant être poursuivie par mise en accusation, à l'exception de tout acte criminel désigné par règlement;
- b) soit le complot ou la tentative en vue de commettre une telle infraction ou le fait d'en être complice après le fait ou d'en conseiller la perpétration.

[12] The relevant regulations are entitled *Regulations Excluding Certain Indictable Offences from the Definition of "Designated Offence"*, SOR/2002-63. They exclude indictable offences under the legislation listed in Schedule "A" hereto. That legislation has no impact on this case.

[13] The Canada Border Services Agency (CBSA) is responsible for the seizure and forfeiture of undeclared currency and monetary instruments under the Act. A CBSA officer (the Customs Officer) interrogated the Applicant at Pearson Airport on November 10, 2003. She prepared handwritten notes as she was interviewing the Applicant (the Customs Officer's Notes). She also prepared a report describing the Seizure and Forfeiture dated November 13, 2003 (the Seizure Report).

[14] On November 19, 2003, the Applicant asked for a Minister's decision under section 25 of the Act. It states:

25. A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may within 90 days after the date of the seizure request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice in writing to the officer who seized the currency or monetary instruments or to an officer at the customs office closest to the place where the seizure took place.

25. La personne entre les mains de qui ont été saisis des espèces ou effets en vertu de l'article 18 ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander au ministre de décider s'il y a eu contravention au paragraphe 12(1) en donnant un avis écrit à l'agent qui les a saisis ou à un agent du bureau de douane le plus proche du lieu de la saisie.

[15] After the Applicant asked for a ministerial decision, his file became the responsibility of CBSA's Recourse Directorate. There, an adjudicator reviewed the file and prepared a document formally described as a "Written Notice of Circumstances of Seizure" but informally known as a "Notice of Reasons for Action". In this case, it was dated January 12, 2004 (the Notice of Reasons) and was served on the Applicant pursuant to subsection 26(1) of the Act which says:

26. (1) If a decision of the Minister is requested under section 25, the President shall without delay serve on the person who requested it written notice of the

26. (1) Le président signifie sans délai par écrit à la personne qui a présenté la demande visée à l'article 25 un avis exposant les circonstances de la saisie à

circumstances of the seizure in respect of which the decision is requested. l'origine de la demande.

[16] Thereafter, subsection 26(2) of the Act afforded the Applicant the opportunity to furnish evidence. It reads as follows:

26. (2) The person on whom a notice is served under subsection (1) may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

26. (2) Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

[17] The Applicant filed the Applicant's Affidavit, the Pathinather Affidavit, the Chawla Affidavit and the Bookkeeper Affidavit described above. His counsel forwarded two letters which contained his submissions and also supplied three letters giving character references for the Applicant. This material will be discussed below.

[18] In addition to receiving the Applicant's evidence, the Respondent was entitled to pursue its own inquiries and did so in this case. The Applicant's lawyer advised the adjudicator that Constable David Kim of the RCMP had interviewed the Applicant on December 3, 2003 to address the possibility that the Applicant had been attempting to fund Tamil terrorists in Sri Lanka. The adjudicator had not known of the interview but said she would make inquiries. After doing so, she wrote to the Applicant's lawyer on June 18, 2004 and advised that:

I have been advised that Constable Kim only investigated whether the currency was to be used for terrorist financing and there was no conclusive evidence to indicate it was intended for terrorist financing. He advised that his investigation did not entail whether the currency was money laundering or proceeds of crime.

[19] The adjudicator also obtained a report dated December 4, 2003 which described the Applicant's previous history with CBSA. It showed that on February 25, 1999, the Applicant had declared commercial goods but had failed to declare personal items worth approximately \$400.00. As well, in 1994, he smuggled jewellery in saris. No particulars of this incident were available. However, when, as a result of that incident, he was subjected to a later search, nothing was found.

[20] The Respondent also conducted a CPIC (Canadian Police Information Centre) search which showed that the Applicant had not been convicted of a criminal offence. Finally, the Minister's Delegate acknowledged during his cross-examination that there was no information in the adjudicator's file which linked the Applicant to organized crime.

[21] From September 2004 to July 2005, the Applicant's application for a Minister's decision was suspended while the Applicant pursued an Access to Information Request. However, in July 2005, the Applicant retained new counsel who revoked the suspension and asked for a decision as soon as possible.

[22] By this date, the first adjudicator had been promoted and a second adjudicator had assumed responsibility for the Applicant's file. She prepared a document entitled Case Synopsis and Reasons for Decision (the Synopsis and Reasons). It was signed by the adjudicator on September 25, 2005.

[23] The Synopsis and Reasons served as a recommendation and was given to a Manager in the Recourse Directorate. He was delegated to make the Minister's decisions under sections 25 and 29 of the Act (the Minister's Delegate). He signed the Synopsis and Reasons on October 3, 2005 and in so doing, he decided to confirm the Forfeiture of the Undeclared Currency and return the Declared Currency to the Applicant.

[24] The final step was communicating his decision and by letter dated October 6, 2005, the Applicant was advised that the Minister's Delegate had concluded that subsection 12(1) of the Act had been contravened and had confirmed the Forfeiture of the Undeclared Currency (the Decision). These decisions were reached under subsections 27(1) and (3) and paragraph 29(1)(c) of the Act. They provide that:

27. (1) Within 90 days after the expiry of the period referred to in subsection 26(2), the Minister shall decide whether subsection 12(1) was contravened.

...

(3) The Minister shall, without delay after making a decision, serve on the person who requested it a written notice of the decision together with the reasons for it.

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister shall, subject to the terms and conditions that the Minister may determine,

...

(c) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.

27. (1) Dans les quatre-vingt-dix jours qui suivent l'expiration du délai mentionné au paragraphe 26(2), le ministre décide s'il y a eu contravention au paragraphe 12(1).

...

(3) Le ministre signifie sans délai par écrit à la personne qui a fait la demande un avis de la décision, motifs à l'appui.

29. (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre, aux conditions qu'il fixe :

...

c) soit confirme la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

**THE EVENTS LEADING TO THE SEIZURE AND FORFEITURE**

[25] On November 10, 2003, the Applicant arrived at Pearson airport to board a flight to Paris. From there, he planned to travel to Dubai and on to Sri Lanka. While at the airport, he did not report to the CBSA that he was transporting currency in excess of \$10,000.00 CAD. At 6:30 pm, the Applicant was approached by the Customs Officer who asked what currency he was carrying at that time. In response to her query, he stated that he had only the Declared Currency. The Customs Officer examined his carry on luggage to verify his declaration and found two gold bars which the Applicant valued at \$20,000.00 CAD. At this point, the Customs Officer noted that sweat was “pouring” down the Applicant’s face. She then noticed a bulge in his pant’s pocket which, when produced, turned out to be a large sum of money.

[26] At that point, the Customs Officer was joined by a supervisor and they escorted the Applicant to a private area in the jetway for further questioning. There, she found a total of eight envelopes of bills enclosed in elastic bands.

[27] After those discoveries, the Applicant was moved again to an area described as “Terminal I Secondary”. In that location, the money was counted and forfeited and the Applicant was given a receipt. He was left in possession of his two gold bars (which are not considered currency in Canada), a quantity of jewellery and the petty cash in his wallet. The Forfeiture included both the Declared Currency and the Undeclared Currency.

[28] The Applicant advised the Customs Officer that he travelled to Dubai in the United Arab Emirates about once a month. The Seizure Report shows that the Applicant's passport indicated that he had returned to Canada from Dubai on October 13, 2003. The Customs Officer's Notes show that the Applicant also said that he did not usually travel with large sums of money and was doing so only because it was close to Christmas.

[29] The Applicant told the Customs Officer that he had bought his ticket on the day of the flight (Monday, November 10<sup>th</sup>) because the ticket office had been closed on Saturday the 8<sup>th</sup>. He said he was travelling to attend his father's funeral and that he would be away for one week. However, when the Customs Officer examined his tickets, she found that his ticket for travel that day to Paris had been issued on November 6<sup>th</sup> for a flight out on the 10<sup>th</sup> and returning on the 19<sup>th</sup> and that his ticket from Dubai to Colombo had been issued on October 31<sup>st</sup>. She, therefore, concluded that his trip was not for the purpose or for the duration he had stated.

[30] The Customs Officer's Notes show that the Applicant indicated quite early in his conversation with the Customs Officer that he was a jeweller and the Minister's Delegate agreed during his cross-examination on his affidavit sworn on April 12, 2006 that the Synopsis and Reasons inaccurately suggested that the Applicant had withheld information about being a jeweller until later in his interview with the Customs Officer.

[31] The Applicant told the Customs Officer that \$47,000.00 of the Forfeited Currency had been lent to him by Kanthy Wilberg, a Montreal jeweller, to buy jewellery. Further,

\$45,000.00 had been lent to him by George Mulhambery of Montreal also to buy jewellery. The Applicant provided Montreal telephone numbers for both jewellers and said he had driven to Montreal two days earlier to meet with them. The Applicant did not explain the source of the balance of the Forfeited Currency.

### **THE EVIDENCE SUBMITTED ON THE APPLICANT'S BEHALF**

[32] In his affidavit of March 1, 2004, the Applicant contradicted the information about the source of the currency that he had given to the Customs Officer. He swore that he had been given \$45,000.00 by Mr. Pathinather of Montreal, Quebec for the purchase of specified items of jewellery and that \$47,000.00 had been advanced to him by Mr. Chawla of Markham, Ontario for the purchase of gold bullion. In this regard, the Chawla Affidavit contradicted the Applicant. Mr. Chawla said he gave the Applicant \$47,000.00 to buy 22 carat gold jewellery in Dubai. He made no mention of a bullion purchase.

[33] The Chawla Affidavit exhibited an undated letter without letterhead signed by Mr. Kurgan who confirmed that, in September 2003, he had loaned Mr. Chawla 93 oz. of fine gold from his personal holdings and that it had a value of \$47,750.00 CAD. Mr. Chawla swore that the gold bullion he sold had been given to him as a loan to help him re-establish himself after a difficult financial period. Mr. Chawla said that the \$47,000.00 in cash he provided to the Applicant was obtained when he sold that gold bullion to jewellers for cash. However, in spite of repeated requests from the adjudicator, no receipts or affidavits were provided to prove that these sales had occurred.

[34] The Pathinather Affidavit stated that, on November 6 or 7, 2003, he had provided the Applicant with \$45,000.00 in cash which came from his business safe and which had been obtained from cash sales of jewellery. Again, in spite of the adjudicator's requests, no evidence was provided to substantiate those sales.

[35] Messrs. Chawla and Pathinather said they trusted the Applicant because they had known and dealt with him over 3.5 and 10 years respectively. They deposed that the East Indian Community prefers cash transactions and that they commonly dealt with the Applicant in large sums of cash. What they did not explain, in spite of the adjudicator's expressions of concern, was the absence of any proof to substantiate the sales which generated the cash they said they gave to the Applicant.

[36] The Bookkeeper's Affidavit indicated his belief that the balance of the Forfeited Currency (after deducting Mr. Chawla's \$47,000.00 and Mr. Pathinather's \$45,000.00) was withdrawn from the Business account. He based this belief on his finding that between September 19 and November 10, 2003, the Applicant withdrew \$37,000.00 “...through six cheques on the Business account issued to himself...”. The particulars of the cheques are as follows:

September 19, 2003	\$8,000.00
September 24, 2003	8,000.00
September 25, 2003	6,000.00
November 7, 2003	5,000.00
November 7, 2003	7,000.00
November 10, 2003	3,000.00

[37] This evidence was inaccurate. The cheques were not issued to the Applicant. Rather, they were payable to the Applicant's wife. However, in the Applicant's Affidavit he says that he received the money when the cheques were cashed.

[38] The Applicant's Affidavit also states that:

- He is well-travelled and flies from Toronto to Dubai every one or two months.
- He had never before carried a large amount of currency. He normally uses bank transfers. He was not aware he had to declare business currency.
- He did not reveal the identities of Mr. Pathinather and Mr. Chawla for fear that as members of Canada's East Indian Community, they would fall under suspicion.
- He carried cash for jewellery purchases in Dubai on this trip because he was on a tight schedule and would have had trouble using Canadian banking services on Remembrance Day, November 11, 2003.

[39] When the adjudicator reviewed the Chawla and Pathinather Affidavits, she wrote to the Applicant's counsel on March 15 and May 3, 2004 saying that they did not "substantiate the legitimacy of their portion of the seized currency." In her first letter, she suggested that legitimate businesses keep records of their funds and she expressed concern that the Applicant's explanation for carrying cash did not make sense when she indicated her understanding that Canadian cash is not easily used for purchases in foreign countries. She asked for more information but none was forthcoming.

[40] The three letters of reference for the Applicant were ultimately discounted in the Synopsis and Reasons on the basis that they did not address the specific problem of the legitimacy of the Forfeited Currency.

## THE DECISION

[41] The Minister's Delegate concluded that there were reasonable grounds to suspect that the Undeclared Currency was proceeds of crime.

[42] The Reasons in the Minister's Delegate letter of October 6 read as follows:

The evidence submitted has confirmed that you were specifically questioned by a Customs officer at Pearson International Airport on November 10, 2003, and you advised the officer that you did not have currency in excess of \$10,000.00 CAD. Examination revealed \$435.00 USD currency and \$123,000.00 Canadian currency.

Consequently, by virtue of section 12 and 18 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act; the currency was lawfully subject to seizure. No terms of release were offered for the currency as the officer had reasonable suspicions to suspect proceeds of crime.

Although your solicitor's representations have been considered, mitigation has not been granted in this case. The evidence provided is not verifiable and does not substantiate the origin of the currency. Based on the totality of the evidence and the lack of verifiable evidence to support the legitimate origin of the currency, reasonable suspicion still exists. As such the currency has been held as forfeit. However, it has been decided that the declared currency (\$4,000.00 Canadian and \$400.00 USD) should be returned to you.

[43] The Synopsis and Reasons shows that the Applicant had failed to address the adjudicator's concerns regarding:

- the packaging of the Forfeited Currency - Why was it in eight envelopes, some with mixed denominations and bound with elastics?;
- the contradictory evidence – At Pearson, the Applicant told the Customs Officer that the Forfeited Currency came from two Montreal jewellers. He gave their names and phone numbers and said he had met them a few days earlier. But the Applicant's Affidavit gave two entirely different names, only one was in Montreal. As well, they were no longer the only source of the funds. He added the Business as a source;
- the fact that money had been withdrawn from the Business account in September for a trip in November even though there was an intervening trip to Dubai in October 2003;
- the lack of documentation showing that sales of gold and jewellery had generated the funds from Messrs. Chawla and Pathinather;
- the Applicant's untrue statements to the Customs Officer about the purpose of his trip and the date on which he purchased his ticket for the November 10<sup>th</sup> flight;
- the Applicant's statement that he intended to use the money for jewellery purchases in Dubai where Canadian currency is not readily accepted.

[44] It is clear to me that the adjudicator's focus on proof of the actual source of the Forfeited Currency was appropriate. It was not enough to merely show through bank statements and bald statements in affidavits that the Applicant and his business associates had sufficient means to have provided the Forfeited Currency. In this regard, see the

decision of Blais J. in *Martirossian v. Canada (Minister of Citizenship and Immigration)*

2001 FCT 1119 at paragraph 36.

[45] In his affidavit of April 12, 2006, the Minister's Delegate expanded on his Reasons. I have deleted the passages in paragraphs 14(b) and 19 which he acknowledged were inaccurate during his cross-examination.

14. In my view, this material demonstrated that there were reasonable grounds to suspect that the undeclared currency seized from the Applicant on November 10, 2003 was proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*, the most significant of which were the following:

- (a) the fact that the Applicant was attempting to export a very large amount of currency and chose to report only a small fraction of this currency to the Customs officer;
- (b) the fact that when questioned about ... the origin of the currency by the Customs officer, the Applicant provided a conflicting and unclear explanation;
- (c) the fact that further to his request for a ministerial review of the seizure, the Applicant provided an explanation for the origin of the currency that differed from that provided originally to the Customs officer; and
- (d) the fact that the ultimate explanation provided by the Applicant for the origin of the currency is implausible and not corroborated by sufficient supporting documentation.

15. With respect to the first ground, the material before me demonstrated that the Applicant was traveling with \$123,000 (Canadian) and \$435 (U.S.). It also demonstrated that the Applicant was a frequent international traveler who would have been aware of currency reporting requirements. Yet when he was asked by a Customs officer how much currency he had in his possession, the Applicant chose to only report \$4,000 (Canadian) and \$400 (U.S.). In my view, such behaviour raises a suspicion that the currency in question is illicit.

16. In particular, because of the risk of theft or loss, most individuals who legitimately possess such large amounts of funds would not attempt to transport these funds in the form of bulk currency. Instead, individuals who wish to transfer large amounts of legitimate funds between countries generally do so using the services of financial institutions (i.e., electronic funds transfers, bank drafts, money orders, traveller's cheques, etc.) because they are faster, cheaper and more secure than bulk cash transportation.

17. In addition, unlike currency of the United States of America, Canadian currency is not readily used or accepted in countries other than Canada. Therefore, it is implausible that large quantities of legitimate Canadian currency would be brought by a traveler to a country such as the United Arab Emirates in order to conduct legitimate business.

18. Furthermore, while recognizing that an occasional traveller may nevertheless decide to incur the risk and inconvenience of travelling with large sums of Canadian currency, it is highly unlikely that such a traveller would then fail to truthfully respond to specific questioning from a Customs officer about the amount of currency being carried unless the currency is in fact illicit and the traveller fears discovery and confiscation of the currency.

19. ...When asked by the Customs officer to explain the origin of the currency, the Applicant initially advised that he was unsure of the identities of the individuals who had given him the currency. Later, the Applicant stated that a certain "Kanthy Wilkerg" and "George Mulhambery", both from Montreal, provided him with \$47,000 (Canadian) and \$45,000 (Canadian) respectively to purchase jewellery. While providing these vague and conflicting explanations, the Applicant was visibly nervous with sweat pouring down his face. In my view, such behaviour raises a suspicion that the currency in question is illicit.

20. In particular, currency can either originate from a legitimate legal source or from the proceeds of crime. For the reasons set out at paragraphs 16 to 18 above, the larger the amount of Canadian currency that is being transported internationally yet not declared, the less likely it will have originated from a legal source. For the rare individual who transports large sums of legitimately earned currency destined for legal purposes, it can be expected that he or

she will be able to clearly explain both the source and intended use of the currency. On the other hand, a traveller's inability to clearly provide such explanations is indicative that he or she is aware that the currency was not earned through legitimate means or is intended for illicit use.

21. With respect to the third ground, the material before me indicated that in March 2004, approximately four months after advising the Customs officer that a certain "Kanthy Wilkerg" and "George Mulhambery", both of Montreal, provided him with \$47,000 (Canadian) and \$45,000 (Canadian) respectively to purchase jewellery, the Applicant provided a different explanation for the origin of the funds. Now, the Applicant was stating that Shudhir Chawla of Markham, Ontario provided him with \$47,000 (Canadian) while George Montgomery Pathinather of Montreal provided him with \$45,000 (Canadian) to purchase jewellery. In addition, for the first time, the Applicant explained that the balance of the currency he was carrying (\$31,000 (Canadian) and \$435 (U.S.)) had been withdrawn from the business account of Jayasaji Jewellery Ltd., a wholesale jewellery company that the Applicant owns with his wife Palaran Gowrikumaran. In my view, the fact that the Applicant has provided this new explanation for the origin of the funds which differs from that provided at the time of the seizure raises a suspicion that the currency in question is illicit for the reasons set out at paragraph 20 above.

22. With respect to the fourth ground, the material before me indicated that while Shudhir Chawla and George Montgomery Pathinather had stated that they provided the Applicant with a total of \$92,000 (Canadian) to purchase certain vaguely described jewellery in the United Arab Emirates on their behalf, neither provided contracts, receipts or any other documentation to support the existence of such a significant financial obligation. In addition, while copies of cheques and bank statements were provided to show that six cheques made payable to the Applicant's wife in September and early November 2003 were drawn down against Jayasaji Jewellery Ltd. bank account, there was no indication that the balance of the currency seized on November 10, 2003 indeed originated from these accounts. In my view, the fact that the Applicant could not provide persuasive documentation to establish a legitimate origin for the funds raises a suspicion that the currency in question is illicit.

23. In particular, it is not plausible that legitimate businesses seeking to purchase \$92,000 worth of jewellery in a foreign country would do so by entrusting another person with currency in that amount and providing him with vague instructions about the type and quantity of jewelerly [sic] to buy, without documenting this arrangement in any form. The fact that the Applicant has chosen to provide such an implausible and unsubstantiated explanation for the origin of the currency renders it reasonable to suspect that the currency is in fact proceeds of crime.

24. In sum, on the basis of all of the material that was before me, with particular emphasis on the grounds set out above and taken as a whole, I concluded that it was reasonable to suspect that the unreported currency in the amount of \$119,000 (Canadian) and \$35 (US) was proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code*.

## **THE STANDARD OF REVIEW**

[46] The following pragmatic and functional analysis has been prepared in light of the Supreme Court of Canada's decisions in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 and *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226.

### **(i) Privative Clause/Appeal Provisions**

[47] The Act includes a strong privative clause. Section 24 states:

The forfeiture of currency or monetary instruments seized under this Part is final and is not subject to review or to be set aside or otherwise dealt with except to the extent and in the manner provided by

La confiscation d'espèces ou d'effets saisis en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention

sections 25 to 30.

que dans la mesure et selon les modalités prévues aux articles 25 à 30.

Further, there is no statutory appeal in sections 25 to 30 of the Act from a decision to confirm a forfeiture under section 29 of the Act. Review is only available in judicial review proceedings. In this regard, see: *Tourki v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2006] F.C.J. No. 52 at paragraphs 30 to 36 and *Ha v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2006] F.C.J. No. 1123 at paragraph 7.

[48] In my view, these facts suggest a high degree of deference.

(ii) ***Relative Expertise***

[49] Section 29 decisions about the appropriate penalty to impose when currency is unreported are made by Minister's delegates. They are individuals who hold the position of "Manager" in the Adjudications Division of the CBSA's Recourse Directorate. The cross-examination of the Minister's Delegate on his affidavit in this case discloses that managers and adjudicators receive training from RCMP and Department of Justice specialists and that they are guided in their work by an RCMP document entitled "Integrated Proceeds of Crime Investigator Indicator List".

[50] There have been 307 decisions made under section 29 since it came into force on January 6, 2003 and in 216 of those cases, forfeiture of the seized currency was

confirmed. For these reasons, I acknowledged that Managers have considerable expertise relative to the Court.

[51] I should note that, after the hearing in this case, Respondent's counsel wrote the Court on February 7, 2007. The letter referred to a decision of my colleague, Mr. Justice Beaudry, in *Marc Elie Thérancé c. Canada (Ministre de la sécurité publique)*, 2007 CF 136. That case also involved an application for judicial review of a decision of a Minister's Delegate under section 29 of the Act. Following a pragmatic and functional analysis, Beaudry, J. concluded, with the agreement of counsel for both parties, that the Standard of Review was patent unreasonableness.

[52] In *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at paragraph 50, the Federal Court of Appeal emphasized the importance of undertaking the functional and pragmatic analysis every time judicial review of a decision is before the Court even if earlier judgments have dealt with the standard of review to be applied to decisions under the same statutory provision.

[53] Accordingly, I am required to make a fresh assessment of the standard of review on the facts of this case and in my view, Justice Beaudry's decision can be distinguished because in this case the Minister's Delegate was not required to use any special expertise in reaching the Decision. The fact that the Applicant contradicted himself and failed to supply adequate documentation are issues which the Court is also able to address. Accordingly, in this case, this factor does not suggest a high degree of deference.

*(iii) The Purpose of the Act and of Section 29*

[54] The Act received Royal assent on June 29, 2000. Its objectives include detecting and deterring money laundering and terrorist financing. They are set out at section 3. It reads in part:

(a) to implement specific measures to detect and deter money laundering and the financing of terrorist activities and to facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences, including

...  
ii) requiring the reporting of suspicious financial transactions and of cross-border movements of currency and monetary instruments,

...

(b) to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves; and

(c) to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering, and the fight against terrorist activity.

a) de mettre en oeuvre des mesures visant à détecter et décourager le recyclage des produits de la criminalité et le financement des activités terroristes et à faciliter les enquêtes et les poursuites relatives aux infractions de recyclage des produits de la criminalité et aux infractions de financement des activités terroristes, notamment :

...  
(ii) établir un régime de déclaration obligatoire des opérations financières douteuses et des mouvements transfrontaliers d'espèces et d'effets,

...

b) de combattre le crime organisé en fournissant aux responsables de l'application de la loi les renseignements leur permettant de priver les criminels du produit de leurs activités illicites, tout en assurant la mise en place des garanties nécessaires à la protection de la vie privée des personnes à l'égard des renseignements personnels les concernant;

c) d'aider le Canada à remplir ses engagements internationaux dans la lutte contre le crime transnational, particulièrement le recyclage des produits de la criminalité, et la lutte contre les activités terroristes.

[55] In order to implement the objective specified at paragraph 3(a)(ii), Part 2 of the Act provides for a currency reporting regime under which importers and exporters of currency must make a report to a Customs official whenever they import or export currency or monetary instruments valued over \$10,000.00 CAD.

[56] Part 2 of the Act became effective with the coming into force of the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 on January 6, 2003.

[57] In the event of a failure to report, Parliament has mandated serious sanctions including forfeiture in the event there are reasonable grounds to suspect that the undeclared currency is proceeds of crime or funding for terrorists. The existence of this sanction not only encourages compliance with the reporting obligations but also ensures that suspected proceeds of crime or funds for terrorists are not returned to persons who have contravened the Act by not reporting.

[58] The Respondent says that in enforcing Part 2 of the Act, the Minister's Delegate is engaged in a balancing of the interests of the Applicant with those of the Canadian public. However, I do not accept this characterization. In my view, the balancing of private and public interests was done by Parliament when it established the legislative scheme. A Minister's Delegate has a much narrower role under section 29. He is simply determining whether, on the facts in a particular applicant's case, a forfeiture should be confirmed. Accordingly, because, in my view, this factor is not polycentric it does not suggest a deferential approach.

**(iv) *The Nature of the Question – Law or Fact***

[59] Once a Minister’s Delegate correctly applies the correct burden of proof to an applicant’s evidence, the remainder of the Decision is fact driven. This suggests significant deference on factual matters but none on the burden of proof.

***Conclusion***

[60] I have concluded that, in this case, primarily because relative expertise does not actually play a significant role, I will review the Decision using a reasonableness standard except when dealing with the burden of proof faced by an applicant who wishes to dispel “reasonable grounds to suspect”. On that issue, correctness will be the standard of review.

**THE ISSUES**

[61] The Applicant has raised the following issues. The headings are mine.

### **No reasonable grounds?**

I. The Minister erred in his decision that the funds in question are forfeit insofar as there exists no reasonable grounds to suspect that the funds in question are the proceeds of crime.

### **An improper test?**

II. The Minister erred in his decision insofar as he improperly reversed the burden of proof, finding, in effect, that the Applicant failed to prove that the funds in question were not the proceeds of crime.

### **A contradictory decision?**

III. The Minister erred in his decision insofar as his decision is, on its face, contradictory and therefore unreasonable.

### **I. No reasonable grounds**

[62] The Applicant says that the sole reason for the Decision was the Applicant's failure to report. However, this submission is not borne out by the facts. It is clear that the Applicant's lies and failure to provide documentation played a large part in the Decision.

### **II. An Improper Test**

[63] Section 29 of the Act is silent about the principles to be used by a Minister's Delegate in deciding whether to confirm a currency forfeiture. However, the Decision makes it clear that, in this case, the Minister's Delegate was determining whether a reasonable suspicion still existed. In other words, the Minister's Delegate adopted for the Decision the test the Customs Officer at the airport was required to use when she

declined to return the Forfeited Currency, pursuant to subsection 18(2) of the Act. That subsection provides that she must have had “reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the Criminal Code or funds for use in the financing of terrorist activities”. In my view, the Decision stated the correct test when it indicated that the Minister’s Delegate was determining whether such reasonable grounds still existed.

[64] However, the Applicant submits that the Minister’s Delegate did not apply the test correctly because he relied on the Synopsis and Reasons and it states:

...Mr. Sellathurai broke the law by failing to declare \$123,574.20 in Canadian currency. Having broken the law and failed to declare, a person cannot regain currency seized as forfeit, on a reasonable suspicion under the *Act*, by merely telling a story that could be true. An innocent explanation as to the origin of the funds must be proven in sufficient detail and with enough credible, reliable and independent evidence to establish that no other reasonable explanation is possible. Otherwise, reasonable doubts remain and the forfeiture stands.

[my

emphasis]

[65] I am persuaded, having read the transcript of the cross-examination of the Minister’s Delegate on his affidavit that he relied to a considerable degree on the Synopsis and Reasons. This means that I cannot discount the possibility that he may well have been influenced by the adjudicator’s opinion about the burden of proof to be borne to the Applicant. She appears to have thought that, to dispel reasonable grounds for suspicion, an applicant must prove an innocent explanation beyond all doubt.

[66] Before reviewing the law, it is helpful to recall the context. The Applicant is not involved in a criminal proceeding or indeed in any *in personam* matter. This is an administrative proceeding *in rem*. It concerns only the Undeclared Currency and whether there are reasonable grounds to suspect that it is proceeds of crime. In *Martineau v. Canada (M.N.R.)*, [2004] 3 S.C.R. 737 at paragraph 56, Justice Fish writing for a unanimous court held that seizures and forfeitures under the *Customs Act* are not penal in nature, but are rather administrative measures intended to provide a timely and effective means of enforcing the *Customs Act*.

[67] Although this case concerns “reasonable grounds to suspect”, the Supreme Court of Canada’s interpretation of the phrase “reasonable grounds to believe” is an appropriate starting point. In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100 at paragraph 114, the Court said the following:

The first issue raised by s. 19(1)(j) of the *Immigration Act* is the meaning of the evidentiary standard that there be “reasonable grounds [page 145] to believe” that a person has committed a crime against humanity. The FCA has found, and we agree, that the “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at p. 445; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information: *Sabour v. Canada (Minister of Citizenship & Immigration)* (2000), 9 Imm. L.R. (3d) 61 (F.C.T.D.).

[my

emphasis]

[68] In the earlier case of *R. v. Monney*, [1999] 1 S.C.R. 652, the Court had considered section 98 of the *Customs Act*, R.S.C., 1985, c. 1 (2<sup>nd</sup> Supp.), which required a customs officer to suspect on reasonable grounds that a person had narcotics secreted on or about his person before conducting a strip search.

[69] In this context, the Court said at paragraph 49:

...Having determined, however, that the search conducted by the customs officers was constitutionally permissible pursuant to s. 98 of the Customs Act on the basis of reasonable grounds to suspect, which can be viewed as a lesser but included standard in the threshold of reasonable and probable grounds to believe, I see no reason to interfere with the implicit factual finding at trial, confirmed on appeal, that Inspector Roberts had at the very least reasonable grounds to suspect that the respondent had ingested narcotics.

[my

emphasis]

[70] The question then is how to describe the lesser but included standard. In my view, even reasonable grounds to suspect must involve more than a “mere” or subjective suspicion or a hunch. The suspicion must be supported by credible objective evidence. In this regard, see *R v. Calderon*, [2004] O.J. No. 3474. There, the Ontario Court of Appeal considered whether police officers had reasonable grounds to suspect that the appellants had been implicated in the transportation of drugs. In that connection, the Court noted that an objective assessment was essential. The Court said at paragraph 69 that “... even a hunch born of intuition gained by experience ...” would not support a conclusion that reasonable grounds to suspect were present.

[71] If credible objective evidence is required to support a suspicion, the question becomes where does the lesser standard appear. To this point, both reasonable grounds to believe and suspect have been treated identically. In my view, the difference must appear in the characterization of the evidence. In *Mugasera, supra*, the Court said that “compelling” evidence was needed to support reason to believe. In my view, this is where the distinction is made. Evidence to support a suspicion need not be compelling, it must simply be credible and objective.

[72] With regard to the burden of proof on an applicant who wishes to dispel a suspicion based on reasonable grounds, it is my view that such an applicant must adduce evidence which proves beyond a reasonable doubt that there are no reasonable grounds for suspicion. Only in such circumstances will the evidence be sufficient to displace a reasonable suspicion.

[73] I have reached this conclusion because, if a Minister’s Delegate were only satisfied on the balance of probabilities that there were no reasonable grounds for suspicion, it would still be open to him to suspect that forfeited currency was proceeds of crime. The civil standard of proof does not free the mind from all reasonable doubt and, if reasonable doubt exists, suspicion survives.

[74] In this case, the adjudicator required proof beyond all doubt and I am satisfied that this constituted an error in law because proof beyond a reasonable doubt is sufficient to defeat reasonable grounds for suspicion.

[75] The next question is whether this error was material. In this regard, I have concluded that it was not. There can be no suggestion on the facts of this case that the Applicant met the correct standard. His evidence failed to displace, beyond a reasonable doubt, the objective and credible evidence supporting the Minister's Delegate's suspicion that the Undeclared Currency was proceeds of crime.

[76] In *Canadian Cable Television Assn. v. American College Sports Collective of Canada, Inc.* (C.A.), [1991] 3 F.C. 626 at paragraph 41, the Court said:

41. If a final word needs to be said, let it be that an inconsequential error of law, or even a number of them, which could have no effect on the outcome do not require this Court to set aside a decision ... The authorities have all required a real possibility that the result was affected.

[77] Since I can see no possibility that the error affected the Decision, the application for judicial review will not succeed on this issue.

### **III. Contradictory Decision**

[78] The Applicant says the Decision should be set aside because it is "contradictory" in that the Declared Currency was returned even though the evidence relating to its origin did not differ from that relating to the origin of the Undeclared Currency. In other words, the Applicant takes issue with the fact that the Decision differed as between the Declared and the Undeclared Currency without a logical explanation for the difference.

[79] However, the Respondent points out that, under section 28 of the Act, the Minister's Delegate was obliged to return the Declared Currency once he concluded that

it had been reported. This was so whether or not he still had reasonable grounds to suspect that it was proceeds of crime. In light of this submission, I have concluded that the return of the Declared Currency does not undermine the Decision.

## **NON ISSUES**

[80] Before the hearing adjourned, Applicant's counsel began his submissions in reply and asked for leave to raise the sufficiency of the reasons in the Decision of October 6, 2005 as an issue. Leave was refused as the request was made far too late in the process.

[81] In his written submissions in reply, the Applicant's counsel raised a second new issue alleging that the adjudicator never told the Applicant that she had concerns about the evidence in the Bookkeeper's Affidavit. Again, because it was first raised in reply, I have not dealt with this submission.

**JUDGMENT**

For all these reasons the application is hereby dismissed with costs.

“Sandra J. Simpson”

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-155-06

**STYLE OF CAUSE:** GOWRIKUMARAN SELLATHURAI  
-and-

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** WEDNESDAY, NOVEMBER 15, 2006

**REASONS FOR JUDGMENT:** SIMPSON J.

**DATED:** FEBRUARY 23, 2007

**APPEARANCES:**

Louis P. Strezos FOR APPLICANT

Jan Brongers FOR RESPONDENT

**SOLICITORS OF RECORD:**

Louis P. Strezos & Associates  
Toronto, Ontario FOR APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR RESPONDENT

## SCHEDEULE “A”

### EXCLUSION

1. The indictable offences under the following Acts are excluded from the definition "designated offence" in subsection 462.3(1) of the *Criminal Code*:

- (a) *Budget Implementation Act, 2000*;
- (b) *Canada Agricultural Products Act*;
- (c) *Copyright Act*;
- (d) *Excise Act*, except for the indictable offences under subsections 233(1) and 240(1);
- (e) *Excise Tax Act*;
- (f) *Feeds Act*;
- (g) *Fertilizers Act*;
- (h) *Foreign Publishers Advertising Services Act*;
- (i) *Health of Animals Act*;
- (j) *Income Tax Act*;
- (k) *Meat Inspection Act*;
- (l) *Nuclear Safety and Control Act*, except for the indictable offence under section 50;
- (m) *Plant Protection Act*; and
- (n) *Seeds Act*.

1. Les actes criminels prévus par les lois ci-après sont exclus de la définition de « infraction désignée », au paragraphe 462.3(1) du *Code criminel*:

- a) la *Loi d'exécution du budget de 2000*;
- b) la *Loi sur les produits agricoles au Canada*;
- c) la *Loi sur le droit d'auteur*;
- d) la *Loi sur l'accise*, exception faite des actes criminels prévus aux paragraphes 233(1) et 240(1) de cette loi;
- e) la *Loi sur la taxe d'accise*;
- f) la *Loi relative aux aliments du bétail*;
- g) la *Loi sur les engrais*;
- h) la *Loi sur les services publicitaires fournis par des éditeurs étrangers*;
- i) la *Loi sur la santé des animaux*;
- j) la *Loi de l'impôt sur le revenu*;
- k) la *Loi sur l'inspection des viandes*;
- l) la *Loi sur la sûreté et la réglementation nucléaires*, exception faite de l'acte criminel prévu à l'article 50 de cette loi;
- m) la *Loi sur la protection des végétaux*;
- n) la *Loi sur les semences*.

# TAB 49

**Forum posts about CBSA's treatment of gold as 'goods'**

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## CBSA duty/taxes/handling reimbursement for Tax Exempt items, HOW-TO

Last Updated: Jan 2nd, 2017 12:01 am

Tags: [cbsa](#) [tax](#)

Page 1 of 4 ▾ Next ▶

[Search this thread](#)

Aug 17th, 2012 2:27 pm

#1

**TIPIT** [OP]  
Deal Addict

Aug 31, 2005  
1154 posts  
99 upvotes  
Montreal

### CBSA duty/taxes/handling reimbursement for Tax Exempt items, HOW-TO

After many people getting duty/taxed when importing goods which are supposed to be exempt, I decided to give some advice here, after a few experience.

It comes from the popular RFD collector and numismatic Coins discussion thread, so the example below is for Fine Precious Metal coins (platinum, gold or silver coins) with a high purity, but the process is the same for any importing goods, you just have to adapt description and HS code would be different (you can find listed by general categories [here](#)).

### CBSA customs duty/taxes/handling fees reimbursements

First, determine if your coins are duty/tax exempted. In Canada, the minimal purity for PM to be tax-exempt:

Silver : .999 (99.9%)

Gold : .995 (99.5%)

Platinum: .995 (99.5%)

A lower purity and you're taxed at 7% or 15%, not sure about the duty. So this is why Britannias (edit: pre 2013) and other sterlings are taxed.

#### What you need:

1. CBSA customs paper received on your package.
2. [CBSA B2G form](#)
3. Proofs that the goods you received are duty/tax-free.

#### Steps:

1. Fill the B2G form

Enter the usual informations, what's important here are sections 6 (Reason for refund/adjustment request) and 7 (Explanation, proofs, invoice, etc.).

Check on the CBSA customs form you received for the **HS code** to compare with the ones below, this is an international standard: [Harmonized Commodity Description and Coding System](#)

On section 6, the box to check is usually (c) *Goods incorrectly described or classified*.

On the *Should be* line, enter the correct number:

7118900010 Gold coin, being legal tender (if it's gold)  
 7118900091 Canadian coins, other than gold, being legal tender (not gold, but Canadian)  
 7118900099 Coin, other than gold or Canadian, being legal tender, N.E.S. (any other coins)

If the HS code was correct but duty or tax was charged anyway, check (d) *Other* and enter: "Goods should be duty and tax exempt, as the HS code."

On section 7, add a comment indicating that the goods should be duty/tax-free, because it's fine precious metal and its purity is 99.5% (or 99.9% for silver). Add the description that the sender wrote on the package if it helps.

**IMPORTANT:** Indicates in this section the amount you ask for refund, and include the handling fees, **they are be reimbursed, but only if the whole package is duty/tax exempted.** Write it clearly: *Refund amount: xxx.xx\$ (including handling fees)*

2. Include a copy of papers received from the CBSA on your package and other evidence that your goods are of the stated purity. The invoice, a flyer, a print of the product on Mint website, eBay item description page, a picture of the goods where we can see the 9999, etc. Anything showing that the stuff qualify as Fine Precious Metal. Send more than enough, it avoids delay by CBSA asking you more information. Someone said here that CBSA asked for more information about the American Silver Eagle coins (probably the most well-known coin in the world)... something they could have found faster in googling it than in sending the letter to ask.

3. Mail all this to the address at the bottom of the form, depends of your postal code.

4. Wait. It usually takes 4 to 6 weeks to receive checks by the mail.

For those who want a bit more information:

[Official CBSA document for tariff on Coins](#) [very last page] (showing it's FREE for the codes above)

[CRA info on Precious Metal taxation](#)

[Harmonized Commodity Description and Coding System](#)

Share:

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Aug 17th, 2012 2:37 pm

#2 •

**kingofwale**

Deal Fanatic



can I post a link of this thread in my OP?

Awesome job, btw

Jul 7, 2007

9382 posts

662 upvotes



[Reply](#) [Reply with quote](#)

Aug 17th, 2012 2:38 pm

#3 •

**kingofwale**

Deal Fanatic



btw how do you proof the item you received is duty free? because on my form, it did indicate that it's silver coin, from mint company, but i still got dinged.

thanks

Jul 7, 2007

9382 posts

662 upvotes



[Reply](#) [Reply with quote](#)

Aug 17th, 2012 2:47 pm

#4 •

**TIPIT** [OP]

3/24/2017

CBSA duty/taxes/handling reimbursement for Tax Exempt items, HOW-TO - RedFlagDeals.com Forums

Deal Addict



Aug 31, 2005  
1154 posts  
99 upvotes  
Montreal

Yes sure you can link.

For proof, you can send anything from a picture of the coin with the 999 circled in red, a copy of the coin's description from Mint webpage, etc.

Sometimes the HS code is correct, but the CBSA employee just taxed you anyway (happened to me), they don't know or they try to get some money anyway. Weird as I would assume that when the HS code is entered in the system, its an automatic step to include or not tax, but it seems not.

So I wrote in the description that the HS code was correct and the item was actually fine PM (9999) and that I shouldn't have been taxed because this HS code is duty and tax exempt.  
I got the check.



Reply    Reply with quote

Aug 17th, 2012 2:54 pm

#5

**deal\_with\_singh**  
Deal Expert

Feb 11, 2009  
15474 posts  
1626 upvotes  
Toronto

Hey, so to confirm, I would use HS Code 7118900099 for my shipment of EMU + Year of the Dragon Coin + Wombat to get the duties reimbursed...correct?

I'm thinking of just paying CP the duty by CC if they accept it and earn the 1.5% cash back lol...pays for the postage 😊 .

### Selling Grizzly Privy Maple Leafs - \$33 ea - PM!



Reply    Reply with quote

Aug 17th, 2012 3:09 pm

#6

**TIPIT** [OP]  
Deal Addict



Aug 31, 2005  
1154 posts  
99 upvotes  
Montreal

**deal\_with\_singh** wrote:

Hey, so to confirm, I would use HS Code 7118900099 for my shipment of EMU + Year of the Dragon Coin + Wombat to get the duties reimbursed...correct?

I'm thinking of just paying CP the duty by CC if they accept it and earn the 1.5% cash back lol...pays for the postage 😊 .

Correct.

For the HS code, it's by first order:

Is it gold? Yes: 7118900010  
If not, is it Canadian? Yes: 7118900091  
If not: 7118900099

As simple as that. And the cashback is yours, a small compensation for the efforts 😊

I will include some more details later on, as you also can refuse the package and ask Canada Post to send it back to CBSA for adjustments, but it can take weeks before you get your package back. I prefer waiting for a check than my package.



Reply    Reply with quote

Aug 17th, 2012 5:54 pm

#7

**deal\_with\_singh**  
Deal Expert

Feb 11, 2009  
15474 posts  
1626 upvotes  
Toronto

So I just picked up my package and attached was a CBSA Postal Import Form....

Item was classified as:  
7326909099 Metal, Articles of NES / Fe (I'm assuming they mean iron by "fe")

I don't know how stupid the CBSA officer was, but the packaging slip "Tax Invoice" states 99.9% Silver after the name of each product listed. But they didn't even bother opening it 😐

Is it better to just send the CBSA form that was attached back? (It's pretty much the same form on the back of it as the B2G form you listed)

As proof I'm thinking the Perth Mint Packaging slip would suffice?

### Selling Grizzly Privy Maple Leafs - \$33 ea - PM!



Reply    Reply with quote

Aug 18th, 2012 12:27 pm

#8 •

**TIPIT** [OP]

Deal Addict



Aug 31, 2005

1154 posts

99 upvotes

Montreal

**deal\_with\_singh wrote:**

So I just picked up my package and attached was a CBSA Postal Import Form....

Item was classified as:

7326909099 Metal, Articles of NES / Fe (I'm assuming they mean iron by "fe")

I don't know how stupid the CBSA officer was, but the packaging slip "Tax Invoice" states 99.9% Silver after the name of each product listed. But they didn't even bother opening it 🤦

Is it better to just send the CBSA form that was attached back? (It's pretty much the same form on the back of it as the B2G form you listed)

As proof I'm thinking the Perth Mint Packaging slip would suffice?

Yes the packing slip should be enough but make sure it's really clear by circling and highlighting the 999 numbers and "silver". They have to see the information very quickly as they have a lot of package to do so they're not going to take time for every single one.

SILVER BULLET BULLION: 2oz - 7oz - 10oz

**2014 gold SUPERMAN - 1095\$, NZ Mint Gold Donald Duck - 680\$**

All other coins I have for sale [HERE](#) - Paypal - [CBSA TAX/DUTY REFUND HOW-TO](#)



Reply

Reply with quote

Aug 20th, 2012 8:40 pm

#9 •

**kingofwale**

Deal Fanatic



Jul 7, 2007

9382 posts

662 upvotes



Reply

Reply with quote

Aug 20th, 2012 10:54 pm

#10 •

**deal\_with\_singh**

Deal Expert

Feb 11, 2009

15474 posts

1626 upvotes

Toronto

**kingofwale wrote:**

does anyone know where to find the CBSA import receipt number???

It's on the receipt it self, mine was just my tracking number...did u get dinged?

Because I'm just sending the slip/invoice is self, it didn't request one from me

**Selling Grizzly Privy Maple Leafs - \$33 ea - PM!**



Reply

Reply with quote

Aug 22nd, 2012 12:35 pm

#11 •

**CanuckPower**

Newbie

Aug 7, 2012

81 posts

3 upvotes

Toronto

can i not just do this at the door and not have to worry about filling everything out? as per this <http://www.cbsa.gc.ca/import/postal-pos...n-eng.html>

Because it would appear they will call me and I just explain its silver 99.9. And I just tell to open the package and its written on each item. Boom, they send it back with no tax owed?

To request a reassessment of the duty and taxes charged on a parcel sent to you, simply refuse delivery of the mail item and ask Canada Post to return it to the CBSA. The following will occur:

Canada Post will write your telephone number on Form E14, CBSA Postal Import Form, give you a copy, and return the mail item to the CBSA.

The CBSA will contact you to discuss the assessment once it receives your goods from Canada Post.

If you don't have to pay duty and taxes after the reassessment, the CBSA will give the item to Canada Post to deliver to you.

If you still have to pay duty and taxes after the reassessment, the CBSA will put a new Form E14 on your mail item.

You will have to pay the amount indicated to Canada Post when it delivers the item to you.


[Reply](#)
[Reply with quote](#)

Aug 22nd, 2012 12:42 pm

#12

**kingofwale**

Deal Fanatic



Jul 7, 2007  
 9382 posts  
 662 upvotes

**CanuckPower wrote:**

can i not just do this at the door and not have to worry about filling everything out? as per this <http://www.cbsa.gc.ca/import/postal-pos...n-eng.html>

Because it would appear they will call me and I just explain its silver 99.9. And I just tell to open the package and its written on each item. Boom, they send it back with no tax owed?

To request a reassessment of the duty and taxes charged on a parcel sent to you, simply refuse delivery of the mail item and ask Canada Post to return it to the CBSA. The following will occur:

Canada Post will write your telephone number on Form E14, CBSA Postal Import Form, give you a copy, and return the mail item to the CBSA.

The CBSA will contact you to discuss the assessment once it receives your goods from Canada Post. If you don't have to pay duty and taxes after the reassessment, the CBSA will give the item to Canada Post to deliver to you.

If you still have to pay duty and taxes after the reassessment, the CBSA will put a new Form E14 on your mail item.

You will have to pay the amount indicated to Canada Post when it delivers the item to you.

the only benefit of doing this is that when CBSA calls, you can tell them what a bunch of idiots they are to not be able to do their job properly.

con:

- take way more time
- won't get your product for weeks
- having to talk to them on the phone
- having to wait for CP again for delivery


[Reply](#)
[Reply with quote](#)

Aug 22nd, 2012 12:44 pm

#13

**hobbes778**

Sr. Member



Dec 18, 2008  
 853 posts  
 40 upvotes

Is the CBSA import receipt number the same as the "Inventory No." on the CBSA Postal Import Form?

Thanks!


[Reply](#)
[Reply with quote](#)

Aug 22nd, 2012 12:44 pm

#14

**whatchamacallit**

Deal Addict



Dec 18, 2006  
 1760 posts  
 237 upvotes  
 Edmonton, AB

I have a question. For some reason for my Perth Mint order, the mint put "Metal Samples" as the item description on the forms that are attached to the outside of the package for the CBSA.

If I were to include this document in my refund application, would it cause any issues since its not a sample but rather a metal coin?

Additionally, I see have to mail the documents in.

Out of curiosity, does the CBSA also refund you for the postage for mailing in the re-assessment request forms?

Thanks.

**FS: Superman Vintage: Issue Price + Shipping**

**FS: 39mm, 41mm and 44mm Royal Canadian Mint Maroon Coin Clamshells**


[Reply](#)
[Reply with quote](#)

Aug 22nd, 2012 12:44 pm

#15 •

**kingofwale**

Deal Fanatic



btw, does this also apply to "brokerage fee" I got charged b UPS?

thanks

Jul 7, 2007

9382 posts

662 upvotes



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# TAB 50

**Zakir Naik ban from Canada, UK, Bangladesh and India**

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## Decision to exclude Dr Zakir Naik upheld

From: [Home Office](#) and [The Rt Hon Theresa May MP](#)  
First published: 5 November 2010

**This was published under the 2010 to 2015 Conservative and Liberal Democrat coalition government**

A court has upheld Theresa May's decision to bar controversial Muslim public speaker from the country.



The Home Secretary excluded Dr Zakir Naik from the UK on 16 June this year and today the court said it upheld that decision.

### Not conducive to public good

Theresa May welcomed the judgement: 'I am pleased the court has upheld my decision to exclude Dr Naik.'

'An individual will be excluded if their presence in the UK is not conducive to the public good. We make no apologies for refusing people access to the UK if we believe they might seek to undermine our society.'

### Privilege not a right

She continued: 'Coming to the UK is a privilege not a right and we are not willing to allow those who might not be conducive to the public good to enter the UK.'

'Exclusion powers are very serious and no decision is taken lightly.'

The Home Office will be seeking its legal costs from the other side.

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Published:

**5 November 2010**

From:

**Home Office**  
**The Rt Hon Theresa May MP**

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# **TAB 51**

**Joanne Lepage assurances to Livingston Consulting**

**Dancause, John**

---

**From:** Milne, Mike  
**Sent:** January 28, 2015 12:39 PM  
**To:** Dancause, John; Strickland, Jeffrey  
**Cc:** Foran, Sherri-Lynn  
**Subject:** FW: Treasure Island Coins - CBSA ruling request  
**Attachments:** Treasure Island Coins CBSA ruling request.pdf; Treasure Island Coins - lit gold products.pdf; Treasure Island Coins - lit silver products.pdf

**From:** Boudreau, Terry  
**Sent:** October 31, 2014 9:44 AM  
**To:** Milne, Mike  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

Joanne Lepage's email below is very informative.

Hope this helps.

Terry

---

**From:** Strickland, Jeffrey  
**Sent:** April 21, 2011 10:02 AM  
**To:** Boudreau, Terry; McIntosh, Lesley  
**Cc:** Lacroix, Danielle  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

The below email may help you with the gold/silver coins files you have.

Although I don't know where the reference is from, it appears the Agency's position with respect to the definition of currency is that it includes "includes all foreign and domestic bank notes and **circulation coins**"

Using this definition, the seizure of gold/silver coins under the *Customs Act* for non-report may be appropriate as opposed to the PCMLTFA.

Hope this helps,  
Jeff

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**From:** Lepage, Joanne  
**Sent:** August 31, 2010 10:56 AM  
**To:** 'MMeyer@livingstonintl.com'  
**Cc:** 'THarman@livingstonintl.com'; Lacroix, Danielle; Paulin, Desiree  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

Good Morning Marion,

The Canada Border Services Agency (CBSA) is responsible for the administration and enforcement of Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) that was implemented on January 6, 2003. Part 2 legislates that every person or entity must report to the CBSA the importation or exportation of currency or monetary instruments valued at the equivalent of CAD \$10,000 or greater.

In response to your request, the definition of currency and monetary instruments as follows:

urrency includes all foreign and domestic bank notes and circulation coins.

Monetary instruments means the following instruments in bearer form (blank, cash, to the bearer) or in such other form as title to them passes on delivery, namely,

(a) securities, including stocks, bonds, debentures and treasury bills; and

(b) negotiable instruments, including bank drafts, cheques, promissory notes, travelers cheques and money orders, other than warehouse receipts or bills of lading.

As previously discussed with Terry Harman, gold and silver coins are not deemed currency or monetary instruments under the PCMLTFA cross border reporting regime. As such, there is no obligation pursuant to the PCMLTFA to submit a written report for such commodities.

I remain available should you require any additional information or clarification.

***Joanne A. Lepage***

Senior Program Advisor/Conseillère principale des programmes  
Penalties and Enforcement Unit / Unité de l'execution de la loi et des sanctions  
Horizontal Border Policies Division / Division des politiques frontaliers horizontales  
Border Programs Directorate / Direction des programmes frontaliers  
Canada Border Services Agency / Agence des services frontaliers du Canada  
150 Isabella 7th Floor | 150 Isabella 7e étage  
Ottawa, ON K1A 0L8

**Joanne.Lepage@cbsa-asfc.gc.ca**

Telephone | Téléphone 613-941-4543 / Facsimile | Télécopieur 613-946-6088 / Télémprimeur | Teletypewriter 1-866-335-3237  
Government of Canada | Gouvernement du Canada

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**From:** Meyer, Marion [mailto:[MMeyer@livingstonintl.com](mailto:MMeyer@livingstonintl.com)]

**Sent:** August 26, 2010 2:06 PM

**To:** Lepage, Joanne

**Cc:** Harman, Terry

**Subject:** Treasure Island Coins - CBSA ruling request

Hello Joanne,

Further to recent conversations you have had with Terry Harman from Livingston regarding our client Treasure Island Coins, please accept the attached letter requesting a ruling with respect to Cross-Border Currency and Monetary Instruments Reporting Regulations. Treasure Island Coins plans to import gold and silver products into Canada. Along with the ruling request letter, attached is product literature for the gold and silver products in question.

Thank you for your assistance. Please let me know if additional information is required.

Regards,

Marion

Marion Meyer, Project Co-ordinator

Livingston Consulting

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Ph: (905) 629-4411 ext 5262

1-888-320-8294

Fx: (905) 629-0216

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

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5090 Explorer Drive, Suite 400  
Mississauga, ON L4W 4Y9

905 629-4411  
Fax 905 629-4499  
[dmackenzie@livingstonintl.com](mailto:dmackenzie@livingstonintl.com)  
[www.livingstonintl.com](http://www.livingstonintl.com)



August 26, 2010

Joanne Lepage, CBSA Rulings  
Canada Border Services Agency  
150 Isabella Street, 7<sup>th</sup> Floor  
Ottawa, ON K1A 0L8

Dear Joanne,

On behalf of and as duly authorized by my client, Treasure Island Coins, Inc. I am submitting a ruling request to verify that certain gold coins, gold bars, silver coins and silver rounds are not subject to the Cross-Border Currency and Monetary Instruments Reporting Regulation.

Descriptive literature for the following items in question, are attached:

Gold American Eagle Coins – 0.9167 purity  
Gold American Buffalo Coins – 0.9999 purity  
Gold Canadian Maple Leaf Coins – 0.9999 purity  
Gold Kilo Bars – 0.999 purity  
Silver American Eagle Coins - .999 purity  
Silver Canadian Maple Leaf Coins - .9999 purity  
Silver Rounds - .999 purity

Customs Brokerage

Consulting

Integrated Logistics

Freight

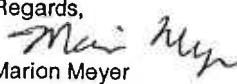
Event Logistics

Managed Services

Based on the foregoing information and in recent verbal advice provided by your office, we believe that the Cross-Border Currency and monetary Instruments Reporting Regulations do not apply to imports of the listed precious metal goods. These goods will be imported into Canada, primarily as commercial transactions with a few casual shipments, destined for large companies and individual investors seeking to store some capital in the form of precious metals.

Your assistance, by ruling on this matter is appreciated. Please let me know if you require additional information.

Regards,

  
Marion Meyer

Project Co-ordinator  
Livingston Consulting  
5090 Explorer Drive, Suite 400  
Mississauga, ON L4W 4T9

Phone: 905-629-4995 ext. 5262  
Fax: 905-629-0216  
E-mail: [mmeyer@livingstonintl.com](mailto:mmeyer@livingstonintl.com)

# TAB 52

**Seizure synopsis**

BETWEEN:

(CLAIMANT)

**Radu Sebastian Hociung**  
Waterloo, ON

and

(ISSUING OFFICE)

**Canada Border Services Agency (CBSA)**  
Niagara-on-the-Lake, ON

**CASE SYNOPSIS AND REASONS FOR DECISION**

The claimant is seeking a ministerial review of the above-noted enforcement action, which was issued by CBSA officials at Niagara-on-the-Lake, Ontario, on October 21, 2014.

The evidence in the reports made pursuant to section 128 of the *Customs Act (CA)* show that on October 21, 2014, the claimant presented himself at the Queenston bridge port-of-entry in Niagara-on-the-Lake, Ontario. He declared to the primary officer his purchase of two tires valued at \$500.00. The officer asked him whether he had bought or received anything other than the two tires and he replied "yes" as he had additionally purchased a bottle of Advil. The officer further proceeded to ask all the mandatory questions as outlined on the E-67 (Canada Border Services Agency Declaration Card) and the claimant was referred for a secondary examination.

Upon examination of his vehicle, the officer discovered undeclared gold and silver coins of a value of \$5,700.00 USD. These were seized for non-report and held for payment.

**TERMS OF RELEASE (ORIGINAL):**

<b>GOODS – 4-USA \$50.00 gold coins &amp; 20-USA \$20 silver coins (GRP. 2/LEVEL 1 CONTRAVENTION - 25% OF \$6,427.89)</b>	<b>\$1,606.97</b>
<b>TOTAL AMOUNT REQUIRED FOR RETURN OF GOODS</b>	<b>\$1,606.97</b>
<b>TOTAL AMOUNT RECEIVED FOR RETURN OF GOODS</b>	<b>\$0</b>

**Appeal**

Following the issuance of this enforcement action, the claimant submitted a request for a decision of the Minister in accordance with section 129 of the *CA*. The claimant appealed this enforcement action stating that;

- The silver eagle coins were US legal tender and IRA eligible investments.
- The coins were classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which were thus monetary instruments was USD \$5,700.00 and as their value was below the \$10,000 CAD, he was not required to declare them, per CBSA regulations.
- He was not asked about cash or financial instruments he carried, which would have required him to disclose.

**Notice of Reasons for Action**

On November 3, 2014, the Agency served upon the claimant a Notice, pursuant to section 130 of the *CA*, informing the claimant that the enforcement action was taken as "the said goods (as per Statement of Goods Seized) are seized because they have been unlawfully imported by reason of Non-report" in contravention of section 12 of the *CA*.

In this correspondence, the senior appeals officer at the time (Ms. Kendall) advised that she would be thoroughly examining the merits of this enforcement action.

At that point in the review, Ms. Kendall explained that all goods entering Canada, regardless of how obtained or for whatever reason being imported and whether used or new, must be reported to the CBSA and that the onus to do so rested upon the individual bringing the goods into the country. The duty to report goods was not dependent on any questioning or prompting by an officer as to whether any goods were being brought into Canada.

Please note that the *CA* was contravened when an incorrect declaration was made by, or on behalf of, the importer even if that error was made with a lack of intent to mislead Customs. An inadvertent error in reporting imported goods does not affect the validity of a seizure of those goods.

Ms. Kendall advised that the coins were classified as goods, as there was a tariff code for collectable coins. Further to this, Ms. Kendall informed the claimant that she had confirmed that under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, currency included all foreign and domestic bank notes and "circulation coins". On the basis that the silver and gold coins were considered as "uncirculated" they are not considered to be currency under the *PCMLTFA*. Consequently, the seized coins were classified as goods, which must be declared in accordance with section 12 of the *CA*.

The claimant was also informed that any further representations should be submitted within 30 days.

A postscript was sent to the issuing office stating;

- *"As the claimant is stating that he was never asked at primary about cash or financial instruments he carried, please have the primary officer submit a detailed narrative report with all questions posed to the claimant and his answers.*
- *Please submit the full documentation package including the E-67, etc.*
- *It has been concluded that the silver coins are considered to be goods and therefore, were required to be reported as per section 12 of the CA. As the claimant did not declare the silver/gold coins it appears there was a contravention of non-report as alleged.*
- *It appears the coins fall under tariff classification 7118.10.00.00. As the coins are silver/gold and are from the US (UST), it also appears they may be duty and tax free. However, as I am not an expert in reading the Customs Tariff I would ask that you please conduct a TEPS on-line rating to confirm the applicable duty and tax rate for these goods.*
- *For your information, Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:*
  - *Level 1 and less than \$2000 value, forced accounting;*
  - *Level 1 and \$2000 or over in value, 5 per cent of value;*
  - *Level 2 or 3 and less than \$1000 value, forced accounting; or*
  - *Level 2 or 3 and \$1000 or over in value, 10 per cent of value.*
- *On the basis this reference, if the coins are determined to be duty and tax free, and since they were seized level 1, it will be recommended to mitigate the terms of release to reflect the aforementioned. However, if it is determined that the coins are not duty and tax free it will be recommended to maintain the enforcement action and terms of release as originally assessed."*

As requested, the issuing office forwarded additional submissions, including, the full documentation package.

**Call from Claimant – November 12, 2014**

The claimant telephoned Ms. Kendall on November 12, 2014 wanting to know where in the *PCMLTFA* it spoke of “circulation coins”. Ms. Kendall advised that all questions need to be submitted to her in writing and that she would provide a written response.

**Issuing Office Response – November 14, 2014**

The primary officer responded on November 14, 2014 with a NIL statement.

**Additional Correspondence from Claimant – November 17, 2014**

Following the Notice of Reasons for Action, the claimant submitted additional correspondence and representations. In review of his representations Ms. Kendall stated that irrespective of reporting requirements stipulated by other pieces of legislation which may or may not have required that he report the importation of the coins in question, for example the *PCMLTFA*, it remained that all goods imported into Canada must be reported in accordance with section 12 of the *CA*. Furthermore, as the goods in question were identified in the *Customs Tariff Schedule* under section XIV, chapter 71.18 and were being imported for the first time they did not meet the criteria outlined in section 12(7) of the *CA* to preclude them from seizure.

Additionally, the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, *US Public Law* document on ‘Buffalo Gold Bullion Coins’ and *US Code Title 31* he provided in support of his appeal had been given consideration, but did not provide relief from the aforementioned reporting requirement.

He requested clear assertions and specific references to Acts the CBSA invoked and the legislative section number(s) that defined currency. He further requested the Act name and section number that made the determination for: “...silver and gold coins are considered as uncirculated, they are not considered to be currency...” In response, although the *PCMLTFA* did define ‘monetary instruments’ neither the *PCMLTFA* nor the *CA* defined ‘currency.’ It was the position of the CBSA that, for the purposes of administering Part 2 of the *PCMLTFA*, gold coins were not considered currency (circulation coins) and thus, there was 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 were considered commodities, they did fall within the reporting provisions of the *CA* and must be reported upon importation.

The issuing office confirmed they had NIL responses / no further representations on December 18, 2014

**Call from Claimant – December 17, 2014**

The claimant stated in his telephone call that he had five follow-up questions. He was disputing everything Ms. Kendall had stated to him on the letters, re: seizure, NRA, ACK letter, “monetary instruments” description, etc. Ms. Kendall advised that he should send her the questions in order for her to put them on file and to respond as nothing stated over the phone could be taken into consideration. He told Ms. Kendall he knew what the answers would be, that she didn’t know what she was talking about and that he would see her in court. He also accused her of aiding and abetting terrorism.

**Additional Correspondence from claimant to CBSA President – January 21, 2015**

On January 21, 2015, the claimant sent a letter to the President of the CBSA, Mr. Luc Portelance, requesting a reassignment of adjudicator for his current appeal on the grounds that the present adjudicator, Ms. Kendall, had misrepresented the *PCMLTFA* in order to obtain a payment of \$1606.97 from him. On the same day, two letters were written to the Recourse Directorate. One submitting his interpretation of a telephone conversation he had with Ms. Kendall and the other one in response to Ms. Kendall’s letter of December 11, 2014.

### Additional correspondence from Claimant – January 21, 2015

The claimant submitted representations noting that Ms. Kendall dropped the claim stating that his money is collectable coins but rather instead that Ms. Kendall had devised that the goods were commodities. According to the claimant, the law explicitly shows that this claim is illegal. The claimant also states that in her letter, Ms. Kendall states that since a tariff appears to match his money, it is subject to the *CA*. This fact, according to the claimant, is false as it is plainly stated on the inside cover of the *Customs Tariff* itself. Finally, the claimant states that Ms. Kendall had so far not provided clear references to any of her claims and thus making it clear that they were just her own personal opinions and not officially sanctioned. The claimant also states that there was no proof that Ms. Kendall had consulted with any legal professional as she had claimed in her December 9, 2014 telephone conversation.

### Acknowledgment – February 3, 2015

The claimant's correspondence was further acknowledged by Ms. Kendall in a letter dated February 3, 2015 where she thanked the claimant for his representations and informs him that they have been duly noted and would be added to the file.

### Request for Legal Opinion – February 12, 2015

On February 12, 2015, a legal opinion was requested from the CBSA Legal Services Unit in order to obtain their advice as to whether the foreign collector gold and silver coins are reportable as goods under the *CA* or currency under the *PCMLTFA* or if other reporting requirements exist through other legislation.

### Change of Adjudicators – February 13, 2015

On February 13, 2015, I, Martine Gagnon, was assigned the file.

### Letter to Claimant – Legal Opinion – March 9, 2015

The CBSA Legal Services Unit's opinion was received on February 26, 2015. In the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTFR)*, "cash" is defined as:

"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. (espèces)

In the French version of the *PCMLTFR*, the term "cash" is translated as "espèces". The English translation of "espèces" within the (*PCMLTFA*) is "currency". Therefore, it is concluded that it was Parliament's intent to equate "cash" and "currency" within the context of the *PCMLTFA* and *PCMLTFR*.

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".

On the basis of the foregoing, the CBSA is of the view that foreign coins intended for circulation would be considered as currency to be reported under the provisions of the *PCMLTFA*. However, foreign coins that are not intended for circulation are to be considered goods and are to be reported under the *CA*.

Following the CBSA Legal Services Unit's opinion, the CBSA sent a letter to the claimant on March 9, 2015 stating that, according to the CBSA, the goods are considered to be reportable under the *CA*.

### Additional – March 17, 2015

On March 17, 2015, the claimant sent additional correspondence stating that on the basis of our March 9, 2015 letter, it appeared that I had not yet reviewed the documentation that had already

been provided as part of his request for ministerial decision and that I had provided an argument based on poor reading comprehension. The definition of cash under the *PCMLTFR* is defined as follows:

“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. (espèces)

According to the claimant, the CBSA made an important reading comprehension error. The correct phrase is “intended for circulation in Canada” followed by “or coins or bank notes of countries other than Canada”, therefore according to the *PCMLTFR*, cash is Canadian coins and notes that are intended for circulation in Canada or foreign coins or bank notes. The intended “for circulation in Canada” part applies only to currency issued under the authority of the *Currency Act*, while the “or coins or bank notes of countries other than Canada” part applies to the claimant’s coins. The claimant also wants to inform us of the fact that the part that applies to foreign currency does not include any circulation requirements.

#### Call from Claimant – April 2, 2015

On April 2, 2015, the claimant and I spoke on the telephone. He wanted me to have the file in front of me to discuss some issues. Before starting the conversation, I explained to him that we could discuss the issues over the telephone but that I would need to have all additional information in writing as well in order to respond to his queries as this process is a written one. He stated that he only thought of those issues after he had sent his latest correspondence. I responded by stating that he could send his additional queries by mail and that we would take them into consideration before responding. He stated that he would let us respond to his original letter and send further correspondence afterwards if need be.

#### Call from Claimant – April 7, 2015

On April 7, 2015, the claimant left a voice mail requesting to get the contact information for the Legal Services Unit. When calling him back, I responded, with acknowledgment and approval from my Manager, that I would not be able to give him this information. He responded he did not want to speak with the lawyer but rather wanted to talk to the Minister as he did not understand that we could not read and understand the definition of cash in the proceeds of crime regulations. I answered that we would respond to his letter shortly in writing and thus by stating this, acknowledged receipt of his letter over the telephone.

#### Legal Opinion – follow-up – April 30, 2015

On April 30, 2015, after requesting further clarifications from the Legal Services Unit with regard to the claimant’s interpretation of the term “cash” in the *PCMLTFR*, counsel confirmed that they were of the opinion that the preferred interpretation is that the foreign coins in question (silver eagles and gold buffalos) are collector coins. While they may have a face value, the true value in the coins relates to the collector aspect and as such these coins can be defined as goods under the *CA*. This is consistent with the CBSA’s position and can be supported by the law through statutory interpretation.

On May 26, 2015, the claimant’s letter dated March 17, 2015 was acknowledged informing him that his representations were carefully considered and reiterating the CBSA’s position that the silver and gold coins imported by the claimant are considered goods under the *CA*.

#### ANALYSIS

Under the provisions of section 12 of the *CA*, all goods imported into Canada must be reported in accordance with the *Regulations Respecting the Reporting of Imported Goods*.

The evidence submitted by the issuing office does establish that the claimant declared having purchased two tires valued at \$500.00. The officer asked him whether he had bought or received anything other than the two tires and he replied “yes” he had purchased a bottle of Advil.

Upon examination of his vehicle were discovered undeclared gold and silver coins with a value of \$5,700.00 USD.

The claimant appealed this action stating that;

- The silver eagle coins were US legal tender and IRA eligible investments.
- The coins were classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which were thus monetary instruments was USD \$5,700.00 and as their value was below the \$10,000 CAD, he was not required to declare them, per CBSA regulations.
- He was not asked about cash or financial instruments he carried, which would have required him to disclose.

The claimant made purchases which consisted of gold and silver coins and the receipt is dated October 21, 2014, the day of the seizure. The primary officer asked the claimant whether he had bought or received anything other than the two tires and he replied "yes" he had purchased a bottle of Advil. He failed to declare the gold and silver coins purchased that day.

The Agency's position remains that the imported foreign gold buffalos and silver eagles coins' are collector coins and that their true value relates to the collector aspect. Notwithstanding their face value, it is the CBSA's position that the coins in question are thus considered goods under the *CA*, and henceforth require reporting upon importation.

As the goods in question were identified in the *Customs Tariff Schedule* under section XIV, chapter 71.18 and were being imported for the first time they did not meet the criteria outlined in section 12(7) of the *CA* to preclude them from seizure. The gold and silver coins do not fall under the *PCMLTFA* as the claimant has adamantly stated. 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" that is again translated as "currency", the CBSA is of the opinion that the term "cash" is to equate the term "currency" within 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*.

For all the reasons noted above, I recommend maintaining the enforcement action however, as the goods are unconditionally duty free and tax exempt, the terms of release should be adjusted in accordance with EN Manual part 5, chapter 2 and paragraph 101. As the goods were not reported, *Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:*

- Level 1 and \$2000 or over in value, 5 per cent of value;

#### **TERMS OF RELEASE (RECOMMENDED):**

<b>GOODS – 4-USA \$50.00 gold coins &amp; 20-USA \$20 silver coins</b>	<b>\$321.39</b>
<b>(GRP. 2/LEVEL 1 CONTRAVENTION - 5% OF \$6,427.89)</b>	

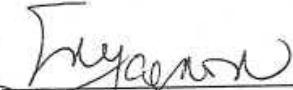
<b>TOTAL AMOUNT REQUIRED FOR RETURN OF GOODS</b>	<b>\$321.39</b>
--	-----------------

Under the provisions of section 131, the Minister shall consider and weigh the circumstances of this case and decide with respect to the gold and silver coins.

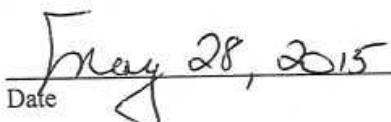
#### **BE IT DECIDED THAT:**

Under section 131 of the *CA*, there has been a contravention of the *CA* or the Regulations with respect to the seized goods;

Under section 133 of the CA, the goods under seizure be returned to the appellant upon receipt of an amount of \$321.39 to be held as forfeit. If release of the goods is not taken on the foregoing terms, within 90 days from the date of this notice, they will be forfeited and disposed of.



M. Gagnon, Senior Appeals Officer

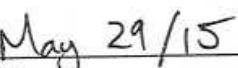


May 28, 2015

Date



Signing Authority



May 29/15

Date

# **TAB 53**

**Electronic Enforcement Appeal Form**

radu, Ashlee

**From:** root@rc.gc.ca  
**Sent:** October 23, 2014 12:39 PM  
**To:** CBSA-ASFC\_Appeals-Appels  
**Subject:** Enforcement Appeal Form

Confirmation: Thank you for submitting your appeal. Please print this page for your records.

subject: Enforcement Appeal Form

language: english [language=1]

fmrlID: rcms2013a

typereview: Customs Seizure Receipt [documentType=3]

enforcement action number: 4273-14-0724

date submitted: 2014-10-23

date of action: 2014-10-21

client type: individual [appellantType=1]

client first name: Radu Sebastian

client surname: Hociung

client address: 226 Willowdale Av

client city: Waterloo

client country: Canada [clientCountry=1]

client province/state: Ontario [clientProvinceState=ON]

client postal/zip code: N2J 3M1

client phone number: 519-883-8454

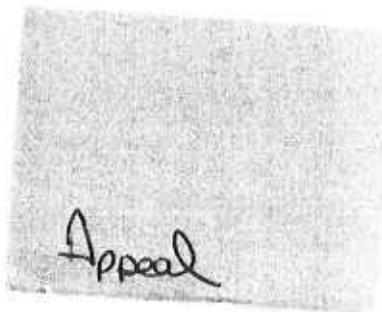
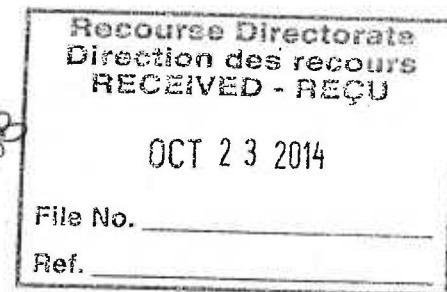
representation: I have a representative

representative type: Law Firm [representativeType=7]

representative name: Giesbrecht, Griffin, Funk & Irvine LLP

representative contact person: Martin F. Mahlstedt

representative address: 60 College St



representative city: Kitchener

representative country: Canada [representativeCountry=1]

representative province/state: Ontario [representativeProvinceState=ON]

representative postal/zip code: N2H 5A1

representative phone number: 519-579-4300

details: I believe the seizure is wrongful for the following reasons:

1. The Gold Buffalo coins are US Legal Tender and IRA eligible investments as declared by the United States Mint ([http://www.usmint.gov/mint\\_programs/buffalo24k/?action=amBuffBull](http://www.usmint.gov/mint_programs/buffalo24k/?action=amBuffBull)).
2. The Silver Eagle coins are US Legal Tender and IRA eligible investments as declared by the United States Mint ([http://www.usmint.gov/mint\\_programs/american\\_eagles/?Action=american\\_eagle\\_silver](http://www.usmint.gov/mint_programs/american_eagles/?Action=american_eagle_silver)).
3. The coins are classified as Financial Instruments by Canada Revenue Agency, per GST/HST memorandum 17.1 from April 1999, section 123(1) para 28, and thus exempt from tax, per para 2. ([http://www.cra-arc.gc.ca/E/pub/gm/17-1/17-1-e.html#P213\\_10371](http://www.cra-arc.gc.ca/E/pub/gm/17-1/17-1-e.html#P213_10371)). I have confirmed this with the technical inquiries line, 1-800-959-8287, along with the following:
  - a) The coins fit the definition of Financial Instruments as stated.
  - b) Even though they are non-circulating currency, they are still currency and thus exempted from tax when imported.
  - c) The CBSA term of "monetary instruments" is equivalent to the CRA term of "financial instruments"
4. The combined value of all the coins, all of which are US legal tender, and thus monetary instruments is USD \$5700. As their value is under C \$10,000, I was not required to declare them, per CBSA regulations. Also, I was not asked about the amount of cash or financial instruments I carried, which would have required me to disclose.

Kindly return my money

Sincerely,  
Radu Hociung

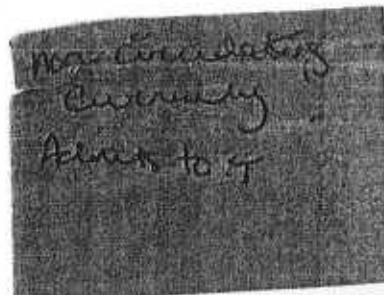
certification: yes

Submit: Submit

---

IP: 24.246.31.171

Mozilla/5.0 (Windows NT 6.1; WOW64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/38.0.2125.104 Safari/537.36



# **TAB 54**

**Canada Revenue Agency, GST/HST Memo 17.1, “Definition of Financial  
Instruments”**



# GST/HST Memoranda Series

## 17.1 Definition of “Financial Instrument”

April 1999

### Overview

This memorandum explains the components of the definition of “financial instrument” as it relates to the provision of financial services under the Goods and Services Tax (GST)/Harmonized Sales Tax (HST).

### Note

This memorandum replaces GST/HST Memorandum 17.1, *Definition of “Financial Instrument”*, dated January 1995. Significant changes have been side-barred.

### Note - HST

Reference in this memorandum is made to supplies taxable at 7% or 15% (the rate of the HST). The 15% HST applies to supplies made in Nova Scotia, New Brunswick and Newfoundland (the “participating provinces”). If a person is uncertain as to whether the supply is made in a participating province, the person may refer to Technical Information Bulletin B-078, *Place of Supply Rules under the HST*, available from any Revenue Canada tax services office.

## General

1. The definition of financial instrument is relevant for the definition of financial service. A financial service generally involves a transaction relating to a financial instrument or money.

### Financial services

2. Supplies of financial services are exempt under Part VII of Schedule V unless specifically listed as zero-rated under Part IX of Schedule VI. Services for which fees are charged and which relate to financial instrument transactions are exempt where these transactions fall within the definition of financial service found in subsection 123(1).

### Definition of financial instrument ss 123(1)

3. “Financial instrument” means:

(a) a debt security;

(b) an equity security;

(c) an insurance policy;

(d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest;

(e) a precious metal;

(f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange;

## **17.1 Definition of “Financial Instrument” (continued)**

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- (g) a prescribed instrument;
- (h) a guarantee, an acceptance or an indemnity in respect of anything described in paragraphs (a), (b), (d), (e) or (g); or
- (i) an option or a contract for the future supply of money or anything described in any of paragraphs (a) to (h).

Components of financial instrument      4. The following paragraphs explain the components of the definition of a financial instrument.

### **Debt security**

- Definition of debt security  
ss 123(1)      5. “Debt security” means a right to be paid money and includes a deposit of money, but does not include a lease, licence or similar arrangement for the use of, or the right to use, property other than a financial instrument.
- Right to be paid money      6. Financial obligations representing a right to be paid money are by definition a debt security for GST/HST purposes. A debt security generally includes a deposit of money, debentures, notes, convertible notes, mortgages, treasury bills, bonds, etc. It also includes book debts and accounts receivable.
- Exclusions      7. The payment of money relating to leases, licences or similar arrangements, or the right to use property other than a financial instrument, is specifically excluded from the definition of debt security. Therefore, such a payment is not in respect of a financial instrument. For example, the leasing of commercial property is treated as a supply of that property, and not a debt security, for GST/HST purposes pursuant to subsection 136(1). Similarly, an automobile lease payment although partially consisting of a financing component is not exempt as consideration for a supply of a financial instrument.
- Contingent right  
Policy statement  
P-170, *Whether or Not a Debt Security Includes Contingent Amounts Owing*.      8. “Debt security” does not include a contingent right. A right to be paid money is a possibility but not a certainty where a contingent right is involved. The payment is conditional upon the occurrence or non-occurrence of some future event that may never happen.
- Late payment charges      9. A late payment charge occurs where a supplier of property or services charges the recipient (customer) an additional amount if payment for the supply is not made within the time required on the invoice. The late payment is a financial service as it relates to the operation of an overdue account (which is a debt security, and therefore a financial instrument).

## **17.1 Definition of “Financial Instrument” (continued)**

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### **Equity security**

Definition of equity security  
ss 123(1)

10. “Equity security” means a share of the capital stock of a corporation or any interest in or right to such a share.
11. A share of capital stock in a corporation representing ownership in the corporation or an interest in or right, claim or title to such a share is, for GST/HST purposes, a financial instrument.

### **Insurance policies**

Definition of insurance policy  
ss 123(1)

12. For GST/HST purposes, “insurance policy” means:
  - (a) a policy or contract of insurance, including life, property and casualty policies, but excluding a warranty contract (as explained in paragraph 23), that is issued by an insurer, including
    - (i) a reinsurance policy,
    - (ii) an annuity contract or a contract that would be an annuity contract except that the payments under the contract
      - are payable on a periodic basis at intervals that are longer or shorter than one year, or
      - vary in amount depending on the value of a specified group of assets or changes in interest rates, and
    - (iii) a segregated funds contract;
  - (b) a policy or contract relating to accident and sickness insurance whether issued or entered into by an insurer; and
  - (c) certain types of construction bonds (see paragraph 17 for more information).
13. “Insurer” means a person who is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an insurance business or under the laws of another jurisdiction to carry on in that other jurisdiction an insurance business.
14. Generally, an insurance policy is a contract whereby one person undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event, and applies only to some contingency or act that may occur in the future. It is an agreement by which one party, for a consideration, promises to pay money or its equivalent, or to perform an act valuable to the other party upon destruction, loss or injury of something in which the other party has an insurable interest.

## 17.1 Definition of “Financial Instrument” (continued)

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Health insurance contracts	15. Health insurance contracts such as accident or sickness insurance pertain to reimbursement for eligible medical, hospital, nursing, dental and certain other health-related expenses. These contracts cover payment for the cost of specified medical or dental services and loss of earnings, and provide an amount in compensation for accidental death or dismemberment. These contracts are included in the definition of an insurance policy whether or not provided by an insurer.
Supplementary health insurance	16. Contracts or policies issued by certain organizations that are not insurers, but provide supplementary health insurance in Canada and are licensed under the <i>Prepaid Hospital and Medical Act</i> (e.g., Blue Cross as well as certain corporations or associations providing accident and sickness policy benefits to their employees under self-insurance plans administered by a third party) are also included in the definition of an insurance policy.
Construction bonds	17. Construction bonds are bid, performance, maintenance or payment bonds issued in respect of a construction contract. These bonds are generally three-party contracts between a surety company, a contractor and an owner or developer of a project. The bonds, as a form of financial guarantee, are used in the construction industry to guarantee performance of a construction contract or the payment of suppliers. <ul style="list-style-type: none"><li>• Bid bond 18. A bid bond guarantees that the contractor, if selected, will enter into the contract for the bid amount and will provide the required contract security.</li><li>• Performance bond 19. A performance bond guarantees completion of the construction contract.</li><li>• Maintenance bond 20. A maintenance bond guarantees against defects in the contractor’s workmanship or materials for a period of time following completion of the construction contract.</li><li>• Payment bond 21. A payment bond guarantees that the contractor will pay its subcontractors, labourers and suppliers on the bonded construction contract.</li></ul> 22. The issuers (usually surety companies) of these construction bonds are normally required to be licensed under the same legislation as insurers. Even though these unique bonds are not normally considered to be contracts of insurance, they do strongly resemble insurance policies. Therefore, for GST/HST purposes, they are treated as insurance and included in the definition of an insurance policy.
Exclusions	23. The definition of insurance policy, however, excludes a warranty in respect of the quality, fitness or performance of tangible property where the warranty is supplied to a person who acquires the property otherwise than for resale (i.e., for personal use) whether or not it is provided by an insurer.  24. Insurance services provided by non-licensed persons are also excluded from the definition of insurance policy except in the case of: <ul style="list-style-type: none"><li>a) accident and sickness insurance as described in paragraphs 15 and 16, and</li><li>b) in some instances, construction bonds as described in paragraph 17.</li></ul>

## 17.1 Definition of “Financial Instrument” (continued)

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### Interest in a partnership, trust or estate of a deceased individual

Terms	<p>25. A partnership is created where two or more persons enter into a relationship to carry on business for profit. A trust is a fiduciary relationship imposed by contract or by law with respect to property or money held by one person for the benefit of one or more persons. A partnership, a trust and the estate of a deceased individual are treated as separate persons under the Act.</p> <p>26. Any interest, or any right in respect of an interest, in a partnership, a trust or the estate of a deceased individual is a financial instrument. This interest or right represents a claim, title or legal share of an <b>investment</b> in a partnership, a trust or the estate of a deceased individual and not in the underlying assets of the partnership, trust or the estate of a deceased individual.</p>
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### Precious metals

Definition of precious metal ss 123(1)	<p>27. A “precious metal” is a bar, ingot, coin or wafer of gold, platinum or silver that is refined to a purity level of at least</p> <ol style="list-style-type: none"><li>99.5% in the case of gold and platinum, and</li><li>99.9% in the case of silver.</li></ol>
Policy statement P-192, <i>Supplies of Precious Metals</i>	<p>28. A precious metal in the form of a bar, ingot or wafer at the required purity levels must generally be recognized and accepted for trading on Canadian financial markets. Ordinarily, these will bear markings indicating their purity level. They 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.</p> <p>29. Any supply of a precious metal (i.e., gold, platinum or silver) meeting the purity requirements, as set out in the definition of precious metal in subsection 123(1), is a supply of a financial service and generally exempt. Metals of this quality are normally investment-related and are usually bought and sold on international exchanges that establish world-wide precious metal prices.</p> <p>30. The sale or purchase of a precious metal, in the course of a commercial activity, that does not comply with the defined requirements is not considered a supply of a financial instrument, but rather a supply of property. Generally, the sale of gold, platinum or silver in bar, ingot, coin or wafer form with a purity level of less than 99.5% for gold and platinum, and less than 99.9% for silver is taxable at 7% or 15%. The sale of gold, platinum or silver at the defined purity levels, but not in the form of a bar, ingot, coin or wafer (e.g., in granular form), is taxable at 7% or 15%.</p>
Refiner	<p>31. A refiner of precious metals is considered to be any person who in the regular course of business converts or refines gold, platinum or silver regardless of the degree of purity.</p>

## **17.1 Definition of “Financial Instrument” (continued)**

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- Zero-rated supply  
Sch. VI, Part IX, s 3
- Refiner's fee
- Non-precious metals
- Supplies to non-residents  
Sch. VI, Part IX, s 1
- Imports  
Sch. VII, s 8
32. A supply of precious metals, as described in paragraphs 27 and 28, made by the refiner thereof or by the person on whose behalf the precious metals were refined is a zero-rated financial service. Accordingly, the first sale of newly refined precious metal by the refiner or its owner is zero-rated. Subsequent supplies of the precious metal are exempt.
33. Where a refining or a manufacturing fee is charged by a refiner of precious metals to the owner of the precious metals, this fee is taxable. However, where it is standard practice for a refiner to charge a separate premium fee when selling its own precious metal that is over and above the intrinsic precious metal value of the product, this fee is considered part of the selling price, and therefore would take on the tax status of the sale of the precious metal.
34. Carat gold, sterling silver or platinum in jewellery or chattel form are examples of metals that do not meet the purity and form requirements established under subsection 123(1), and therefore are not considered to be precious metals. Supplies of these goods are taxable at 7% or 15%, unless otherwise zero-rated in Schedule VI or exempted under Schedule V.
35. Precious metals supplied by a financial institution to a non-resident person are zero-rated.
36. Precious metals imported under any circumstances are prescribed by the *Non-Taxable Imported Goods (GST) Regulations*, and are therefore non-taxable imports by virtue of section 8 of Schedule VII.

## **Options or contracts traded on recognized commodity exchanges**

- Financial instruments
- Options
37. A commodity option or commodity future contract is a financial instrument for GST/HST purposes when traded on a recognized commodity exchange, such as the Winnipeg Commodity Exchange.
38. An option for the future supply of a commodity includes a right, but not an obligation, to buy or sell a commodity at a specified price within a stipulated future time period. The option buyer pays a premium to the dealer for this right, in addition to the usual commission. The supply of a commodity option where sold on a recognized commodity exchange is a financial service provided under paragraph (d) of the definition of financial service in subsection 123(1). However, the taxable status of the underlying commodity, if the option is exercised, is either taxable at 7% or 15% or exempt depending on the nature of the supply.

## **17.1 Definition of “Financial Instrument” (continued)**

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- Futures contract      39. A futures contract is an agreement to buy or sell a specific amount of a commodity at a particular price on a stipulated future date. Contrary to a commodity option, a futures contract obligates the buyer to purchase the underlying commodity and the seller to sell it, unless the contract is sold to another before the exercise date. The supply of a futures contract where sold on a recognized commodity exchange is also a financial service provided under paragraph (d) of the definition of financial service in subsection 123(1). However, the taxable status of the underlying commodity when the exercise date becomes due is either taxable or exempt depending on the nature of the supply.

### **Prescribed instruments**

40. Paragraph (g) of the definition of financial instrument provides for additional categories of financial instruments. To date, no regulations have been promulgated.

### **Guarantees, acceptances or indemnities**

- Guarantee      41. A guarantee includes an undertaking by a person to pay money or perform obligations with respect to a financial instrument provided under paragraphs (a), (b), (d), (e), and (g) of the definition of financial instrument in subsection 123(1), should the person primarily liable for the payment of a debt or obligation fail to execute that person's responsibility. For example, a guarantee bond is considered to be a financial instrument. A guarantee bond is a guarantee wherein the principal and interest may be guaranteed by a party other than the issuer. This situation may arise in parent-subsidiary relationships where bonds issued by a subsidiary are guaranteed by the parent.
- Acceptance      42. An acceptance in respect of paragraphs (a), (b), (d), (e) and (g) of the definition of financial instrument will include a formal indication by a person of its acceptance or guarantee that a financial instrument will be paid (e.g., Banker's Acceptance). An acceptance agreement is created, for example, when the drawee of a financial instrument writes “accepted” and a designated date of payment on the instrument and the drawee is responsible for payment at maturity.
- Indemnity      43. An indemnity in respect of paragraphs (a), (b), (d), (e) and (g) of the definition of financial instrument refers to a collateral contract or agreement by which one person agrees to indemnify another against an anticipated loss. It is an undertaking to be liable to pay money or perform an obligation in respect of the financial instrument (e.g., indemnity bond).
44. Guarantees, acceptances or indemnities pertaining to financial instruments defined in paragraphs (a), (b), (d), (e) or (g) of the definition of financial instrument are also defined (in paragraph (h)) to be themselves financial instruments for GST/HST purposes. Therefore, financial services relating to these guarantees, acceptances or indemnities will generally be exempt.

## **17.1 Definition of “Financial Instrument” (continued)**

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### **Options and contracts**

- Options                    45. An option for the future supply of money or a financial instrument described in paragraphs (a) to (h) of the definition of financial instrument refers to a right, but not an obligation, to buy or sell money or a financial instrument at a specified price within a stipulated future time period.
- Contract                  46. A contract for the future supply of money or a financial instrument described in paragraphs (a) to (h) of the definition of financial instrument refers to an agreement to buy or sell the above at a stipulated future date. For example, a future contract to purchase or sell US dollars at a specified price on a stipulated future date is a financial instrument.

All GST/HST memoranda and other Revenue Canada publications are available on Internet at the Revenue Canada site <http://www.rc.gc.ca/> under the heading “Technical Information” in “General Information”.

# TAB 55

**CBSA (Ann Kendall) Letter to Radu Hociung dated November 3, 2014**



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

Recourse Directorate    1686 Woodward Dr.  
Ottawa, ON, K1A 0L8

Radu Sebastian Hociung  
226 Willowdale Ave.  
Waterloo, ON N2J 3M1

November 3, 2014

**Subject: Request for a Ministerial Decision CS-74472/4273-14-0724**

We have accepted your letter dated October 23, 2014 as a request for a ministerial review (appeal) under section 129 of the *Customs Act*.

In accordance with privacy legislation, we require written authorization from you confirming that we may correspond with Martin F. Mahlstedt of Giesbrecht Griffin Funk and Irvine LLP and release information relating to this matter. Until we receive such authorization, we will direct all correspondence relating to this request to you.

The Recourse Directorate of the Canada Border Services Agency (CBSA) has the mandate to conduct a full and impartial review of the decision taken by the officer who made the enforcement action. The Recourse Directorate is committed to making the redress process as transparent and timely as possible.

Please accept this letter as the written Notice of Reasons for Action required by section 130 of the *Act*. To assist you in understanding the decision-making process, I have attached a copy of the relevant sections of the *Act* outlining the various documents, timelines, and conditions. I have also attached a copy of the issuing officer's Narrative Report relating to the enforcement action for your review and consideration.

According to the report prepared by the issuing office, the enforcement action was taken because "the said goods (as per Statement of Goods Seized) are seized because they have been unlawfully imported by reason of Non-report" in contravention of section 12 of the *Customs Act*.

Briefly, these reports indicate that, on October 21, 2014, you presented yourself at the Queenston bridge port-of-entry in Niagara, Ontario. You declared to the primary officer having purchased two tires valued at \$500.00. The officer asked you whether you had bought or received anything other than the two tires and you replied "yes" you had purchased a bottle of Advil. The officer then proceeded to ask all the mandatory questions as outlined on the E-67 (Canada Border Services Agency Declaration Card) and you were referred for a secondary examination.

Upon examination of your vehicle were discovered undeclared gold and silver coins with a value of \$5,700.00 USD. These were seized for non-report and held for payment.

Under the provisions of section 12 of the *Customs Act*, all goods imported into Canada must be reported in accordance with the *Regulations Respecting the Reporting of Imported Goods*.

**Canada**

Under the provisions of the section 110 of the *Customs Act*, an officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize them as forfeit.

Your comments have been noted and are appreciated. You appealed this enforcement action stating:

- The silver eagle coins are US legal tender and IRA eligible investments.
- The coins are classified as financial instruments by Canada Revenue Agency.
- The combined value of all the coins which are thus monetary instruments is USD \$5,700.00 and as their value was below the \$10,000 CAD, you were not required to declare them, per CBSA regulations.
- You were not asked about cash or financial instruments you carried, which would have required you to disclose.

Please be advised that I will be thoroughly examining the merits of this enforcement action.

At this point in the review, I should explain that that all goods entering Canada, regardless of how obtained or for whatever reason being imported and whether used or new, must be reported to the CBSA and the onus to do so rests upon the individual bringing the goods into the country. The duty to report goods is not dependent on any questioning or prompting by an officer as to whether any goods are being brought into Canada.

Please note that *Customs Act* is contravened when an incorrect declaration is made by, or on behalf of, the importer even if that error was made with a lack of intent to mislead Customs. An inadvertent error in reporting imported goods does not affect the validity of a seizure of those goods.

Please be advised that the coins are classified as goods, as there is a tariff code for collectable 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*.

You may, within 30 days from the date of mailing of this letter, provide any additional information or documentation that you believe will assist us in coming to a decision. If we do not receive a response within this timeframe, we will assume that none is forthcoming and make the decision based on the evidence currently on file. When replying, please quote our file number (see the Subject line) and send your response to the address below:

**Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8**

I can assure you that we will review and consider all documents and information before making a final decision. You will be notified by registered mail as soon as a decision is made.

**Canada**

Yours truly,

A. Kendall  
Adjudicator  
Recourse Directorate  
*For the President of the Canada Border Services Agency*

Tel. No.: (613) 960-5051  
Fax No.: (613) 960-5129

Attachments

Canada

c.c. 4273-Canada Border Services Agency  
Queenston Bridge - Traffic Operations  
P.O. Box 126  
Niagara Falls, Ontario  
L2E 6T1

- P.S. As the claimant is stating that he was never asked at primary about cash or financial instruments he carried, please have the primary officer submit a detailed narrative report with all questions posed to the claimant and his answers.
- Please submit the full documentation package including the E-67, etc.
- It has been concluded that the silver coins are considered to be goods and therefore, were required to be reported as per section 12 of the *Customs Act*. As the claimant did not declare the silver/gold coins it appears there was a contravention of non-report as alleged.
- It appears the coins fall under tariff classification 7118.10.00.00. As the coins are silver/gold and are from the US (UST), it also appears they may be duty and tax free. However, as I am not an expert in reading the Customs Tariff I would ask that you please conduct a TEPS on-line rating to confirm the applicable duty and tax rate for these goods.
- For your information, Part 5, Chapter 2, Paragraph 101 of the Enforcement Manual states that when unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:
  - Level 1 and less than \$2000 value, forced accounting;
  - Level 1 and \$2000 or over in value, 5 per cent of value;
  - Level 2 or 3 and less than \$1000 value, forced accounting; or
  - Level 2 or 3 and \$1000 or over in value, 10 per cent of value.
- Based on this reference, if the coins are determined to be duty and tax free, and since they were seized level 1, it will be recommended to mitigate the terms of release to reflect the aforementioned. However, if it is determined that the coins are not duty and tax free it will be recommended to maintain the enforcement action and terms of release as originally assessed.

Please forward further comments or representations to my attention within 15 days from the date of this letter. If you do not respond within this timeframe, we will assume that none is forthcoming and will make the decision based on the evidence currently on file.

Thank you for your assistance in this matter.

c.c. File

# TAB 56

**Plaintiff letter to CBSA, November 10, 2014**

Radu Hociung

226 Willowdale Ave, Waterloo, ON, Canada, N2J 3M1  
☎ (519) 883-8454 📩 radu.vs-cbsa-Nov10-2014@ohmi.org

Recourse Directorate  
Direction des recours  
RECEIVED - REÇU

NOV 17 2014

File No. CS - 74472

Ref. AXN

Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8

11/10/14

**Subject:**

Thank you for your letter dated November 3 2014.

Here is additional information that may help you:

1. Find attached a sworn affidavit from the Assistant Deputy Minister of Finance that states the status of Canadian gold coins as **CIRCULATION CURRENCY**.
2. Find attached a copy of *US Public Law 109-145*, which amends *US Code Title 31*, section 5112(a) (11) and adds the American Gold Buffalo coins to the list of **CURRENT US LEGAL-TENDER** (ie, **CURRENCY**)
3. Find attached an excerpt of *US Code Title 31*, section 5112(e), which explicitly says that US Silver Eagles are **NUMISMATIC**, and **CURRENT LEGAL TENDER** at the same time.
4. Further mode, kindly read the seizing officer's narrative report, paragraph 11, where he states he was advised by the CBSA superintendent on duty that "coins minted with metals at the required purity levels and issued by a government authority qualify" [ as currency ]. He does not claim to have checked these simple criteria, even though he stated them both when on the statement of goods seized: "United States of America \$50, 1oz of .9999 Fine Gold". In fact this is the same information I conveyed to him repeatedly during our interaction, and he vehemently refused to consider it. [Note: I believe the superintendent is referring to paragraph 27 of section 123 of Canada Revenue Agency Memorandum 17.1]

Please clarify your assertions with clear references to the acts you are invoking. I would like clarifications for the following claims you made in your November 4, 2014 letter:

1. "... under the PCMLTFA, a currency includes all foreign and domestic ...". Please supply the section number that defines currency. As far as I can tell, this act does not mention the words "bank note", "circulation", "coin", even though you have highlighted the phrase "circulation coins" by enclosing it

in quotes and underlining it, implying the phrase is used in the text of the Act.

2. "... silver and gold coins are considered as uncirculated, they are not considered to be currency...", **please supply the act name and section number** that makes this determination. As far as I can tell, the *US Code Title 31* explicitly says that gold and silver uncirculated coins issued under its authority **is current legal tender** of the United states, see sections 5102, 5112 (a)(11) for gold, and 5112(e) for silver. Note that the word "uncirculated" has a specific legal meaning, which is distinct from the word "circulation" (eg. Collectible loonies you can buy at the post office are uncirculated , but were issued "for circulation" – see attachment –, ie you can spend them if you want, and are no less legal currency than loonies already circulated). Under the Currency Act of Canada, and US Code Title 31, both gold and silver are "uncirculated" currency issued for "circulation". Also note the text of the Minister of Finance's affidavit that uses similar language, "issued for circulation", and are "current and legal tender", even though bullion coins are by definition "uncirculated". Neither Canadian, nor US acts exclude "uncirculated" coins from being "currency", quite the contrary, they explicitly state it. Please supply references to Acts you've used in your assertion.

Furthermore, note the following:

1. At no point have I claimed to have made an error in reporting, inadvertent or intentional. I have plainly and repeatedly stated the error of classification is ENTIRELY the CBSA's. My report was as complete and accurate as required by Canada's laws, including:
  - a) *Canada Customs Act*,
  - b) *Canada Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,
  - c) *Canada Tax Act*
2. Section 110 of the *Customs Act* applies to goods, but not financial instruments or currency.
3. The collectability of currency does not affect its currency status, even for non-circulating currency. Your claim to the contrary finds no support in Canadian Law or United States Law, and in fact *US Title 31* explicitly contradicts it.
4. I am not submitting my narrative account of the events at CBSA on Oct 21<sup>st</sup> at this time.

Also, I feel obligated to point out the following, though I have written to the Prime Minister and to the Minis-

ter of Public Safety separately on this issue:

Mis-classification of currency as 'goods' is effectively exempting currency traffic from the requirements to report under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. I do not believe it is the mandate of the CBSA to allow such arbitrary exemptions, and as such through your flawed interpretation of the law, you have created a hazard to the national security of Canada.

On the web there are numerous accounts of your narrative that "gold currency is goods exempt from PCMLTFA", going back several years, which act as advertisement to actual terrorists and other criminals that they are welcome in Canada along with their currency, as long as they convert it to gold prior to arrival. Conversion is easy in most of the world, and even the Royal Canadian Mint exports its gold coins worldwide.

I would be interested to know if you also regard other Canadian currency that has been officially, permanently withdrawn from circulation, and is now collectible, as "goods", and exempt from PCMLTFA. I am referring to the Canada \$1000 note, the \$2 note, but also to the plethora of collectible commemorative coinage in circulation (pick up a handful of Canadian quarters, and you'll find much of it falls in this category). **Please inform me what your interpretation is vis-a-vis these forms of currency.**

Furthermore, if your interpretation were correct, then the definition of Canada Revenue Agency of gold and silver coins above a certain purity, issued by a government authority, would apply to NO gold coins anywhere in the world, and would be a pointless section of the Tax act.

Radu Hociung

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I await your clarifications on sections numbers, and your decision.

Sincerely,

Radu Hociung

Attachments.



# GST/HST Memoranda Series

## 17.1 Definition of “Financial Instrument”

April 1999

### Overview

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### General

1. The definition of financial instrument is relevant for the definition of financial service. A financial service generally involves a transaction relating to a financial instrument or money.

### Financial services

2. Supplies of financial services are exempt under Part VII of Schedule V unless specifically listed as zero-rated under Part IX of Schedule VI. Services for which fees are charged and which relate to financial instrument transactions are exempt where these transactions fall within the definition of financial service found in subsection 123(1).

### Definition of financial instrument ss 123(1)

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(a) a debt security;

(b) an equity security;

(c) an insurance policy;

(d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest;

(e) a precious metal;

(f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange;

## Definition of "Financial Instrument" (continued)

### **Interest in a partnership, trust or estate of a deceased individual**

#### **Terms**

25. A partnership is created where two or more persons enter into a relationship to carry on business for profit. A trust is a fiduciary relationship imposed by contract or by law with respect to property or money held by one person for the benefit of one or more persons. A partnership, a trust and the estate of a deceased individual are treated as separate persons under the Act.
26. Any interest, or any right in respect of an interest, in a partnership, a trust or the estate of a deceased individual is a financial instrument. This interest or right represents a claim, title or legal share of an **investment** in a partnership, a trust or the estate of a deceased individual and not in the underlying assets of the partnership, trust or the estate of a deceased individual.

### **Precious metals**

#### **Definition of precious metal ss 123(1)**

27. A "precious metal" is a bar, ingot, coin or wafer of gold, platinum or silver 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.

#### **Policy statement P-192, Supplies of Precious Metals**

28. A precious metal in the form of a bar, ingot or wafer at the required purity levels must generally be recognized and accepted for trading on Canadian financial markets. Ordinarily, these will bear markings indicating their purity level. They 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.
29. Any supply of a precious metal (i.e., gold, platinum or silver) meeting the purity requirements, as set out in the definition of precious metal in subsection 123(1), is a supply of a financial service and generally exempt. Metals of this quality are normally investment-related and are usually bought and sold on international exchanges that establish world-wide precious metal prices.

30. The sale or purchase of a precious metal, in the course of a commercial activity, that does not comply with the defined requirements is not considered a supply of a financial instrument, but rather a supply of property. Generally, the sale of gold, platinum or silver in bar, ingot, coin or wafer form with a purity level of less than 99.5% for gold and platinum, and less than 99.9% for silver is taxable at 7% or 15%. The sale of gold, platinum or silver at the defined purity levels, but not in the form of a bar, ingot, coin or wafer (e.g., in granular form), is taxable at 7% or 15%.

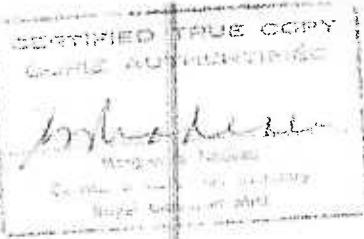
#### **Refiner**

31. A refiner of precious metals is considered to be any person who in the regular course of business converts or refines gold, platinum or silver regardless of the degree of purity.

Department of Finance  
Canada

Ottawa, Canada  
K1A 0G5

Ministère des Finances  
Canada



TO WHOM IT MAY CONCERN:

I, Mark Jewett, Assistant Deputy Minister and Counsel to the Department of Finance, hereby declare under oath that the following coins were issued under the authority of the Government of Canada for circulation in Canada pursuant to s.5.1 of the Royal Canadian Mint Act, 1985 R.S., c. R-8, as amended:

\$50	9999 Au	Maple Leaf Reverse Design
\$50	9995 Pt	Maple Leaf Reverse Design
\$20	9999 Au	Maple Leaf Reverse Design
\$20	9995 Pt	Maple Leaf Reverse Design
\$10	9999 Au	Maple Leaf Reverse Design
\$10	9995 Pt	Maple Leaf Reverse Design
\$5	9999 Au	Maple Leaf Reverse Design
\$5	9995 Pt	Maple Leaf Reverse Design
\$5	9999 Ag	Maple Leaf Reverse Design
\$2	9995 Pt	Maple Leaf Reverse Design
\$1	9995 Pt	Maple Leaf Reverse Design
\$1	9999 Au	Maple Leaf Reverse Design

The above-referenced coins are current and legal tender and may be used as a means of payment in accordance with the provisions of the *Currency Act*, 1985 R.S., c. C-52, as amended.

No tax under Part IX of Schedule VI to the *Excise Tax Act*, 1985 R.S., c. E-15, as amended, is payable on the sale of the above-referenced coins by the Royal Canadian Mint.

Sworn before me in the City of Ottawa,)  
Province of Ontario, Canada,)  
this 15<sup>th</sup> of April, 1999 )

Douglas R. Wyatt  
General Counsel  
General Legal Services Division  
Department of Finance

For and on behalf of:  
DEPARTMENT OF FINANCE CANADA

Mark Jewett, Q.C.  
Assistant Deputy Minister  
and Counsel to the  
Department of Finance

Canada

and issued remain tarnish-free for as long as possible without incurring undue expense; and

(6) if the Secretary of the Treasury determines to include on any \$1 coin minted under section 102 of this Act a mark denoting the United States Mint facility at which the coin was struck, such mark should be edge-incused.

## TITLE II—BUFFALO GOLD BULLION COINS

### SEC. 201. GOLD BULLION COINS.

Section 5112 of title 31, United States Code, is amended—

(1) in subsection (a), by adding at the end the following:

“(11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.”; and

(2) by adding at the end, the following:

“(q) GOLD BULLION COINS.—

Deadline.

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Presidential \$1 Coin Act of 2005, the Secretary shall commence striking and issuing for sale such number of \$50 gold bullion and proof coins as the Secretary may determine to be appropriate, in such quantities, as the Secretary, in the Secretary's discretion, may prescribe.

(2) INITIAL DESIGN.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), the obverse and reverse of the gold bullion coins struck under this subsection during the first year of issuance shall bear the original designs by James Earle Fraser, which appear on the 5-cent coin commonly referred to as the ‘Buffalo nickel’ or the ‘1913 Type 1’.

“(B) VARIATIONS.—The coins referred to in subparagraph (A) shall—

“(i) have inscriptions of the weight of the coin and the nominal denomination of the coin incused in that portion of the design on the reverse of the coin commonly known as the ‘grassy mound’; and

“(ii) bear such other inscriptions as the Secretary determines to be appropriate.

(3) SUBSEQUENT DESIGNS.—After the 1-year period described to in paragraph (2), the Secretary may—

“(A) after consulting with the Commission of Fine Arts, and subject to the review of the Citizens Coinage Advisory Committee, change the design on the obverse or reverse of gold bullion coins struck under this subsection; and

“(B) change the maximum number of coins issued in any year.

(4) SOURCE OF GOLD BULLION.—

“(A) IN GENERAL.—The Secretary shall acquire gold for the coins issued under this subsection by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined.

James Earle  
Fraser.

- (d) (1) United States coins shall have the inscription "In God We Trust". The obverse side of each coin shall have the inscription "Liberty". The reverse side of each coin shall have the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. Subject to other provisions of this subsection, the obverse of any 5-cent coin issued after December 31, 2005, shall bear the likeness of Thomas Jefferson and the reverse of any such 5-cent coin shall bear an image of the home of Thomas Jefferson at Monticello. The Secretary of the Treasury, in consultation with the Congress, shall select appropriate designs for the obverse and reverse sides of the dollar coin. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the Secretary may inscribe coins of the denomination with the year that was last inscribed on coins of the denomination.
- (2) The Secretary shall prepare the devices, models, hubs, and dies for coins, emblems, devices, inscriptions, and designs authorized under this chapter. The Secretary may, after consulting with the Citizens Coinage Advisory Committee and the Commission of Fine Arts, adopt and prepare new designs or models of emblems or devices that are authorized in the same way as when new coins or devices are authorized. The Secretary may change the design or die of a coin only once within 25 years of the first adoption of the design, model, hub, or die for that coin. The Secretary may procure services under section 3109 of title 5 in carrying out this paragraph.
- (e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in qualities and quantities that the Secretary determines are sufficient to meet public demand, coins which—
- (1) are 40.6 millimeters in diameter and weigh 31.103 grams;
  - (2) contain .999 fine silver;
  - (3) have a design—
    - (A) symbolic of Liberty on the obverse side; and
    - (B) ~~of an eagle on the reverse side;~~
  - (4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and
  - (5) have reeded edges.
- (f) **Silver Coins.**—
- (1) **Sale price.**— The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).
  - (2) **Bulk sales.**— The Secretary shall make bulk sales of the coins minted under subsection (e) at a reasonable discount.
  - (3) **Numismatic items.**— For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) shall be considered to be numismatic items.
- (g) For purposes of section 5132 (a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.
- (h) **The coins issued under this title shall be legal tender as provided in section 5103 of this title.**
- (i) (1) Notwithstanding section 5111 (a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in qualities and quantities that the Secretary determines are sufficient to meet public demand, and such gold coins shall—
  - (A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have—
    - (i) on the obverse side, a design symbolic of Liberty; and

**TITLE 31 - Section 5103 - Legal tender**

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpprint.html>).*

**§ 5102. Standard weight**

The standard troy pound of the National Institute of Standards and Technology of the Department of Commerce shall be the standard used to ensure that the weight of United States coins conforms to specifications in section 5112 of this title.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

**Historical and Revision Notes**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5102	31:364.	R.S. § 3548; restated Mar. 4, 1911, ch. 268, § 1, 36 Stat. 1354.

The words "National Bureau of Standards of the Department of Commerce" are substituted for "Bureau of Standards of the United States" because of 15:1511. The words "troy pound of the mint of the United States, conformably to which the coinage thereof shall be regulated" are omitted as unnecessary because of the restatement. The word "ensure" is substituted for "securing" as being more precise. The words "specifications in section 5112 of this title" are substituted for "the provisions of the laws relating to coinage" because of the restatement.

**Amendments**

1988—Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

**§ 5103. Legal tender**

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub. L. 97-452, § 1(19), Jan. 12, 1983, 96 Stat. 2477.)

**Historical and Revision Notes**

**1982 Act**

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5103	31:392.	July 23, 1965, Pub. L. 89-81, § 102, 79 Stat. 255.
	31:456.	R.S. § 3584.

The words "All . . . regardless of when coined or issued" are omitted as unnecessary because of the restatement. The word "debts" is substituted for "debts, public and private" to eliminate unnecessary words. The words "public charges, taxes, duties, and dues" are omitted as included in "debts".

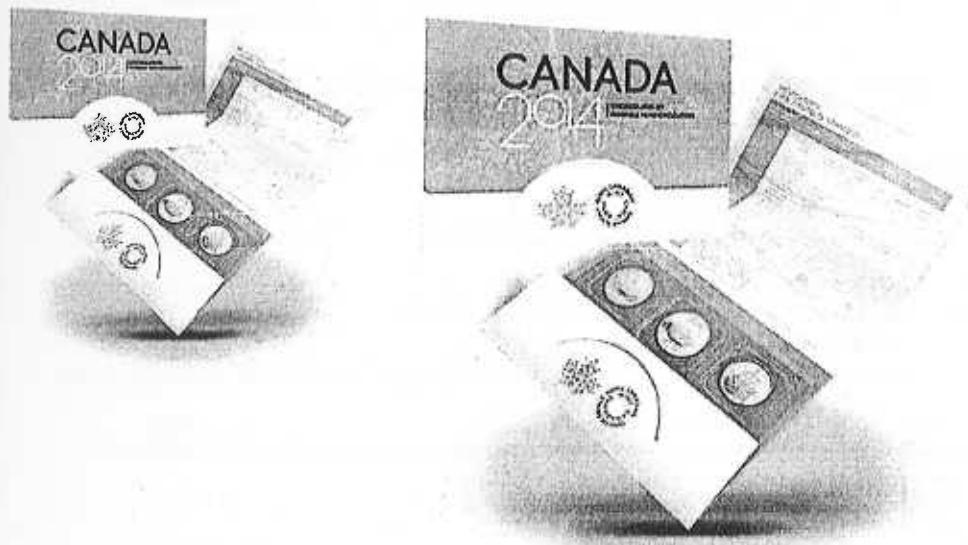
**1983 Act**

This restores to 31:5103 the reference to public charges, taxes, and dues because they are not considered to be debts. See, *Hagar v. Reclamation District No. 108*, 111 U.S. 701, 706 (1884).

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(CANADA AND US ONLY)

Royal Canadian Mint

## Uncirculated Set (2014)



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[Specifications](#)

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STATUS:  
Canada and US only

\$24.95 CAD

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[close](#)

### Check Store Inventory

#### Uncirculated Set (2014)

Ottawa

IN STOCK

[View Ottawa store details >](#)

Vancouver

IN STOCK

[View Vancouver store details >](#)

Winnipeg

IN STOCK

[View Winnipeg store details >](#)

\* Please call store to confirm product stock.

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See reverse



**NEW! Unique packaging! Includes the rare 50-cent coin!**

Nothing delights the eye more than a perfect, shiny coin. And this set delivers on that—times six! It includes all five of Canada's circulation coins, plus the rare 50-cent coin featuring Canada's Coat of Arms.

This set is a great gift for birthdays and weddings, and is a wonderful souvenir for anyone visiting Canada. Transform everyday achievements, like the first day of school or first job, into memorable milestones—an affordable gift to keep handy for those special moments of 2014!

The Uncirculated Set continues a long tradition as the perfect way to collect Canada's circulation coins from year-to-year. Order yours today!

**Special Features:**

- New! Unique packaging holds your coins and your certificate in the same place.
- These uncirculated coins have been carefully selected to provide you with the best examples of their kind.
- Perfect gift to mark any 2014 event such as a birth, a wedding, an anniversary, or as a great souvenir to those travelling to Canada.
- Fits perfectly into your uncirculated set binder!

**Polar Bear:**

Canada's bi-metallic two-dollar coin, launched in 1996, features a polar bear, one of the world's largest terrestrial carnivores which can weigh up to 650 kilograms. It lives near the cold seas and frozen ice of Canada's far-north.

**Common Loon:**

Launched in 1987, the reverse of the one-dollar coin represents a common loon swimming against the rugged backdrop of the Canadian Shield. The loon's haunting calls are one the quintessential sound of the Canadian wilderness in summer.

**Canada's Coat of Arms:**

The Canadian Coat of Arms, proclaimed in 1921 and modified in 1986, reminds Canadians of our diverse heritage. It features images from France (the fleur-de-lis), England (the three royal lions and rose), Scotland (a lion and thistle) and Ireland (the Irish harp and shamrock).

**Caribou:**

An enduring symbol of the Canadian north, the majestically-anlered caribou has remained a Canadian icon since first appearing on the twenty-five-cent piece in 1936.

**Bluenose:**

In 1921, Atlantic Canadians built one of the finest racing and fishing vessels in Canadian history, the Bluenose. Known for its speed, and almost unbeatable in a race, the ship first appeared on the ten-cent piece in 1937.

**Beaver:**

The beaver is Canada's national animal. Highly sought after for its rich fur in the 17th and 18th centuries, it was the mainstay of the colonial economy for centuries. Today, the beaver is revered as a symbol of hard work and perseverance.

**Packaging:**

Your 2014 Uncirculated Set coins are sealed inside a transparent film and presented in a colourful specifications card!

Order yours today!

**Specifications**

**No.**  
128638

**2 dollars**

**Composition:**  
three-ply nickel finish plated (outer ring), three-ply brass finish plated aluminum bronze (inner core)

**Finish:**  
uncirculated

**Weight (g):**  
6.92

**Diameter (mm):**  
28

**Edge:**  
Interrupted serrations

**Artist:**  
Brent Townsend (reverse), Susanna Blunt (obverse)

**1 dollar**

**Composition:**  
three-ply brass plated steel

**Finish:**  
uncirculated

**Weight (g):**  
6.27

**Diameter (mm):**  
26.5

**Edge:**  
plain

**Artist:**  
Ralph-Robert Carmichael (reverse), Susanna Blunt (obverse)

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#### **Canada's Coat of Arms:**

The Canadian Coat of Arms, proclaimed in 1921 and modified in 1958, reminds Canadians of our diverse heritage. It features images from France (the fleur-de-lis), England (the three royal lions and rose), Scotland (a lion and unicorn) and Ireland (the Irish harp and shamrock).

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An enduring symbol of the Canadian north, the majestically-antlered caribou has remained a Canadian icon since first appearing on the twenty-five-cent piece in 1936.

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Order yours today!

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6.92

**Diameter (mm):**  
28

**Edge:**  
interrupted serrations

**Artist:**  
Brent Townsend (reverse), Susanna Blunt (obverse)

### **1 dollar**

**Composition:**  
three-ply brass plated steel

**Finish:**  
uncirculated

**Weight (g):**  
6.27

**Diameter (mm):**  
26.5

**Edge:**  
plain

**Artist:**  
Ralph-Robert Carmichael (reverse), Susanna Blunt (obverse)

# **TAB 57**

**Minister of Finance precious metals coins affidavit**



Department of Finance  
Canada

Ottawa, Canada  
K1A 0G5

Ministère des Finances  
Canada



TO WHOM IT MAY CONCERN:

I, Mark Jewett, Assistant Deputy Minister and Counsel to the Department of Finance, hereby declare under oath that the following coins were issued under the authority of the Government of Canada for circulation in Canada pursuant to s.5.1 of the *Royal Canadian Mint Act, 1985 R.S., c. R-8*, as amended:

\$50	.9999 Au	Maple Leaf Reverse Design
\$50	.9995 Pt	Maple Leaf Reverse Design
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\$5	.9999 Au	Maple Leaf Reverse Design
\$5	.9995 Pt	Maple Leaf Reverse Design
\$5	.9999 Ag	Maple Leaf Reverse Design
\$2	.9995 Pt	Maple Leaf Reverse Design
\$1	.9995 Pt	Maple Leaf Reverse Design
\$1	.9999 Au	Maple Leaf Reverse Design

The above-referenced coins are current and legal tender and may be used as a means of payment in accordance with the provisions of the *Currency Act, 1985 R.S., c. C-52*, as amended.

No tax under Part IX of Schedule VI to the *Excise Tax Act, 1985 R.S., c. E-15*, as amended, is payable on the sale of the above-referenced coins by the Royal Canadian Mint.

Sworn before me in the City of Ottawa, )  
Province of Ontario, Canada, )  
this 15<sup>th</sup> of April, 1999 )

Douglas R. Wyatt  
Douglas R. Wyatt  
General Counsel  
General Legal Services Division  
Department of Finance

For and on behalf of:  
DEPARTMENT OF FINANCE CANADA

Mark Jewett  
Mark Jewett, Q.C.  
Assistant Deputy Minister  
and Counsel to the  
Department of Finance

**Canada**

# TAB 58

**US Public law 109-145 (Presidential \$1 Coin Act of 2005)**

PUBLIC LAW 109–145—DEC. 22, 2005

PRESIDENTIAL \$1 COIN ACT OF 2005

Public Law 109–145  
109th Congress  
An Act

Dec. 22, 2005  
[S. 1047]

Presidential \$1  
Coin Act of 2005.  
31 USC 5101  
note.

31 USC 5112  
note.

To require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively, to improve circulation of the \$1 coin, to create a new bullion coin, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Presidential \$1 Coin Act of 2005”.

**TITLE I—PRESIDENTIAL \$1 COINS**

**SEC. 101. FINDINGS.**

Congress finds the following:

(1) There are sectors of the United States economy, including public transportation, parking meters, vending machines, and low-dollar value transactions, in which the use of a \$1 coin is both useful and desirable for keeping costs and prices down.

(2) For a variety of reasons, the new \$1 coin introduced in 2000 has not been widely sought-after by the public, leading to higher costs for merchants and thus higher prices for consumers.

(3) The success of the 50 States Commemorative Coin Program (31 U.S.C. 5112(l)) for circulating quarter dollars shows that a design on a United States circulating coin that is regularly changed in a manner similar to the systematic change in designs in such Program radically increases demand for the coin, rapidly pulling it through the economy.

(4) The 50 States Commemorative Coin Program also has been an educational tool, teaching both Americans and visitors something about each State for which a quarter has been issued.

(5) A national survey and study by the Government Accountability Office has indicated that many Americans who do not seek, or who reject, the new \$1 coin for use in commerce would actively seek the coin if an attractive, educational rotating design were to be struck on the coin.

(6) The President is the leader of our tripartite government and the President's spouse has often set the social tone for the White House while spearheading and highlighting important issues for the country.

(7) Sacagawea, as currently represented on the new \$1 coin, is an important symbol of American history.

(8) Many people cannot name all of the Presidents, and fewer can name the spouses, nor can many people accurately place each President in the proper time period of American history.

(9) First Spouses have not generally been recognized on American coinage.

(10) In order to revitalize the design of United States coinage and return circulating coinage to its position as not only a necessary means of exchange in commerce, but also as an object of aesthetic beauty in its own right, it is appropriate to move many of the mottos and emblems, the inscription of the year, and the so-called "mint marks" that currently appear on the 2 faces of each circulating coin to the edge of the coin, which would allow larger and more dramatic artwork on the coins reminiscent of the so-called "Golden Age of Coinage" in the United States, at the beginning of the Twentieth Century, initiated by President Theodore Roosevelt, with the assistance of noted sculptors and medallic artists James Earle Fraser and Augustus Saint-Gaudens.

Theodore  
Roosevelt.  
Earle Fraser.  
Augustus  
Saint-Gaudens.

(11) Placing inscriptions on the edge of coins, known as edge-incusing, is a hallmark of modern coinage and is common in large-volume production of coinage elsewhere in the world, such as the 2,700,000,000 2-Euro coins in circulation, but it has not been done on a large scale in United States coinage in recent years.

(12) Although the Congress has authorized the Secretary of the Treasury to issue gold coins with a purity of 99.99 percent, the Secretary has not done so.

(13) Bullion coins are a valuable tool for the investor and, in some cases, an important aspect of coin collecting.

#### SEC. 102. PRESIDENTIAL \$1 COIN PROGRAM.

Section 5112 of title 31, United States Code, is amended by adding at the end the following:

"(n) REDESIGN AND ISSUANCE OF CIRCULATING \$1 COINS HONORING EACH OF THE PRESIDENTS OF THE UNITED STATES.—

"(1) REDESIGN BEGINNING IN 2007.—

"(A) IN GENERAL.—Notwithstanding subsection (d) and in accordance with the provisions of this subsection, \$1 coins issued during the period beginning January 1, 2007, and ending upon the termination of the program under paragraph (8), shall—

"(i) have designs on the obverse selected in accordance with paragraph (2)(B) which are emblematic of the Presidents of the United States; and

"(ii) have a design on the reverse selected in accordance with paragraph (2)(A).

"(B) CONTINUITY PROVISIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), the Secretary shall continue to mint and issue \$1 coins which bear any design in effect before the issuance of coins as required under this subsection (including the so-called 'Sacagawea-design' \$1 coins).

“(ii) CIRCULATION QUANTITY.—Beginning January 1, 2007, and ending upon the termination of the program under paragraph (8), the Secretary annually shall mint and issue such ‘Sacagawea-design’ \$1 coins for circulation in quantities of no less than  $\frac{1}{3}$  of the total \$1 coins minted and issued under this subsection.”.

“(2) DESIGN REQUIREMENTS.—The \$1 coins issued in accordance with paragraph (1)(A) shall meet the following design requirements:

“(A) COIN REVERSE.—The design on the reverse shall bear—

“(i) a likeness of the Statue of Liberty extending to the rim of the coin and large enough to provide a dramatic representation of Liberty while not being large enough to create the impression of a ‘2-headed’ coin;

“(ii) the inscription ‘\$1’; and

“(iii) the inscription ‘United States of America’.

“(B) COIN OBVERSE.—The design on the obverse shall contain—

“(i) the name and likeness of a President of the United States; and

“(ii) basic information about the President, including—

“(I) the dates or years of the term of office of such President; and

“(II) a number indicating the order of the period of service in which the President served.

“(C) EDGE-INCUSED INSCRIPTIONS.—

“(i) IN GENERAL.—The inscription of the year of minting or issuance of the coin and the inscriptions ‘E Pluribus Unum’ and ‘In God We Trust’ shall be edge-incused into the coin.

“(ii) PRESERVATION OF DISTINCTIVE EDGE.—The edge-incusing of the inscriptions under clause (i) on coins issued under this subsection shall be done in a manner that preserves the distinctive edge of the coin so that the denomination of the coin is readily discernible, including by individuals who are blind or visually impaired.

“(D) INSCRIPTIONS OF ‘LIBERTY’.—Notwithstanding the second sentence of subsection (d)(1), because the use of a design bearing the likeness of the Statue of Liberty on the reverse of the coins issued under this subsection adequately conveys the concept of Liberty, the inscription of ‘Liberty’ shall not appear on the coins.

“(E) LIMITATION IN SERIES TO DECEASED PRESIDENTS.—No coin issued under this subsection may bear the image of a living former or current President, or of any deceased former President during the 2-year period following the date of the death of that President.

“(3) ISSUANCE OF COINS COMMEMORATING PRESIDENTS.—

“(A) ORDER OF ISSUANCE.—The coins issued under this subsection commemorating Presidents of the United States shall be issued in the order of the period of service of each President, beginning with President George Washington.

“(B) TREATMENT OF PERIOD OF SERVICE.—

“(i) IN GENERAL.—Subject to clause (ii), only 1 coin design shall be issued for a period of service for any President, no matter how many consecutive terms of office the President served.

“(ii) NONCONSECUTIVE TERMS.—If a President has served during 2 or more nonconsecutive periods of service, a coin shall be issued under this subsection for each such nonconsecutive period of service.

“(4) ISSUANCE OF COINS COMMEMORATING 4 PRESIDENTS DURING EACH YEAR OF THE PERIOD.—

“(A) IN GENERAL.—The designs for the \$1 coins issued during each year of the period referred to in paragraph (1) shall be emblematic of 4 Presidents until each President has been so honored, subject to paragraph (2)(E).

“(B) NUMBER OF 4 CIRCULATING COIN DESIGNS IN EACH YEAR.—The Secretary shall prescribe, on the basis of such factors as the Secretary determines to be appropriate, the number of \$1 coins that shall be issued with each of the designs selected for each year of the period referred to in paragraph (1).

“(5) LEGAL TENDER.—The coins minted under this title shall be legal tender, as provided in section 5103.

“(6) TREATMENT AS NUMISMATIC ITEMS.—For purposes of section 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

“(7) ISSUANCE OF NUMISMATIC COINS.—The Secretary may mint and issue such number of \$1 coins of each design selected under this subsection in uncirculated and proof qualities as the Secretary determines to be appropriate.

“(8) TERMINATION OF PROGRAM.—The issuance of coins under this subsection shall terminate when each President has been so honored, subject to paragraph (2)(E), and may not be resumed except by an Act of Congress.

“(9) REVERSION TO PRECEDING DESIGN.—Upon the termination of the issuance of coins under this subsection, the design of all \$1 coins shall revert to the so-called ‘Sacagawea-design’ \$1 coins.”.

**SEC. 103. FIRST SPOUSE BULLION COIN PROGRAM.**

Section 5112 of title 31, United States Code, as amended by section 102, is amended by adding at the end the following:

“(o) FIRST SPOUSE BULLION COIN PROGRAM.—

“(1) IN GENERAL.—During the same period described in subsection (n), the Secretary shall issue bullion coins under this subsection that are emblematic of the spouse of each such President.

“(2) SPECIFICATIONS.—The coins issued under this subsection shall—

“(A) have the same diameter as the \$1 coins described in subsection (n);

“(B) weigh 0.5 ounce; and

“(C) contain 99.99 percent pure gold.

“(3) DESIGN REQUIREMENTS.—

“(A) COIN OBVERSE.—The design on the obverse of each coin issued under this subsection shall contain—

“(i) the name and likeness of a person who was a spouse of a President during the President’s period of service;

“(ii) an inscription of the years during which such person was the spouse of a President during the President’s period of service; and

“(iii) a number indicating the order of the period of service in which such President served.

“(B) COIN REVERSE.—The design on the reverse of each coin issued under this subsection shall bear—

“(i) images emblematic of the life and work of the First Spouse whose image is borne on the obverse; and

“(ii) the inscription ‘United States of America’.

“(C) DESIGNATED DENOMINATION.—Each coin issued under this subsection shall bear, on the reverse, an inscription of the nominal denomination of the coin which shall be '\$10'.

“(D) DESIGN IN CASE OF NO FIRST SPOUSE.—In the case of any President who served without a spouse—

“(i) the image on the obverse of the bullion coin corresponding to the \$1 coin relating to such President shall be an image emblematic of the concept of ‘Liberty’—

“(I) as represented on a United States coin issued during the period of service of such President; or

“(II) as represented, in the case of President Chester Alan Arthur, by a design incorporating the name and likeness of Alice Paul, a leading strategist in the suffrage movement, who was instrumental in gaining women the right to vote upon the adoption of the 19th amendment and thus the ability to participate in the election of future Presidents, and who was born on January 11, 1885, during the term of President Arthur; and

“(ii) the reverse of such bullion coin shall be of a design representative of themes of such President, except that in the case of the bullion coin referred to in clause (i)(II) the reverse of such coin shall be representative of the suffrage movement.

“(E) DESIGN AND COIN FOR EACH SPOUSE.—A separate coin shall be designed and issued under this section for each person who was the spouse of a President during any portion of a term of office of such President.

“(F) INSCRIPTIONS.—Each bullion coin issued under this subsection shall bear the inscription of the year of minting or issuance of the coin and such other inscriptions as the Secretary may determine to be appropriate.

“(4) SALE OF BULLION COINS.—Each bullion coin issued under this subsection shall be sold by the Secretary at a price that is equal to or greater than the sum of—

“(A) the face value of the coins; and

“(B) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

“(5) ISSUANCE OF COINS COMMEMORATING FIRST SPOUSES.—

“(A) IN GENERAL.—The bullion coins issued under this subsection with respect to any spouse of a President shall be issued on the same schedule as the \$1 coin issued under subsection (n) with respect to each such President.

“(B) MAXIMUM NUMBER OF BULLION COINS FOR EACH DESIGN.—The Secretary shall—

“(i) prescribe, on the basis of such factors as the Secretary determines to be appropriate, the maximum number of bullion coins that shall be issued with each of the designs selected under this subsection; and

“(ii) announce, before the issuance of the bullion coins of each such design, the maximum number of bullion coins of that design that will be issued.

“(C) TERMINATION OF PROGRAM.—No bullion coin may be issued under this subsection after the termination, in accordance with subsection (n)(8), of the \$1 coin program established under subsection (n).

“(6) QUALITY OF COINS.—The bullion coins minted under this Act shall be issued in both proof and uncirculated qualities.

“(7) SOURCE OF GOLD BULLION.—

“(A) IN GENERAL.—The Secretary shall acquire gold for the coins issued under this subsection by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined.

“(B) PRICE OF GOLD.—The Secretary shall pay not more than the average world price for the gold mined under subparagraph (A).

“(8) BRONZE MEDALS.—The Secretary may strike and sell bronze medals that bear the likeness of the bullion coins authorized under this subsection, at a price, size, and weight, and with such inscriptions, as the Secretary determines to be appropriate.

“(9) LEGAL TENDER.—The coins minted under this title shall be legal tender, as provided in section 5103.

“(10) TREATMENT AS NUMISMATIC ITEMS.—For purposes of section 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.”.

**SEC. 104. REMOVAL OF BARRIERS TO CIRCULATION.**

Section 5112 of title 31, United States Code, as amended by sections 102 and 103, by adding at the end the following:

“(p) REMOVAL OF BARRIERS TO CIRCULATION OF \$1 COIN.—

“(1) ACCEPTANCE BY AGENCIES AND INSTRUMENTALITIES.—

Beginning January 1, 2006, all agencies and instrumentalities of the United States, the United States Postal Service, all nonappropriated fund instrumentalities established under title 10, United States Code, all transit systems that receive operational subsidies or any disbursement of funds from the Federal Government, such as funds from the Federal Highway Trust Fund, including the Mass Transit Account, and all entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, including the legislative and judicial branches of the Federal Government,

Effective date.

shall take such action as may be appropriate to ensure that by the end of the 2-year period beginning on such date—

“(A) any business operations conducted by any such agency, instrumentality, system, or entity that involve coins or currency will be fully capable of accepting and dispensing \$1 coins in connection with such operations; and

“(B) displays signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.

“(2) PUBLICITY.—The Director of the United States Mint, shall work closely with consumer groups, media outlets, and schools to ensure an adequate amount of news coverage, and other means of increasing public awareness, of the inauguration of the Presidential \$1 Coin Program established in subsection (n) to ensure that consumers know of the availability of the coin.

“(3) COORDINATION.—The Board of Governors of the Federal Reserve System and the Secretary shall take steps to ensure that an adequate supply of \$1 coins is available for commerce and collectors at such places and in such quantities as are appropriate by—

“(A) consulting, to accurately gauge demand for coins and to anticipate and eliminate obstacles to the easy and efficient distribution and circulation of \$1 coins as well as all other circulating coins, from time to time but no less frequently than annually, with a coin users group, which may include—

“(i) representatives of merchants who would benefit from the increased usage of \$1 coins;

“(ii) vending machine and other coin acceptor manufacturers;

“(iii) vending machine owners and operators;

“(iv) transit officials;

“(v) municipal parking officials;

“(vi) depository institutions;

“(vii) coin and currency handlers;

“(viii) armored-car operators;

“(ix) car wash operators; and

“(x) coin collectors and dealers;

“(B) submitting an annual report to the Congress containing—

“(i) an assessment of the remaining obstacles to the efficient and timely circulation of coins, particularly \$1 coins;

“(ii) an assessment of the extent to which the goals of subparagraph (C) are being met; and

“(iii) such recommendations for legislative action the Board and the Secretary may determine to be appropriate;

“(C) consulting with industry representatives to encourage operators of vending machines and other automated coin-accepting devices in the United States to accept coins issued under the Presidential \$1 Coin Program established under subsection (n) and any coins bearing any design in effect before the issuance of coins required under subsection (n) (including the so-called ‘Sacagawea-design’ \$1

Reports.

coins), and to include notices on the machines and devices of such acceptability;

“(D) ensuring that—

“(i) during an introductory period, all institutions that want unmixed supplies of each newly-issued design of \$1 coins minted under subsections (n) and (o) are able to obtain such unmixed supplies; and

“(ii) circulating coins will be available for ordinary commerce in packaging of sizes and types appropriate for and useful to ordinary commerce, including rolled coins;

“(E) working closely with any agency, instrumentality, system, or entity referred to in paragraph (1) to facilitate compliance with the requirements of such paragraph; and

“(F) identifying, analyzing, and overcoming barriers to the robust circulation of \$1 coins minted under subsections (n) and (o), including the use of demand prediction, improved methods of distribution and circulation, and improved public education and awareness campaigns.

“(4) BULLION DEALERS.—The Director of the United States Mint shall take all steps necessary to ensure that a maximum number of reputable, reliable, and responsible dealers are qualified to offer for sale all bullion coins struck and issued by the United States Mint.

“(5) REVIEW OF CO-CIRCULATION.—At such time as the Secretary determines to be appropriate, and after consultation with the Board of Governors of the Federal Reserve System, the Secretary shall notify the Congress of its assessment of issues related to the co-circulation of any circulating \$1 coin bearing any design, other than the so-called ‘Sacagawea-design’ \$1 coin, in effect before the issuance of coins required under subsection (n), including the effect of co-circulation on the acceptance and use of \$1 coins, and make recommendations to the Congress for improving the circulation of \$1 coins.”.

Notification.

#### SEC. 105. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) the enactment of this Act will serve to increase the use of \$1 coins generally, which will increase the circulation of the so-called “Sacagawea-design” \$1 coins that have been and will continue to be minted and issued;

(2) the continued minting and issuance of the so-called “Sacagawea-design” \$1 coins will serve as a lasting tribute to the role of women and Native Americans in the history of the United States;

(3) the full circulation potential and cost-savings benefit projections for the \$1 coins are not likely to be achieved unless the coins are delivered in ways useful to ordinary commerce;

(4) the coins issued in connection with this title should not be introduced with an overly expensive taxpayer-funded public relations campaign;

(5) in order for the circulation of \$1 coins to achieve maximum potential—

(A) the coins should be as attractive as possible; and

(B) the Director of the United States Mint should take all reasonable steps to ensure that all \$1 coins minted

and issued remain tarnish-free for as long as possible without incurring undue expense; and

(6) if the Secretary of the Treasury determines to include on any \$1 coin minted under section 102 of this Act a mark denoting the United States Mint facility at which the coin was struck, such mark should be edge-incused.

## **TITLE II—BUFFALO GOLD BULLION COINS**

### **SEC. 201. GOLD BULLION COINS.**

Section 5112 of title 31, United States Code, is amended—

(1) in subsection (a), by adding at the end the following:

“(11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.”; and

(2) by adding at the end, the following:

“(q) GOLD BULLION COINS.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of the Presidential \$1 Coin Act of 2005, the Secretary shall commence striking and issuing for sale such number of \$50 gold bullion and proof coins as the Secretary may determine to be appropriate, in such quantities, as the Secretary, in the Secretary’s discretion, may prescribe.

“(2) INITIAL DESIGN.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), the obverse and reverse of the gold bullion coins struck under this subsection during the first year of issuance shall bear the original designs by James Earle Fraser, which appear on the 5-cent coin commonly referred to as the ‘Buffalo nickel’ or the ‘1913 Type 1’.

“(B) VARIATIONS.—The coins referred to in subparagraph (A) shall—

“(i) have inscriptions of the weight of the coin and the nominal denomination of the coin incused in that portion of the design on the reverse of the coin commonly known as the ‘grassy mound’; and

“(ii) bear such other inscriptions as the Secretary determines to be appropriate.

“(3) SUBSEQUENT DESIGNS.—After the 1-year period described to in paragraph (2), the Secretary may—

“(A) after consulting with the Commission of Fine Arts, and subject to the review of the Citizens Coinage Advisory Committee, change the design on the obverse or reverse of gold bullion coins struck under this subsection; and

“(B) change the maximum number of coins issued in any year.

“(4) SOURCE OF GOLD BULLION.—

“(A) IN GENERAL.—The Secretary shall acquire gold for the coins issued under this subsection by purchase of gold mined from natural deposits in the United States, or in a territory or possession of the United States, within 1 year after the month in which the ore from which it is derived was mined.

Deadline.

James Earle  
Fraser.

“(B) PRICE OF GOLD.—The Secretary shall pay not more than the average world price for the gold mined under subparagraph (A).

“(5) SALE OF COINS.—Each gold bullion coin issued under this subsection shall be sold for an amount the Secretary determines to be appropriate, but not less than the sum of—

“(A) the market value of the bullion at the time of sale; and

“(B) the cost of designing and issuing the coins, including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping.

“(6) LEGAL TENDER.—The coins minted under this title shall be legal tender, as provided in section 5103.

“(7) TREATMENT AS NUMISMATIC ITEMS.—For purposes of section 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

“(8) PROTECTIVE COVERING.—

“(A) IN GENERAL.—Each bullion coin having a metallic content as described in subsection (a)(11) and a design specified in paragraph (2) shall be sold in an inexpensive covering that will protect the coin from damage due to ordinary handling or storage.

“(B) DESIGN.—The protective covering required under subparagraph (A) shall be readily distinguishable from any coin packaging that may be used to protect proof coins minted and issued under this subsection.”.

### TITLE III—ABRAHAM LINCOLN BICENTENNIAL 1-CENT COIN REDESIGN

#### SEC. 301. FINDINGS.

31 USC 5112  
note.

Congress finds the following:

(1) Abraham Lincoln, the 16th President, was one of the Nation's greatest leaders, demonstrating true courage during the Civil War, one of the greatest crises in the Nation's history.

(2) Born of humble roots in Hardin County (present-day LaRue County), Kentucky, on February 12, 1809, Abraham Lincoln rose to the Presidency through a combination of honesty, integrity, intelligence, and commitment to the United States.

(3) With the belief that all men are created equal, Abraham Lincoln led the effort to free all slaves in the United States.

(4) Abraham Lincoln had a generous heart, with malice toward none, and with charity for all.

(5) Abraham Lincoln gave the ultimate sacrifice for the country he loved, dying from an assassin's bullet on April 15, 1865.

(6) All Americans could benefit from studying the life of Abraham Lincoln, for Lincoln's life is a model for accomplishing the “American dream” through honesty, integrity, loyalty, and a lifetime of education.

(7) The year 2009 will be the bicentennial anniversary of the birth of Abraham Lincoln.

(8) Abraham Lincoln was born in Kentucky, grew to adulthood in Indiana, achieved fame in Illinois, and led the nation in Washington, D.C.

(9) The so-called “Lincoln cent” was introduced in 1909 on the 100th anniversary of Lincoln’s birth, making the obverse design the most enduring on the nation’s coinage.

(10) President Theodore Roosevelt was so impressed by the talent of Victor David Brenner that the sculptor was chosen to design the likeness of President Lincoln for the coin, adapting a design from a plaque Brenner had prepared earlier.

(11) In the nearly 100 years of production of the “Lincoln cent”, there have been only 2 designs on the reverse: the original, featuring 2 wheat-heads in memorial style enclosing mottoes, and the current representation of the Lincoln Memorial in Washington, D.C.

(12) On the occasion of the bicentennial of President Lincoln’s birth and the 100th anniversary of the production of the Lincoln cent, it is entirely fitting to issue a series of 1-cent coins with designs on the reverse that are emblematic of the 4 major periods of President Lincoln’s life.

31 USC 5112  
note.

Victor David  
Brenner.

#### **SEC. 302. REDESIGN OF LINCOLN CENT FOR 2009.**

(a) IN GENERAL.—During the year 2009, the Secretary of the Treasury shall issue 1-cent coins in accordance with the following design specifications:

(1) OBVERSE.—The obverse of the 1-cent coin shall continue to bear the Victor David Brenner likeness of President Abraham Lincoln.

(2) REVERSE.—The reverse of the coins shall bear 4 different designs each representing a different aspect of the life of Abraham Lincoln, such as—

- (A) his birth and early childhood in Kentucky;
- (B) his formative years in Indiana;
- (C) his professional life in Illinois; and
- (D) his presidency, in Washington, D.C.

(b) ISSUANCE OF REDESIGNED LINCOLN CENTS IN 2009.—

(1) ORDER.—The 1-cent coins to which this section applies shall be issued with 1 of the 4 designs referred to in subsection (a)(2) beginning at the start of each calendar quarter of 2009.

(2) NUMBER.—The Secretary shall prescribe, on the basis of such factors as the Secretary determines to be appropriate, the number of 1-cent coins that shall be issued with each of the designs selected for each calendar quarter of 2009.

(c) DESIGN SELECTION.—The designs for the coins specified in this section shall be chosen by the Secretary—

(1) after consultation with the Abraham Lincoln Bicentennial Commission and the Commission of Fine Arts; and

(2) after review by the Citizens Coinage Advisory Committee.

31 USC 5112  
note.

#### **SEC. 303. REDESIGN OF REVERSE OF 1-CENT COINS AFTER 2009.**

The design on the reverse of the 1-cent coins issued after December 31, 2009, shall bear an image emblematic of President Lincoln’s preservation of the United States of America as a single and united country.

31 USC 5112  
note.

#### **SEC. 304. NUMISMATIC PENNIES WITH THE SAME METALLIC CONTENT AS THE 1909 PENNY.**

The Secretary of the Treasury shall issue 1-cent coins in 2009 with the exact metallic content as the 1-cent coin contained in

1909 in such number as the Secretary determines to be appropriate for numismatic purposes.

**SEC. 305. SENSE OF THE CONGRESS.**

It is the sense of the Congress that the original Victor David Brenner design for the 1-cent coin was a dramatic departure from previous American coinage that should be reproduced, using the original form and relief of the likeness of Abraham Lincoln, on the 1-cent coins issued in 2009.

31 USC 5112  
note.

Approved December 22, 2005.

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**LEGISLATIVE HISTORY—S. 1047 (H.R. 902):**

HOUSE REPORTS: No. 109–39 accompanying H.R. 902 (Comm. on Financial Services).

CONGRESSIONAL RECORD, Vol. 151 (2005):  
Nov. 18, considered and passed Senate.  
Dec. 13, considered and passed House.



# TAB 59

**November 19, 2014 advice by CBSA colleagues that gold is goods**

Dancause, John

**From:** Kendall, Ann  
**Sent:** November 19, 2014 10:24 AM  
**To:** Dancause, John  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

As requested

**From:** Milne, Mike  
**Sent:** October 31, 2014 10:17 AM  
**To:** Kendall, Ann  
**Cc:** Jones, Theresa; Sears, Mark; Drabyk, Holly; Dancause, John  
**Subject:** RE: Treasure Island Coins - CBSA ruling request

The contravention is governed by the Proceeds of Crime Legislation and any determination as to goods would emanate from the *Customs Tariff*.

I suspect his CRA reference is a moot point. The important point is whether the goods seized are goods or do they qualify as currency that need to be reported.

I think JL's e-mail should help.

Mike Milne  
Recourse Directorate | Direction des recours  
CANADA BORDER SERVICES AGENCY | AGENCE DES SERVICES FRONTALIERS DU CANADA  
Ottawa, ON K1A 0L8  
[Mike.Milne@cbsa-asfc.gc.ca](mailto:Mike.Milne@cbsa-asfc.gc.ca)  
T 613-960-5065 | F 613-960-5129  
Teletypewriter/Téléimprimeur: 1-866-335-3237

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**From:** Kendall, Ann  
**Sent:** October 31, 2014 9:57 AM  
**To:** Milné, Mike  
**Cc:** Jones, Theresa; Sears, Mark; Drabyk, Holly; Dancause, John  
**Subject:** RE: Treasure Island Coins - CBSA ruling request

Thank you Mike

My question is in regards to the link the claimant provided for CRA ( coins are classified as Financial Instruments, however, the document also dates to 1999, <http://www.cra-arc.gc.ca/E/pub/gm/17-1/17-1-e.html>) which states different to what we are utilizing with (PCMLTFA). I have to address this issue as it is the basis of his appeal.

Does the new PCMLTFA legislation out-rule the 1999 CRA information?

Thank you  
Ann

**From:** Milne, Mike  
**Sent:** October 31, 2014 9:46 AM  
**To:** Kendall, Ann  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

Mike Milne  
Recourse Directorate | Direction des recours  
CANADA BORDER SERVICES AGENCY | AGENCE DES SERVICES FRONTALIERS DU CANADA  
Ottawa, ON K1A 0L8  
[Mike.Milne@cbsa-asfc.gc.ca](mailto:Mike.Milne@cbsa-asfc.gc.ca)  
T 613-960-5065 | F 613-960-5129  
Teletypewriter/Téléimprimeur: 1-866-335-3237

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**From:** Boudreau, Terry  
**Sent:** October 31, 2014 9:44 AM  
**To:** Milne, Mike  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

Joanne Lepage's email below is very informative.

Hope this helps.

Terry

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**From:** Strickland, Jeffrey  
**Sent:** April 21, 2011 10:02 AM  
**To:** Boudreau, Terry; McIntosh, Lesley  
**Cc:** Lacroix, Danielle  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

The below email may help you with the gold/silver coins files you have.

Although I don't know where the reference is from, it appears the Agency's position with respect to the definition of currency is that it includes "includes all foreign and domestic bank notes and circulation coins"

Using this definition, the seizure of gold/silver coins under the *Customs Act* for non-report may be appropriate as opposed to the PCMLTFA.

Hope this helps,  
Jeff

**From:** Lepage, Joanne  
**Sent:** August 31, 2010 10:56 AM  
**To:** 'Meyer@livingstonintl.com'  
**Cc:** 'THarman@livingstonintl.com'; Lacroix, Danielle; Paulin, Desiree  
**Subject:** FW: Treasure Island Coins - CBSA ruling request

Good Morning Marion,

The Canada Border Services Agency (CBSA) is responsible for the administration and enforcement of Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) that was implemented on January 6, 2003. Part 2 legislates that every person or entity must report to the CBSA the importation or exportation of currency or monetary instruments valued at the equivalent of CAD \$10,000 or greater.

In response to your request, the definition of currency and monetary instruments as follows:

Currency includes all foreign and domestic bank notes and circulation coins.

Monetary instruments means the following instruments in bearer form (blank, cash, to the bearer) or in such other form as title to them passes on delivery, namely,

(a) securities, including stocks, bonds, debentures and treasury bills; and

(b) negotiable instruments, including bank drafts, cheques, promissory notes, travelers cheques and money orders, other than warehouse receipts or bills of lading.

As previously discussed with Terry Harman, gold and silver coins are not deemed currency or monetary instruments under the PCMLTFA cross border reporting regime. As such, there is no obligation pursuant to the PCMLTFA to submit a written report for such commodities.

I remain available should you require any additional information or clarification.

*Joanne A. Lepage*

Senior Program Advisor/Conseillère principale des programmes  
Penalties and Enforcement Unit / Unité de l'exécution de la loi et des sanctions  
Horizontal Border Policies Division / Division des politiques frontaliers horizontales  
Border Programs Directorate / Direction des programmes frontaliers  
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Government of Canada | Gouvernement du Canada

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**From:** Meyer, Marion [<mailto:MMeyer@livingstonintl.com>]  
**Sent:** August 26, 2010 2:06 PM  
**To:** Lepage, Joanne  
**Cc:** Harman, Terry  
**Subject:** Treasure Island Coins - CBSA ruling request

Hello Joanne,

Further to recent conversations you have had with Terry Harman from Livingston regarding our client Treasure Island Coins, please accept the attached letter requesting a ruling with respect to Cross-Border Currency and Monetary Instruments Reporting Regulations. Treasure Island Coins plans to import gold and silver products into Canada. Along with the ruling request letter, attached is product literature for the gold and silver products in question.

Thank you for your assistance. Please let me know if additional information is required.

Regards,  
Marion,  
*Mariel* *yer, Project Co-ordinator*  
*Livingston Consulting*

---

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# TAB 60

**December 11, 2014 Ann Kendall letter to the plaintiff**



Canada Border Services Agency      Agence des services frontaliers du Canada

Recourse Directorate      1686 Woodward Dr.  
Ottawa, ON, K1A 0L8

Radu Sebastian Hociung  
226 Willowdale Ave.  
Waterloo, ON  
N2J 3M1

December 11, 2014

**Subject: Request for a Ministerial Decision CS - 74472/4273-14-0724**

This correspondence is to acknowledge receipt and thank you for your letter with enclosures dated November 17, 2014, on the above-noted enforcement action.

Upon review of your submission I would like to make the following comments in response:

Irrespective of reporting requirements stipulated by other pieces of legislation which may or may not have required that you report the importation of the coins in question, for example the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), it remains that all goods imported into Canada must be reported in accordance with section 12 of the *Customs Act* (CA). Furthermore, as the goods in question are identified in the *Customs Tariff Schedule* under section XIV, chapter 71.18 and were being imported for the first time they did not meet the criteria outlined in section 12(7) of the CA to preclude them from seizure.

Additionally, the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, *US Public Law* document on 'Buffalo Gold Bullion Coins' and *US Code Title 31* you provided in support of your appeal have been given consideration, but do not provide relief from the aforementioned reporting requirement.

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.

I can assure you that your representations will be carefully considered, in conjunction with the evidence on file, when this matter is reported for final decision. The decision, when rendered, will outline the final terms and you will be notified by registered mail.

I trust that the above is satisfactory.

Yours truly,

A. Kendall  
Adjudicator  
Recourse Directorate

Tel. No.: (613) 960-5051  
Fax No.: (613) 960-5129

c.c. 4273-Canada Border Services Agency  
Queenston Bridge - Traffic Operations  
P.O. Box 126  
Niagara Falls, Ontario  
L2E 6T1

P.S. Please find attached a copy of the most recent correspondence received in this matter. Any further comments or representations should be forwarded to my attention within 30 days from the date of this correspondence. Thank you.

c.c. File

# **TAB 61**

**December 17, 2014, Notes on telephone conversation between Ms. Ann  
Kendall and the plaintiff.**

**The plaintiff's notes on the conversations**

## Memo for File/Notes pour le dossier

File #:	74472
Name:	
Date:	Dec 17/14
Time:	13:00

Reason for Memo: Contact:

Telephone Conversation Name:  
Voicemail Message Telephone #: 519-883-8454  
Note To File  
Research  
Change of Address Alt. Telephone #:

Summary: \_\_\_\_\_  
\_\_\_\_\_

He L.M. stating he had 5 follow-up questions.

He was disputing everything Re: Seizure, NFA, ACK letters, "monetary instruments" description. I told him to send me the five questions & that I would answer.

He said he knows the answer to the Appeal, that I don't know what I am talking about & that he would see me in court.

He also accused me of aiding & abetting terrorism.

Radu Hociung

226 Willowdale Ave, Waterloo, ON, Canada, N2J  
3M1   
☎ (519) 883-8454  r<sup>a</sup>du.vs-cbsa-Oct21-2014@ohmi.org

Radu Hociung, 226 Willowdale Ave, Waterloo, ON, Canada, N2J  
3M1

CBSA  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8

01/21/15

**Subject: Telephone conversations re: CBSA Seizure 4273-14-0724**

I would like to add the following records of my telephone conversations with A KENDALL to this case. I have used my notes and independent recollection:

On December 17, 2014 at 12:50pm, A KENDALL responded to the voicemail I left for her at 10:29am the same day. The questions she addressed are:

Q1: I wanted to ask you for clarifications on your letter dated December 11, 2014, while the details are still fresh in your memory. What does the Minister of Finance's Sworn Affidavit talk about?

AK: I don't remember.

Q2: If you don't mind, kindly open the Sworn Affidavit.

AK: Ok

Q3: In the first paragraph, the Deputy Minister declares under oath that the following coins were issued for circulation in Canada under the authority of the Government of Canada. Then it goes on to list a number of Gold, Silver and Platinum coins, with denominations, metal purity and names. Then he states that they are "current", "legal tender" and may be used according to the Currency Act, 1985 R.S., c C-52, as amended. In closing, the affidavit explicitly states that under Part IX of schedule VI of the Excise Tax Act, 1985 RS c E-15, no tax is payable on the sale of these coins.

AK: Yes, what's your point?

RH: Your response on Dec 11 to this sworn affidavit is that gold coins are considered commodities and they fall within the reporting provisions of the Customs Act and must be reported upon importation. Your response directly contradicts the Minister of Finance. Does your authority override the Minister's Sworn Affidavit?

AK: Silence, then after a short while, "Is there anything else?"

Q4: Thank you for admitting to fabricating in your letter dated Nov 3 that the PCMLTFA defines "currency"

A4: Wow! Then, is there anything else?

On December 9, 2014 at 13:58, I called A KENDALL and asked the following questions, and the responses. I sought to clarify the basis for her claim on Nov 3 that collectible, non-circulation bank notes are not considered currency. With her answer she contradicted her claim that collectibles are not currency. Later, in her Dec 11 letter, A KENDALL changed her position to that the gold coins are "commodities".

Q1: I would like to understand how the circulation status of a currency affects its treatment under the Customs Act. Are the \$1000 banknotes that are now non-circulation currency, and are collectibles, still considered currency?

AK: Yes

Q2: What about the \$2 banknotes, now withdrawn

A2: What about recently withdrawn 1cent coins, are they currency?

AK: Yes

Q3: What about my gold coins, which are declared to be currency of the United States by the US code Title 31?

AK: They are not currency.

Q4. Ok, so if my gold coins are not currency, does it mean that they can be brought into Canada in any amount (say 1000 coins) without the requirement to report them under the PCMLTFA ?

AK: Yes, you have to declare them for Customs, but don't need to fill out a currency report.

RH: This exemption from the PCMLTFA for currency in the form of gold coins means that the CBSA is facilitating terrorist financing and money laundry, and does not seem consistent with the intent of

the PCMLTFA.

AK: Silence

*Note: A KENDALL also stated this in writing in her December 11, 2014 letter:*

"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."

On November 12, 2014 at 08:58am, A KENDALL responded to the voicemail I left for her 5 days prior, on November 7, 2014 at 14:29. The following questions were addressed:

Q1: Which sections of the PCMLTFA defines "currency"?

AK: (after a pause) Section 12.

Q2: What is the legal definition of "currency" in Canada?

AK: Currency is something like a quarter that you can use in a convenience store to buy some gum, for example.

RH: That is not the legal definition. The legal definition for Canadian currency is given in the Currency Act, and the legal definition for foreign currency is given in the Excise Act

Q3: Which act of regulation specifies that "uncirculated" legal tender coins are not considered currency?

A3: Evaded.

Q4: What is the tariff code for legal-tender coins?

A4: Evaded.

Radu Hociung

Page 4/4

Sincerely,

A handwritten signature in black ink, appearing to read "R.H." followed by a stylized surname.

Radu Hociung

# TAB 62

**Jan 21, 2015 plaintiff letter to Recourse Directorate**

Radu Hociung

226 Willowdale Ave, Waterloo, ON, Canada, N2J  
2 (519) 883-8454 radu.vs-cbsa-Oct21-2014@ohmi.org

Radu Hociung, 226 Willowdale Ave, Waterloo, ON, Canada, N2J

CBSA  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8

Recourse Directorate  
Direction des recours  
RECEIVED - REÇU

JAN 28 2015

File No. CS-744-72

Ref. AXK

01/21/15

**Subject: CBSA Seizure 4273-14-0724**

Thank you for your December 11, 2014 letter. I duly noted you dropped your claim that my money is “collectable [sic] coins”, and instead you have devised a new claim that my money is “commodities”, I will quote the relevant sections of the law that **explicitly** show your claim to be illegal:

Currency Act, R.S.C., 1985, c. C-52 states:

11. (1) No person shall, except in accordance with a licence granted by the Minister, melt down, break up or use otherwise than as currency any coin that is current and legal tender in Canada.

999  
SAC

Ie, commodity metals may be freely melted down, but currency made from the same metals is not legally melttable. In other words, as an example, if an affiliate crosses the border with one million dollar coins, she may not claim they are simple commodities, representing 6000kg of brass plated steel, and thus not currency. While you may consider this a valid explanation, I provided to you the legal proof to the contrary. The exact same logic applies to currency made from other metals.

The US equivalent US Code Title 31, to which my money is subject to, states:

(1) The Secretary may prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States.

999  
SAC

As you expressed doubt as to whether my money is currency, here is the quote of the US Code Title 31 which explicitly lists my money as currency of the United States:

§ 5112. Denominations, specifications, and design of coins

(a) The Secretary of the Treasury may mint and issue only the following coins:

- (1) a dollar coin that is 1.043 inches in diameter.
- (2) a half dollar coin that is 1.205 inches in diameter and weighs 11.34 grams.
- (3) a quarter dollar coin that is 0.955 inch in diameter and weighs 5.67 grams.
- (4) a dime coin that is 0.705 inch in diameter and weighs 2.268 grams.
- (5) a 5-cent coin that is 0.835 inch in diameter and weighs 5 grams.
- (6) except as provided under subsection (c) of this section, a one-cent coin that is 0.75 inch in diameter and weighs 3.11 grams.
- (7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.
- (8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.
- (9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.
- (10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.

**(11) A \$50 gold coin that is of an appropriate size and thickness, as determined by the Secretary, weighs 1 ounce, and contains 99.99 percent pure gold.**

(12) A \$25 coin of an appropriate size and thickness, as determined by the Secretary, that weighs 1 troy ounce and contains .9995 fine palladium.

[...]

(e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in qualities and quantities that the Secretary determines are sufficient to meet public demand, coins which—

- (1) are 40.6 millimeters in diameter and weigh 31.103 grams;
- (2) contain .999 fine silver;
- (3) have a design—
  - (A) symbolic of Liberty on the obverse side; and

**(B) of an eagle on the reverse side;**

- (4) have inscriptions of the year of minting or issuance, and the words “Liberty”, “In God We Trust”, “United States of America”, “1 Oz. Fine Silver”, “E Pluribus Unum”, and “One Dollar”;  
and  
(5) have reeded edges.

These are all quotes of the sections I referenced to you on November 6, 2014, which you have acknowledged to received yet casually dismissed as non-applicable.

Furthermore, here is the quote of the Excise Tax Act that, again, explicitly states that my money is indeed exempt from the Customs Act:

3. “**Financial instrument**” means:

- (a) a debt security;
- (b) an equity security;
- (c) an insurance policy;
- (d) an interest in a partnership, a trust or the estate of a deceased individual, or any right in respect of such an interest;

**(e) a precious metal;**

- (f) an option or a contract for the future supply of a commodity, where the option or contract is traded on a recognized commodity exchange;

27. A “precious metal” is a bar, ingot, coin or wafer of gold, platinum or silver 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.

28. A precious metal in the form of a bar, ingot or wafer at the required purity levels must generally be recognized and accepted for trading on Canadian financial markets. Ordinarily, these will bear markings indicating their purity level. They 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.

Furthermore, your claims that since a tariff appears to match my money, it is subject to the Customs Act, are false, this fact is plainly stated on the inside cover of the Customs Tariff itself:

**WARNING**

Users of this Departmental Consolidation are reminded that it is prepared for convenience of reference only and that, as such, has no official sanction.

In other words, the while it surely is convenient as a reference, the Tariff does not establish applicability of anything. For your own reference, it is the *Excise Tax Act* that establishes what the *Customs Act* applies to.

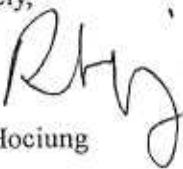
I would like you to clarify explicitly what makes these laws non-applicable. In your explanation, clearly state the name of the act and section number you refer to. Please refrain from quoting the text of Acts, as you have demonstrated in your initial letter dated November 3, 2014, and confirmed in your letter dated December 11, 2014 that such quotes are non-existent misrepresentations.

Radu Hociung

//  
Page 5/5

So far you have not provided clear references to any of your claims, and thus it is clear they are just your own personal opinions, and thus not officially sanctioned. I also see no evidence that you consulted with any legal professional as you claimed in our telephone conversation on December 9, 2014. Perhaps you'd like to substantiate your claim?

Sincerely,

  
Radu Hociung

# TAB 63

**January 21, 2015 Plaintiff letter to CBSA President.**

CANADA BORDER  
SERVICES AGENCY  
PRESIDENT'S OFFICE

Radu Hociung

2015 JAN 27 15:40  
226 Willowdale Ave, Waterloo, ON, Canada, N2J 3M1  
T (519) 883-8454 E radu.vs-cbsa-Oct21-2014@ohmi.org

AGENCE DES SERVICES

FRONTIERS

DU CANADA

BUREAU DU PRESIDENT

Radu Hociung, 226 Willowdale Ave, Waterloo, ON, Canada, N2J 3M1

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

01/21/15

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, 2<sup>nd</sup> 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.

Radu Hociung

Page 3/3

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 3<sup>rd</sup>, I followed up with a phone call on December 9<sup>th</sup>, 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,



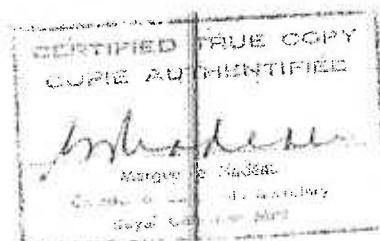
Radu Hociung

Attachments

Department of Finance  
Canada

Ottawa, Canada  
K1A 0G5

Ministère des Finances  
Canada



TO WHOM IT MAY CONCERN:

I, Mark Jewett, Assistant Deputy Minister and Counsel to the Department of Finance, hereby declare under oath that the following coins were issued under the authority of the Government of Canada for circulation in Canada pursuant to s.5.1 of the *Royal Canadian Mint Act, 1985 R.S., c. R-8*, as amended:

\$50	.9999 Au	Maple Leaf Reverse Design
\$50	.9995 Pt	Maple Leaf Reverse Design
\$20	.9999 Au	Maple Leaf Reverse Design
\$20	.9995 Pt	Maple Leaf Reverse Design
\$10	.9999 Au	Maple Leaf Reverse Design
\$10	.9995 Pt	Maple Leaf Reverse Design
\$5	.9999 Au	Maple Leaf Reverse Design
\$5	.9995 Pt	Maple Leaf Reverse Design
\$5	.9999 Ag	Maple Leaf Reverse Design
\$2	.9995 Pt	Maple Leaf Reverse Design
\$1	.9995 Pt	Maple Leaf Reverse Design
\$1	.9999 Au	Maple Leaf Reverse Design

The above-referenced coins are current and legal tender and may be used as a means of payment in accordance with the provisions of the *Currency Act, 1985 R.S., c. C-52*, as amended.

No tax under Part IX of Schedule VI to the *Excise Tax Act, 1985 R.S., c. E-15*, as amended, is payable on the sale of the above-referenced coins by the Royal Canadian Mint.

Sworn before me in the City of Ottawa, )  
Province of Ontario, Canada, )  
this 15<sup>th</sup> of April, 1999 )

Douglas R. Wyatt  
General Counsel  
General Legal Services Division  
Department of Finance

For and on behalf of:  
DEPARTMENT OF FINANCE CANADA

Mark Jewett, Q.C.  
Assistant Deputy Minister  
and Counsel to the  
Department of Finance

Canada

# TAB 64

**Jan 29, 2015 John Dancause letter to Ann Kendall**

January 29, 2015

Ann:

**CS-74472 (Seizure of \$5,700 USD collector gold & silver coins)**

Jeff and I have had some lengthy discussions on the above file and decided to take it to TIC, where it was discussed yesterday.

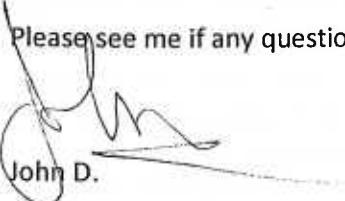
We don't have sufficient confirmation from the CBSA that the collector coins under review are uncirculated thus, might be currency ('cash') and thus, might fall under the PCMLTFA as opposed to the *Customs Act*. There may even be a gap in legislation in which collector coins are not adequately addressed.

Please tell the seizing agency that although they demonstrated their reasons for seizing the coins under the CA, the enforcement action may be cancelled since it is not clear that the CA is the most appropriate governing legislation for gold and silver collector coins. We found in our research that while the PCMLTFA itself does not define 'currency', the PCMLTFA Regulations do define "cash" which includes "...coins or bank notes of countries other than Canada." Thus, cash may be construed as currency. As such, consideration is being given to accepting the coins as currency under the PCMLTFA.

Allow them to provide any comments within 15 days.

NB: We will be seeking a legal opinion to clarify the issue of where gold/silver coins fall, i.e., the PCMLTFA, CA or other legislation) but this will not hold up the deciding of this enforcement action.

Please see me if any questions. Thank you.



John D.

**B/F - February 19, 2015**

# PCMLTFA REGULATIONS

SOR/2002-184 — December 15, 2014

and has at least one partner, employee or administrator that is an accountant. (*cabinet d'expertise comptable*)

“Act” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.* (*Loi*)

“annuity” has the same meaning as in subsection 248(1) of the *Income Tax Act.* (*rente*)

“British Columbia notary corporation” means an entity that carries on the business of providing notary services to the public in the province of British Columbia in accordance with the *Notaries Act*, R.S.B.C. 1996, c. 334. (*société de notaires de la Colombie-Britannique*)

“British Columbia notary public” means a person who is a member of the Society of Notaries Public of British Columbia. (*notaire public de la Colombie-Britannique*)

“business relationship” means any relationship with a client, established by a person or entity to which section 5 of the Act applies, to conduct financial transactions or provide services related to those transactions and, as the case may be,

(a) if the client holds one or more accounts with that person or entity, all transactions and activities relating to those accounts; or

(b) if the client does not hold an account, only those transactions and activities in respect of which that person or entity is required to ascertain the identity of a person or confirm the existence of an entity under these Regulations.

It does not include any transaction or activity to which any of paragraphs 62(1)(a), (b) and (d) or any of subsections 62(2) to (4) apply. (*relation d'affaires*)

“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. (*espèces*)

“CICA Handbook” means the handbook prepared and published by the Canadian Institute of Chartered Accountants, as amended from time to time. (*Manuel de l'ICCA*)

« cabinet d'avocats » Entité qui exploite une entreprise de prestation de services juridiques au public. (*legal firm*)

« cabinet d'expertise comptable » Entité qui exploite une entreprise de prestation de services d'expertise comptable au public et qui compte au moins un comptable parmi ses associés, ses employés ou ses gestionnaires. (*accounting firm*)

« cabinet juridique » [Abrogée, DORS/2003-102, art. 3]

« cadre dirigeant » S'agissant d'une entité :

a) soit l'administrateur de cette entité qui en est l'employé à temps plein;

b) soit le premier dirigeant, le directeur de l'exploitation, le président, le secrétaire, le trésorier, le contrôleur, le directeur financier, le comptable en chef, le vérificateur en chef ou l'actuaire en chef de l'entité, ou toute personne exerçant ces fonctions;

c) soit un autre dirigeant relevant directement du conseil d'administration, du premier dirigeant ou du directeur de l'exploitation de l'entité. (*senior officer*)

« centrale de caisses de crédit » Coopérative de crédit centrale, au sens de l'article 2 de la *Loi sur les associations coopératives de crédit*, ou centrale de caisses de crédit ou fédération de caisses de crédit ou de caisses populaires régie par une loi provinciale autre qu'une loi édictée par la législature du Québec. (*credit union central*)

« comptable » Comptable agréé, comptable général licencié ou comptable en management accrédité. (*accountant*)

« contrôle continu » Surveillance périodique, conforme à l'évaluation des risques prévue au paragraphe 9.6(2) de la Loi et au paragraphe 71(1) du présent règlement et exercée par une personne ou une entité visée à l'article 5 de la Loi, de la relation d'affaires de cette personne ou de cette entité avec un client, en vue de :

a) déceler les opérations devant être déclarées au titre de l'article 7 de la Loi;

# CURRENCY ACT



R.S.C., 1985, c. C-52

L.R.C., 1985, ch. C-52

## An Act respecting Currency

### SHORT TITLE

- Short title** 1. This Act may be cited as the *Currency Act*.  
R.S., c. C-39, s. 1; 1984, c. 9, s. 2.

### INTERPRETATION

- Definitions** 2. In this Act,  
“Minister” means the Minister of Finance.  
“subsidiary coin” [Repealed, R.S., 1985, c. 35 (3rd Supp.), s. 16]  
R.S., 1985, c. C-52, s. 2; R.S., 1985, c. 35 (3rd Supp.), s. 16; 1996, c. 16, s. 60; 1999, c. 4, s. 9.

## PART I CURRENCY AND COINAGE

### MONETARY UNIT

- Monetary unit** 3. (1) The monetary unit of Canada is the dollar.  
  
**Denominations** (2) The denominations of money in the currency of Canada are dollars and cents, the cent being one hundredth of a dollar.  
R.S., 1985, c. C-52, s. 3; 1999, c. 4, s. 10.  
  
4. to 6. [Repealed, R.S., 1985, c. 35 (3rd Supp.), s. 17]

### CURRENT COINS

- Current coins** 7. (1) A coin is current for the amount of its denomination in the currency of Canada if it was issued under the authority of  
(a) the *Royal Canadian Mint Act*; or  
(b) the Crown in any province of Canada before it became part of Canada and if the coin was, immediately before October 15, 1952, current and legal tender in Canada.

## Loi concernant la monnaie

### TITRE ABRÉGÉ

1. *Loi sur la monnaie*.  
S.R., ch. C-39, art. 1; 1984, ch. 9, art. 2.

### DÉFINITIONS

2. Les définitions qui suivent s'appliquent à la présente loi.  
« ministre » Le ministre des Finances.  
« pièce de monnaie divisionnaire » [Abrogée, L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 16]  
L.R. (1985), ch. C-52, art. 2; L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 16; 1996, ch. 16, art. 60; 1999, ch. 4, art. 9.

## PARTIE I MONNAIE ET PIÈCES

### UNITÉ MONÉTAIRE

3. (1) L’unité monétaire du Canada est le dollar.  
  
(2) Les valeurs nominales de la monnaie canadienne sont le dollar et le cent, celui-ci étant la centième partie d’un dollar.  
L.R. (1985), ch. C-52, art. 3; 1999, ch. 4, art. 10.  
  
4. à 6. [Abrogés, L.R. (1985), ch. 35 (3<sup>e</sup> suppl.), art. 17]

### PIÈCES AYANT COURS LÉGAL

7. (1) Ont cours légal, pour la valeur faciale qui y figure en monnaie canadienne, les pièces émises :  
a) sous le régime de la *Loi sur la Monnaie royale canadienne*;  
b) dans le cadre des attributions de la Couronne dans une province avant que celle-ci ne fasse partie du Canada et qui, avant le 15

Titre abrégé

Définitions  
« ministre »  
“Minister”

Valeurs nominales

Unité monétaire  
Pièces de monnaie ayant cours légal

# TAB 65

**March 9, 2015 letter from Martine Gagnon to the plaintiff.**

 Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

Recourse Directorate

1686 Woodward Dr.  
Ottawa, ON, K1A 0L8

Radu Sebastian Hociung  
226 Willowdale Avenue  
Waterloo, ON  
N2J 3M1

March 9, 2015

**Subject: Request for a Ministerial Decision CS – 74472 / 4273-14-0724**

Mr. Hociung,

Although your correspondence dated January 21, 2015 was acknowledged on February 3, 2015, I would like to provide you with additional information following the receipt of an opinion from our Legal Services Unit.

In the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations* (PCMLTFR), “cash” is defined as:

“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. (*espèces*)

In the French version of the PCMLTFR, the term “cash” is translated as “espèces”. The English translation of “espèces” within the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (PCMLTFA) is “currency”. Therefore, it is concluded that it was Parliament’s intent to equate “cash” and “currency” within the context of the PCMLTFA and PCMLTFR.

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”.

On the basis of the foregoing, the Canada Border Services Agency (CBSA) is of the view that foreign coins **intended for circulation** would be considered as **currency** to be reported under the provisions of the PCMLTFA. However, foreign coins that are **not intended for circulation** are to be considered **goods** and are to be reported under the *Customs Act*.

In the circumstances of this enforcement action, the information available suggests that the foreign coins were not intended for circulation, and as such have been deemed goods to be reported under the *Customs Act*. On the basis of the documentation on file, it appears that the goods in question were acquired outside of Canada and were not properly reported to the CBSA. Consequently, it appears a contravention of the *Customs Act* may have occurred, and the enforcement action may have been warranted. Without information or documentation to dispute this allegation, the enforcement action may be maintained as assessed.

You may, within 30 days from the date of mailing of this correspondence, provide any additional information or representation that you believe will assist in making the decision in this case. All of the information submitted by mail should quote the file number and be sent to the address below:

Canada Border Services Agency  
Recourse Directorate, Appeals Division  
1686 Woodward Dr.  
Ottawa, Ontario  
K1A 0L8

I can assure you that the evidence on file will be carefully considered when this matter is reported for final decision. As soon as a decision is rendered, you will be notified by registered mail.

Regards,



**M. Gagnon**  
Senior Appeals Officer, Appeals Division, Recourse Directorate  
Canada Border Services Agency  
Tel. No.: (613) 960-5070  
Fax No.: (613) 960-5129

# TAB 66

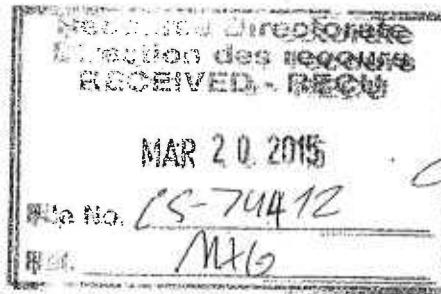
**March 17, 2015 letter from the plaintiff to Ms Gagnon**

Radu Hociung

226 Willowdale Ave, Waterloo, ON, Canada, N2J 3M1  
T (519) 883-8454 E radu.vs-cbsa-Oct21-2014@ohmi.org

Radu Hociung, 226 Willowdale Ave, Waterloo, ON, Canada, N2J 3M1

Canada Border Services Agency  
Recourse Directorate  
1686 Woodward Drive  
Ottawa ON K1A 0L8



03/17/15

**Subject: Request for a Ministerial Decision CS – 74472 / 4273-14-0724**

Mr. Gagnon,

Thank you for your letter dated March 9, 2015. Based on the content of this letter, it appears you have not yet reviewed the documentation that has already been provided as part of this request for ministerial decision, and that as a response, you have provided an argument based on poor reading comprehension.

You quoted the PCMLTFR's definition of "cash", but you (or the "Legal Services Unit") made an important reading comprehension error. The correct phrase, as given by the text of PCMLTFR, is "intended for circulation in Canada", followed by "or coins or bank notes of countries other than Canada". In plain English, "cash", according to PCMLTFR is:

- Canadian coins and notes that are intended for circulation in Canada **or**,
- foreign coins and bank notes.

Ie, the "intended for circulation in Canada" part applies only to currency issued under the authority of the Currency Act (ie, Canadian currency), while the "or coins or bank notes of countries other than Canada" part, which you disregarded, applies to my coins.

Please take note of the fact that the part that applies to foreign currency **does not include any circulation requirements**.

Your error is that you shortened the full phrase to "intended for circulation" and completely ignored the second half of the definition which deals with foreign currency. Due to this error, the remainder of your argument is nonsensical, as you imply that there exist foreign coins that are indeed "intended for circulation" in Canada. Surely you can see the fallacy in your interpretation, as other countries cannot issue currency for circulation in Canada. The other fallacy of your interpretation, is that no foreign currency can be considered "cash", as it is not intended for circulation (in Canada, as the full definition provides). I do not believe it can be concluded that Parliament's intent is to only subject Canadian currency to the PCMLTFA, and treat all other currencies as "goods", though this is what you effectively claim.

Radu Hociung

//  
Page 2/2

It is my understanding that you made the representations in your letter in support of, and with the intent of obtaining from me a payment of \$1606.97. Please confirm this understanding.

Additionally, my coins are U.S. Legal tender, and thus "intended for circulation". See my previous correspondence for references to the applicable U.S. Legislation. Furthermore, even the Canadian equivalent gold and silver coins are issued as under the authority of the Currency Act and "intended for circulation", which is plainly and explicitly stated by the Finance Minister in a sworn affidavit which you will also find in my previous correspondence.

Sincerely

Radu Hociung

# TAB 67

**May 26, 2015 letter from Ms Gagnon to the plaintiff.**



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

Recourse Directorate  
Appeals Division

333 North River Rd, Tower A, 11th Floor  
Ottawa, ON, K1A 0L8

**REGISTERED**

Radu Hociung  
226 Willowdale Avenue  
Waterloo, Ontario  
N2J 3M1

May 26, 2015

**Subject: Request for a Ministerial Decision CS – 74472 / 4273-14-0724**

This correspondence is to acknowledge receipt of your letter received on March 20, 2015 on the above-noted enforcement action.

Although you state in your letter that it appears that we have not yet reviewed the documentation that was provided, I can assure you that all of your representations have been carefully considered, in conjunction with the evidence on file.

The Agency's position remains that the imported foreign American Gold Buffalo and Silver Eagles coins are collector coins and that their true value relates to the collector aspect. Notwithstanding their face value, it is the CBSA's position that the coins in question are thus considered goods under the *Customs Act*. As such, these goods were required to be reported to the CBSA at the time of importation into Canada. You can expect the subsequent correspondence to be the Minister's decision letter, which you should receive in the near future by registered mail.

Regards,

A handwritten signature in black ink, appearing to read "M. Gagnon".

**M. Gagnon**  
Senior Appeals Officer, Appeals Division, Recourse Directorate  
Canada Border Services Agency  
Tel. No.: (343) 291-7223  
Fax No.: (343) 941-7239

# TAB 68

**May 28, 2015 drafted Minister's Decision by Martine Gagnon**



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

Federal Directorate  
1686 Woodward Dr

Ottawa, ON, K1A 0L8

A handwritten signature in black ink, appearing to be a stylized 'J' or 'S'.

**REGISTERED**

Radu Sebastian Hociung  
226 Willowdale Avenue  
Waterloo, ON  
N2J 3M1

May 28, 2015

**Subject: Request for a Ministerial Decision - CS-74472/4273-14-0724**

I am writing to inform you of the ministerial decision on the above-noted appeal.

I have reviewed the enforcement action, the evidence and the law as it applies to your case. I have fully considered the documentation you provided as well as the reports from the issuing office.

**Decision**

After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, that there has been a contravention of the *Customs Act* or the Regulations in respect of the goods that were seized;

Under the provisions of section 133 of the *Customs Act*, the goods under seizure shall be returned to the appellant upon receipt of an amount of \$321.39 to be held as forfeit. If release of the goods is not taken on the foregoing terms, within 90 days from the date of this notice, they will be forfeited and disposed of.

**Reasons**

On October 21, 2014, you presented yourself to Canada Border Services Agency (CBSA) officials at the Queenston Bridge in Niagara-on-the-Lake, ON where you failed to report the importation of United States (US) gold and silver coins. It was determined that you had purchased these coins in the United States the same day as your return to Canada at a value of \$5,700 USD. As you failed the report the importation of the coins as required by section 12 of the *Customs Act*, they were seized and offered for release upon payment of \$1,606.97 CAD.

You appealed the enforcement action on the basis that the coins are legal tender qualifying as monetary instruments and the importation did not need to be reported as their value was less than \$10,000 CAD. Additionally, as you were not questioned about the amount of currency of monetary instruments in your

**Canada**

possession, you were not obliged to disclose the value of the currency or monetary instruments in your possession.

However, after a thorough review of the information, evidence, legislation and regulations applicable to these circumstances, it has been concluded that the coins in your possession on October 21, 2014 seized by CBSA officials were required to be reported pursuant to the *Customs Act*.

I have reached this conclusion with careful consideration given to the definition of "cash" as it appears in the *Proceeds of Crime Money Laundering and Terrorist Financing Regulations (PCMLTR)*, and the relationship between the definition of "cash" in the Regulations and the term "currency" in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLFA)*. In the French versions of the *Act* and the *Regulations*, the terms "cash" and "currency" are both represented as "espèces". As such, it is accepted that the definition for "cash" in the *Regulations* is the definition for "currency" in the *Act*.

The common denominator for the definition of currency is that the bank notes and coins must be intended for circulation to be considered as such. In the circumstances of this enforcement action, the coins were not intended for circulation. Consequently, they are not considered to be currency subject to the reporting requirements of the *PCMLFA*, but are considered goods subject to the reporting requirements of the *Customs Act*.

All goods entering Canada, including gold and silver coins, must be reported to the CBSA in accordance with the *Customs Act*. The onus to do so falls upon the individual bringing the goods into the country whether or not prompted by a CBSA officer.

With respect to the supporting documentation you provided during the appeal process, that is the Canada Revenue Agency (CRA) *GST / HST Memoranda Series 17.1*, the sworn and signed Department of Finance document, the *US Public Law* document on 'Buffalo Gold Bullion Coins' and the *US Code Title 31* all relate to different applications for currency and not to the *Customs Act* or the *PCMLFA*. Thus, while considered, these documents were given no weight in support of your appeal. As the latter two documents relate to US currency, they have no bearing on the *Customs Act*, the *PCMLFA* or Canadian currency laws.

The information available to me confirms that the coins in question was acquired outside of Canada and were not properly reported to the CBSA. Consequently, a contravention of the *Customs Act* did occur and the coins in question were lawfully subject to seizure and forfeiture. However, the terms of release have been reduced to \$321.39 to better reflect the circumstances of this enforcement action.

Should you have any questions concerning the release of your goods, please contact the CBSA officials at the Queenston Bridge, Niagara-On-The-Lake, Ontario at (905) 354-9478.

To appeal the decision made pursuant to section 131, you may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*. You must file your action within 90 days of the date of the mailing of this decision.

To appeal the decision made pursuant to section 133, you may appeal this decision by way of an application for judicial review under subsection 18.1(1) of the *Federal Courts Act*. An application to the Court must normally be filed within 30 days of the date of the mailing of this decision.

I trust that this letter satisfactorily explains the ministerial decision in this matter. If you have any questions, please contact the adjudicator, Martine Gagnon, at (343) 291-7223.

Yours truly,

Attachment

c. 4273  
Queenston Bridge - Traffic Operations  
P.O. Box 126  
Niagara Falls, Ontario L2E 6T1

P.S. As the coins are silver/gold and are from the US (UST), they are duty free and tax exempt. The penalty was reduced to 5% of the undeclared value from the Level 1 (Group 2) of 25% originally assessed. Thank you for your assistance and cooperation in this matter.

c.c. File

# TAB 69

**US Mint Procedures to Qualify for Bulk Purchase of Gold and Platinum bullion Coins**

(from <https://www.usmint.gov/consumer/Gold-and-Platinum-APRequirements.pdf>)

## PROCEDURES TO QUALIFY FOR BULK PURCHASE OF GOLD and PLATINUM BULLION COINS

### I. BACKGROUND

#### **American Eagle Gold Bullion Coins**

Public Law 99-185, enacted December 17, 1985, directs the United States Mint to mint and issue legal tender gold bullion coins. The coins are .9167 fine gold (22 karat), with the following weights and face values:

<u>Weight – troy oz. of fine gold</u>	<u>Face value (denomination)</u>
1 oz.	\$50
1/2 oz.	\$25
1/4 oz.	\$10
1/10 oz.	\$5

(In addition to the .9167 gold, the coins are composed of .0300 silver and .0533 copper.)

All four denominations of the American Eagle Gold Bullion Coins have the same designs. These consist of a symbolic Liberty, a modified Saint-Gaudens design on the obverse, and a family of eagles, a male eagle carrying an olive branch and flying above a nest containing a female eagle and hatchlings on the reverse as described in the law. The American Eagle Gold Bullion Coins have reeded edges and are inscribed with the denomination, the year of minting or issuance, the symbolic phrases on all current U.S. coin denominations, and the fine gold content. There is no mint mark on the American Eagle Gold Bullion Coins.

Sales of the American Eagle Gold Bullion Coins began October 20, 1986. The program will continue indefinitely.

#### **American Buffalo Gold Bullion Coins**

Public Law 109-145, enacted December 22, 2005, directs the United States Mint to mint and issue legal tender gold bullion coins that are .9999 fine gold. Currently, this coin is issued only in a one-ounce weight and face value of \$50.

Title II of Public Law 109-145 requires the obverse and reverse of the coins struck during the first year of issuance to bear the original designs by James Earle Fraser, which appear on the five-cent coin (nickel), commonly referred to as the “Buffalo nickel,” or the “1913 Type 1.” The obverse depicts a buffalo, and the reverse, an Indian chief. The design remains the same since 2006, its first year of issuance.

The American Buffalo Gold Bullion Coins have reeded edges and are inscribed with the denomination, the year of minting or issuance, the symbolic phrases on all current U.S. coin denominations, and the fine gold content.

The program will continue indefinitely.

## **American Eagle Platinum Bullion Coins**

Public Law 104-52, Title V, Section 520, directed the United States Mint to produce and sell legal tender platinum bullion coins. The coins are .9995 fine platinum, with the following weights and face values:

<u>Weight – troy oz. of fine platinum</u>	<u>Face value (denomination)</u>
1 oz.	\$100

The coin obverse (front) design, “Portrait of Liberty” features Lady Liberty looking toward the future in a modern interpretation of an American icon, the Statue of Liberty. The reverse (back) design, “Eagle Soaring Above America”, depicts an eagle, America’s symbol of freedom, spreading its wings high above our great nation at sunrise. The American Eagle Platinum Bullion Coins have reeded edges and are inscribed with the denomination, the year of minting or issuance, the symbolic phrases on all current U.S. coin denominations and the fine platinum content. There is no mint mark on the American Eagle Platinum Bullion Coins.

Sale of the American Eagle Platinum Bullion Coins began September 23, 1997. The program was temporarily halted in 2009. The legislation does not require that this program continue indefinitely. Continuation of this program is solely at the discretion of the Secretary of the Treasury.

### **II. PURPOSE**

The United States Mint is interested in ensuring that the coins minted and issued under its gold and platinum bullion coin programs are distributed effectively and efficiently and in a manner that ensures that the bullion coins are competitive with bullion products produced by other international mints. To accomplish this goal, the United States Mint seeks to use private sector distribution channels that ensure that the coins are:

- A. As widely available to the public as possible;
- B. Are bought and sold at prices/premiums that are in line with other similar bullion coin products in the marketplace; and
- C. Bought and sold in a manner that ensures relatively low transaction costs.

Due in part to the commodity-like, investment nature of these coins characterized by constantly fluctuating coin prices, the United States Mint has determined that the most effective and efficient means for bullion coin distribution is through the use of the well-established gold/platinum bullion coin distribution network in the private sector. This network typically consists of hundreds of coin and precious metal dealers, participating banks, brokerage companies and other financial intermediaries.

### **III. PURCHASE PROCEDURES**

Gold and platinum bullion coins are sold in bulk quantities to business firms, approved by the United States Mint, that have met the qualifying criteria set forth in Section V below. Approved firms can purchase in the following quantities:

- A minimum of 1,000 ounces of gold coins, composed of any combination of one-ounce and fractional pieces, in 500-ounce units (the standard packaged quantity). Purchases above the minimum must be in 500-ounce increments.
- A minimum of 100 ounces of platinum one ounce bullion coins. Purchases above the minimum must be made in 100-ounce increments.
- A maximum order quantity of 15,000 ounces or \$20 million, whichever is less, will be imposed per purchaser per fixing unless otherwise pre-approved by the United States Mint.
- The United States Mint reserves the right to sell less than the minimum quantity, vary the maximum quantity and to suspend all sales at any time as circumstances warrant.

The American Eagle Gold Bullion Coins are packaged in semi-clear plastic tubes, and the tubes are placed in vacuum formed inserts in sealed molded plastic shipping containers. The tops of the plastic tubes and the shipping containers are imprinted with the United States Mint seal.

The American Buffalo Gold Bullion Coins are individually packaged in a PVC protective covering.

The American Eagle Platinum One Ounce Bullion coins are packaged in semi-clear plastic tubes, placed in a vacuum formed inserts and sealed in molded plastic shipping containers which contain 100 coins per box.

The price of the gold bullion coins is based on the gold content plus a fixed percentage premium of the gold price. The pricing of the precious metal content is established at the time of the sale: The London P.M. (second) Gold Fix on the date following the day of the order, excluding federal government holidays. The fixed premiums are a percentage of the gold price: 3 percent, 5 percent, 7 percent and 9 percent for the 1, 1/2, 1/4 and 1/10 ounce coins, respectively. The set premiums charged cover all of the United States Mint's manufacturing, marketing and distribution expenses. The United States Mint reserves the right to alter the pricing mechanisms and vary the premiums charged for the gold bullion coins as circumstances dictate. Any such change will not affect orders accepted prior to the announced change.

The price of the platinum bullion coins is based on the platinum content plus a fixed percentage premium of the platinum price. The pricing of the precious metal content is established at the time of the sale: The London Platinum Fix on the day following the day of the order, excluding federal government holidays. A fixed premium of **4%** is charged for the American Eagle Platinum One Ounce Bullion Coin. The United States Mint reserves the right to alter the pricing mechanisms and vary premiums charged for the platinum bullion coins as circumstances dictate. Any such change will not affect orders accepted prior to the announced change.

Fax orders are received by the United States Mint, Bullion Coin Operations Branch, until 3:00 p.m. ET., Monday through Friday, excluding federal government holidays. Once the order is confirmed in writing by the United States Mint, an order cannot be changed or cancelled by the purchaser. All sales are final.

Payment for the gold and or platinum bullion coins is accepted only in U.S. dollars by wire transfer of funds on the second business day (standard "two-day value") following the day of the London Fixing

used in determining the price of the order. Earlier payment/pick up arrangements may be granted.

Purchased coins are authorized for release after receipt of payment is confirmed. All United States Mint gold and platinum bullion coins must be picked up freight-on-board (F.O.B.) at the United States Mint at West Point (West Point, New York).

The United States Mint will not repurchase its gold or platinum bullion coins.

#### **IV. MARKETING SUPPORT**

The United States Mint may make promotional materials available at no cost to the bullion coin dealer distribution network. Additional quantities of point-of-sale materials (e.g., brochures, posters) for both gold programs may be made available, in bulk, to commercial bullion coin wholesalers and retailers. In order to receive these materials, the requesting firm must either be an Authorized Purchaser (AP) of United States Mint bullion coins or approved in writing by the United States Mint to be placed on the United States Mint bullion retail list at [www.usmint.gov/bullionretailer](http://www.usmint.gov/bullionretailer). The United States Mint reserves the right to withhold such materials, in its sole discretion, based on factors that it considers to be in the best interests of the United States Mint's gold bullion coin programs.

#### **V. QUALIFYING CRITERIA – GOLD/PLATINUM**

Business firms interested in qualifying to purchase United States Mint gold or platinum bullion coins directly from the United States Mint are required to submit documentation showing that they meet each of the following criteria.

##### **A. Experienced Market-Maker in Gold/Platinum Bullion Coins**

The United States Mint seeks only the most well-established, industry-recognized, and sufficiently capitalized precious metal wholesalers/market-makers to aid in the primary distribution of its gold and or platinum bullion coin products. Requiring that its APs be highly capitalized ensures that the applying firm will be capable in both up and down markets to actively support a continuous two-way market in large volumes of gold and or platinum bullion coins during both stable and volatile market conditions. Merely providing a two-way, buy-and- sell retail market in the purchase and sale of gold and or platinum bullion coins does not in itself satisfy the spirit and intent of this aspect of the criteria. Rather, applying firms should be widely recognized in the gold and or platinum bullion trading industry as being significant market-makers/wholesalers in the trading of physical gold and or platinum bullion coin/products. This should, in part, be demonstrated by applicant-provided precious metals trading and bank references. The United States Mint reserves the right to contact these references to validate claims made by the applicant. The United States Mint will conduct the review of a Dun & Bradstreet report on all applicants as part of its credit and financial review of the applicant. The United States Mint reserves the right to consult with other international mints which produce and distribute similar types of gold and platinum bullion coins in an attempt to verify the applicant's industry "market-maker"/wholesaler claims.

An applying firm may also be engaged in the retail purchase and sale of gold and or platinum bullion coins, but it must be able to demonstrate that for a minimum of five continuous years it has maintained a well-established wholesale network of retail coin and precious metal dealers in which it distributes and markets these coins.

In lieu of the five-year history requirement, the United States Mint may consider an applying firm's relative experience/stature in the industry if a firm has a minimum of three years continuous experience in the purchase and sale of gold and or platinum bullion coins at a wholesale level and/or can also demonstrate it has other commodities trading experience, futures and/or electronic trading activities deemed acceptable by the United States Mint. Trading references and any other relevant documentation that validates the firm's experience must be provided for consideration. Applying firms should be prepared to provide a list of their wholesale customer base as part of the verification process of this aspect of the criteria. The United States Mint reserves the right to contact any or all submitted references, at its discretion, to aid in the verification process. Primary distributorships with other international or national mints that produce and market similar gold and platinum bullion coin products are advantageous and will strengthen the firm's application.

Interested firms must submit certification from an Independent Certified Public Accounting firm recognized by the *American Institute of Certified Public Accountants* licensed by the jurisdiction in which the company is located to perform an independent audit and as a result of that audit to express an opinion on the financial statements of the company. The auditor will perform the audit in accordance with generally accepted auditing standards and will express an opinion on the financial statements presented by the company. This accounting firm must attest to the applying firm's involvement in and knowledge of the gold and platinum markets. This can be demonstrated in a number of ways, including:

1. Membership on a major precious metals exchange such as NYMEX London, Zurich or Tokyo.
2. Volume of gold and or platinum bullion coins traded over any recent five-year period.
3. Longstanding established relationships with industry-recognized commodity-based clearing houses (used to hedge their bullion trading positions).
4. References to applying firm's position in the marketplace as a significant market-maker/wholesaler of physical bullion and or bullion coin products in industry trade journals, articles, publications, Web-based stories, etc.
5. Any other evidence that clearly demonstrates a thorough knowledge and expertise in the precious metals market.

In addition, the certification must attest that the applying firm:

- Has been actively engaged in wholesale "market-making" bullion coin activities for a minimum of five continuous years. This is defined as a firm's historical (five-year minimum history) and present practice of regularly quoting "instantaneous narrow bid-ask wholesale spreads" to other major bullion coin wholesalers for large quantities (100-500 ounces or more) of gold bullion coins.
- If applying under the three-year and/or commodities clause referenced above, the certification must attest to the applying firm's ability for the past three fiscal years to:
  - actively trade in commodities, futures and/or electronic trading activities and offer a wide range of these products and/or services,
  - demonstrate the firm has sustained or consistently grown in business size based on tangible net worth,

- the firm is considered reputable via the National Futures Association and/or other documentation such as industry trade journals, articles, publications, Web-based stories

All attestations should clearly demonstrate its ability to engage as a market-maker in gold and or platinum bullion coins and should made by the applicant's accounting firm.

- Has a broad base of wholesale, retail and/or institutional clients (a sample listing of those clients/trading partners should be provided for reference purposes) to whom it currently markets and trades gold and or platinum bullion coins.
- Has sold 100,000 or more ounces of gold and or platinum bullion coins in any 12-month period since 1990, or if not applicable, see commodities/futures/electronic trading certification required above.
- Has a longstanding, established relationship (defined as having been in place for at least one year prior to the application date) with an industry-recognized commodity clearing house that is used to hedge the applicant's bullion trading positions. NOTE: The applicant may be asked to provide a contact at the clearing house who can verify applicant's trading volume claims.

## B. Tangible Net Worth

Interested firms must submit certification from an independent certified public accounting firm recognized by the *American Institute of Certified Public Accountants* licensed by the jurisdiction in which the company is located to perform an independent audit and as a result of that audit to express an opinion on the financial statements of the company. The auditor will perform the audit in accordance with generally accepted auditing standards and will express an opinion on the financial statements presented by the company attesting that the applying firm possesses tangible net worth of at least \$25 million for the last three of its fiscal years.

This is necessary to ensure the applying firms have sufficient assets to cover their potential settlement obligations with the United States Mint and to protect the United States Mint and third parties from adverse market risk should companies that are insufficiently capitalized not be able to meet their settlement obligations with the United States Mint. In addition, requiring that our APs be highly capitalized ensures that they will be capable in both up and down markets to actively support a continuous two-way market in large volumes of gold bullion coins during both stable and volatile market conditions.

Tangible net worth is defined as the difference between total assets (less intangible assets such as goodwill, organization expenses, subscription lists, patents, licenses and similar items) and total liabilities.

Companies whose tangible net worth is less than \$25 million will be able to meet this criterion by submitting an irrevocable letter of credit in favor of the United States Mint. The letter of credit should be in an amount equal to the difference between its stated tangible net worth and \$25 million. This will protect the United States Mint against any adverse market risk it may incur should an AP fail to honor its settlement obligations and the United States Mint is forced to liquidate any long positions entered upon to hedge an AP's most recent coin purchase(s). However, the company's tangible net worth must be a minimum of \$20 million for the last three of its fiscal years. The letter of credit must be drawn on a bank insured by the Federal Deposit Insurance Corporation. The letter of credit will be used to secure all of the company's financial liabilities to the United States Mint incurred in connection with its purchases of United States Mint Bullion Coins. Title to all gold and or platinum bullion coins purchased by APs will

remain with the United States Mint until coins are physically picked up by the AP after payment has been made for them.

The letter of credit is to remain in force for six months. After the six-month period, the company may continue as an AP without the need to satisfy the \$25 million net worth criterion or the letter of credit. However, the company must perform satisfactorily during the six-month period (e.g., comply with all of the requirements of the United States Mint's Authorized Purchaser Agreement).

#### C. Audit by an Independent Certified Public Accounting Firm

An applying company must submit an audit statement covering the past three fiscal years. The auditor will perform the audit in accordance with generally accepted auditing standards and will express an opinion on the financial statements presented by the company. The audit firm must be an independent certified public accounting firm recognized by the *American Institute of Certified Public Accountants* licensed by the jurisdiction in which the company is located to perform an independent audit.

Additionally, the auditor will express an opinion on the financial statements presented by the company that the applying firm has a policy of being substantially hedged in its precious metals transactions.

#### D. Other.

The United States Mint reserves the right to perform credit and other checks as appropriate to substantiate the creditworthiness and qualifications of any firm applying to become an AP of its gold and platinum bullion coins.

To protect the interests of the United States Mint and the integrity of the United States Government, the United States Mint reserves the right to refuse or to deny any firm from participation as an AP of its gold and platinum bullion coins.

### **VI. HOW TO APPLY**

Interested firms should submit the required documentation to become an AP for United States Mint gold and platinum bullion coins to the following address:

United States Mint  
Sales and Marketing Department  
ATTN: Bullion Program Team Lead  
801 9th Street NW  
Washington, DC 20220 (20001, if sent by Federal Express)

NOTE: A business firm that is applying to qualify as an AP of gold bullion coins and also interested in becoming an AP of American Eagle Platinum and Silver Bullion Coins only needs to submit one documentation package. However, the firm should indicate its interest in being a purchaser of the platinum and silver bullion coins by having its accounting firm also include a statement attesting to its experience in the platinum and silver bullion coin markets as required by the United States Mint application criteria for those respective bullion products. All applicants who qualify to become United States Mint Gold Bullion Coin Authorized Purchasers will also be allowed to purchase United States Mint Platinum Bullion Coins.

**All documentation must be in English. Applying firms are requested to label “proprietary/confidential” on each page of the documentation submitted which contains proprietary and/or confidential information that should not be made available for public release. Upon receipt, all documents will become the property of the U.S. government and will not be returned.**

Business firms with questions regarding the documentation required for qualifying as an AP of gold bullion coins should contact Jack Szczerban, Branch Chief, Precious Metal Branch, at:

Telephone: (202) 354-7530  
Fax: (202) 756-6932

## **VII. APPROVAL/DISAPPROVAL**

Each firm will be notified periodically in writing regarding its application status. Please note, because of the thorough review process required for these applications, it may take several weeks, on average, to render a decision.

Each approved firm will be assigned a customer number and sent the detailed ordering, payment and pick-up procedures for the gold and platinum bullion coins. In addition, each AP will be required to return a signed agreement stating that it will, among other terms and conditions:

- Maintain an orderly, uninterrupted and liquid two-way market for the gold and or platinum bullion coins, including buying back and holding inventories in order to maintain stable premiums in unsettled markets.
- Maintain buy/sell premiums for the United States Mint gold and or platinum bullion coins with as narrow a spread between buy and sell prices as prudent business judgment/market conditions permits. These premiums are to be competitive with those charged for other bullion coins, considering prevailing market conditions.
- May in the marketing, promotion or sale of United States Mint gold and or platinum bullion coins, refer to its firm as an “Authorized Purchaser of United States Mint gold and or platinum bullion coins,” however:
  - o Shall not imply or indicate, that the AP is an “official” or “designated” distributor for the Department of the Treasury or the United States Mint or has any other “official” status, or that the AP has a connection with the Department of the Treasury or the United States Mint beyond the relationship established by the agreement.
  - o Shall not use the official seal of the United States Department of Treasury or United States Mint in any manner or use any other United States Department of Treasury or United States Mint intellectual property or trade dress.
  - o Shall ensure that all advertising, packaging and promotional materials intended for use in

connection with the marketing of said coins is accurate and in keeping with the dignity and character of the coins as issuances of the U.S. government. The United States Mint reserves the right to require APs to discontinue usage of any material that it determines does not meet this standard or is objectionable (e.g., print advertisements and/or Web advertisements that promote bullion coins which have not been manufactured and/or no issue date has been established, Web site reference that the firm is an “official U.S. Mint or licensed dealer” of gold/platinum bullion coins).

- Adhere to the purchase, payment and pick-up procedures for United States Mint gold/platinum bullion coins attached to the agreement.

The approved firms will also be required to agree that:

- Disputes concerning the purchase of coins under the agreement will be resolved by the United States District Court, District of Columbia, according to federal law, and that the jurisdiction and venue of that court is agreed to by the AP.
- Failure to adhere to the terms and conditions of the agreement may result in immediate unilateral termination of the firm as an AP of gold bullion coins. In addition, the United States Mint reserves the right to discontinue selling gold/platinum bullion coins to an AP if, in the judgment of the United States Mint, the best interests of the U. S. government and the gold/platinum bullion coin program so indicate.

## **VIII. ANNUAL REVIEW OF AUTHORIZED PURCHASERS**

The United States Mint will periodically, but at least once a year, review its list of APs of gold/platinum bullion coins to determine if any changes are required. As part of this review, the United States Mint will review AP bullion coin purchase history from the United States Mint. An AP's direct distributor status could be adversely affected by relatively infrequent purchases. The current APs will not be required to take any action, except to indicate their interest in continuing as APs of gold/platinum bullion coins when contacted by the United States Mint bullion coin representative.

## **IX. RIGHT TO MODIFY PURCHASER CRITERIA**

The United States Mint reserves the right to modify the qualifying criteria for APs of gold/platinum bullion coins as deemed necessary for the successful continuation of the gold/platinum bullion coin program. The criteria for the purchase of the gold/platinum bullion coins are not issued for the benefit of the public and do not create any right of action in any federal court or in any administrative body.

## **X. RIGHT TO TEMPORARILY REFRAIN FROM THE REVIEW OF NEW APPLICATIONS**

The United States Mint reserves the right to temporarily refrain from the review of new AP applications during periods in which the allocation of any bullion product is required. The temporary refrain period will continue until a minimum of nine months after all allocations have been lifted, but no more than one year after all allocations have been lifted.

# TAB 70

**Email communications re Case Management Conference Mar 2, 2017**

**Subject:** RE: FW: T-1450-15 March 2, 12pm EST CMC agenda  
**From:** "Nelson, Shaun" <shaun.nelson@cas-satj.gc.ca>  
**Date:** 02/03/2017 8:01 AM  
**To:** 'Radu Hociung' <radu.cbsa@ohmi.org>, "Peterson, Eric" <Eric.Peterson@justice.gc.ca>  
**CC:** "Schutz, Jake" <Jake.Schutz@cas-satj.gc.ca>, "Nelson, Shaun" <shaun.nelson@cas-satj.gc.ca>

Good morning,

The CMC will proceed as scheduled.

Shaun Nelson  
Case Management Team Registry Officer  
Toronto Local Office  
shaun.nelson@cas-satj.gc.ca  
416-954-5087 (Phone)  
416-973-2154 (Fax)

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**From:** Radu Hociung [mailto:[radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)]  
**Sent:** March-01-17 8:20 PM  
**To:** Peterson, Eric; Nelson, Shaun; Bennett-Nelson, Natasha  
**Subject:** Re: FW: T-1450-15 March 2, 12pm EST CMC agenda

Hello Messrs. Peterson and Nelson, and Ms. Bennet- Nelson,

As the plaintiff, I would like to suggest that the CMC take place as scheduled as the motions Mr. Peterson mentioned have no bearing on the issues to be discussed at the CMC.

The main topic of the CMC is continued discovery of the defendant, which he is still resisting, including by the filing of the summary judgment motion the day before the CMC (He could have filed this motion months ago if his true intention was to obtain a summary judgment, and not to further stall discovery). Whatever the outcome of the motions, the discovery still needs to be completed.

Sincerely,  
Radu Hociung (Plaintiff)

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

On 01/03/2017 12:29 PM, Peterson, Eric wrote:

Dear Mr. Nelson and Ms. Bennett-Nelson,

With respect to the case conference scheduled for 12 pm tomorrow in this matter, the plaintiff has filed a motion in writing to amend his claim. My client has now filed a motion in writing for summary judgment on the claim as it now stands and as it may be amended. That motion was filed earlier today with the court registry at 180 Queen Street West. My client is inquiring if Prothonotary Aalto intends to adjourn the case conference until after the disposition of these motions.

Eric Peterson  
Crown Counsel | Avocat de la Couronne  
Litigation Extradition Advisory Division/ la Division du contentieux, de l'extradition et du service consultatif  
(LEAD)  
Department of Justice Canada/Ministere de la Justice Canada

Ontario Regional Office/Bureau régional de l'Ontario  
The Exchange Tower | La tour exchange  
130 King Street West | 130, rue King Ouest  
Suite 3400, Box 36 | Pièce 3400, C.P. 36  
Toronto (Ontario) M5X 1K6  
Tel. | Tél: (416) 952-6334  
Fax | Téléc: (416) 973-5004  
E-mail | Courriel: [eric.peterson@justice.gc.ca](mailto:eric.peterson@justice.gc.ca)

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**From:** Radu Hociung [<mailto:radu.cbsa@ohmi.org>]  
**Sent:** February 28, 2017 1:18 PM  
**To:** Nelson, Shaun [sshaun.nelson@cas-satj.gc.ca](mailto:sshaun.nelson@cas-satj.gc.ca); Peterson, Eric [Eric.Peterson@justice.gc.ca](mailto:Eric.Peterson@justice.gc.ca)  
**Subject:** T-1450-15 March 2, 12pm EST CMC agenda

Hello Messrs. Nelson, Peterson,

I would like to propose the following agenda for the March 2nd CMC:

**1. Costs awarded for Defendant's August 30, 2016 motion.** In the last CMC, the defendant claimed that due to set-off he would not pay the \$400 costs. At the time of the CMC, the plaintiff did not know the rules surrounding set-off. As a counter-claim is a pre-requisite in any set-off, and as the Defendant has not made such a counter claim, set-off is not a possibility in this action. Also, I would like to note that the \$321.39 figure that the defendant hopes to collect is not a debt, fine, or other such unconditional debt. It is "terms of release"; the minister holds the Plaintiff's property valued at USD \$5700 as security. Thus if the \$321.39 is not paid, the Defendant has to simply not release, but forfeit the USD \$5700. The \$321.39 is in no case a debt, but merely a price, which the Plaintiff may, but is not required to pay, while the \$400 owed by the defendant is an unconditional debt. Even if the defendant is successful in the action, the plaintiff is not required to pay the \$321.39 figure. In Nesi Energy (1999 ABQB 93), the Bench ruled: "The existence of a cross-claim is prerequisite. Legal set-off requires that the cross-claims be debts."

- The plaintiff seeks an order that the defendant should pay the plaintiff as ordered, immediately, with interest.

**2. Incomplete answers to written examination questions.** Out of the 40 written questions, 10 were responded with an objection statement, and no preliminary answer; 5 were non-responsive, where the answer did not relate to the question, 5 answers gave rise to further questions, and the rest were answered completely. This partial answer was delivered at about 2pm on January 31st, at the last possible moment given Prothonotary Aalto's order from the last CMC (they were to be delivered by January 31st according to the order). The Plaintiff would seek:

- an ORDER pursuant Rule 97(b) that questions 39 and 40 be properly answered, with a deadline that the Court deems just. The answer given by the defendant on Jan 31st for both is "OBJECTION - Solicitor-Client Privilege". This is improper as the CBSA has already disclosed the contents of the two documents (likely abridged) in questions to the plaintiff in letters dated March

9, 2015 and June 1, 2015. Furthermore, these communications are rulings by the Legal Services Unit, and not legal advice. The Recourse Directorate requested these rulings on Feb 12, 2015, likely on the basis of documentation submitted by the plaintiff at the time. Thus: a) the Recourse Directorate was merely passing information collected from the Plaintiff to the Legal Services Unit, and thus privilege does not exist (as confirmed in *Pearson v. Inco*). Also, express waiver occurs where the client voluntarily and intentionally discloses confidential communications, as has happened in this case, so even if privilege existed, it was explicitly waived.

- an ORDER pursuant Rule 97(b) with a deadline, that the defendant answer questions 1-4, 14, that were improperly objected as not being relevant. The questions directly relate to claim 2 in the Statement of Claim, namely that the CBSA has consistently, since its creation, treated gold and silver currency as "goods".
- an ORDER pursuant Rule 97(b) with a deadline, that the defendant answer question 18, improperly objected to as being irrelevant. This question directly relates to claim 1.(f)(iii), 1.(L) and 3.(a), as it looks to find what basis the border officer had to threaten the plaintiff with arrest.
- an ORDER pursuant Rule 97(b) with a deadline, that the defendant answer question 35, improperly objected as being protected by solicitor-client privilege. The question requested the name of the author of a document the defendant listed in his Affidavit of Documents as being privileged. The name of the author is metadata, not part of the communication. Without it, the protected document is ambiguously identified, as "Memorandum for M. Lefebre"
- an ORDER pursuant Rule 97(b) with a deadline, that the defendant answer question 38, improperly objected as irrelevant. The question related directly to claim 4(b), and the heart of the matter, that the Minister of Finance stated in sworn affidavit that Canadian gold and silver coins are currency, while the CBSA's basis for the enforcement is the exact opposite of the Minister of Finance's position.
- an ORDER pursuant Rule 97(b) with a deadline, that the defendant answer the remaining questions that were answered with non-responsive answers, or which gave rise to further questions, as per feedback given by the Plaintiff to the Defendant on February 2nd and 7th.
- a warning, that should the defendant fail to provide the answers as ordered, a default judgment will be given, pursuant Rule 97(d) and/or Rule 210

**3. Privileged communications.** The defendant has asserted solicitor-client privilege for all communications between the CBSA recourse directorate and the Legal Services Unit, even though it is clear that these communications were a request for ruling (recorded by Martine Gagnon in the case synopsis under the heading "Request for Legal Opinion - February 12, 2015"):

"On February 12, 2015, a legal opinion was requested from the CBSA Legal Services Unit in order to obtain their advice as to whether the foreign collector gold and silver coins are reportable as goods under the CA or currency under the PCMLTFA or if other reporting requirements exist through other legislation"

In any case, these communications are the basis for the Minister's decision; they are not privileged communications between a solicitor and a client.

How and when may the Plaintiff pursue disclosure of these documents? By way of motion, by separate action or application?

**4. Motion for Leave to Amend SoC.** On February 20th, 2017, the plaintiff filed and served a motion in writing for leave to amend the statement of claim, based on the partial answers received from the Defendant on January 31st. What is the schedule for hearing this motion?

**5. Summary Judgment.** The plaintiff intends to dispose of several of the claims in the Amended Statement of Claim by way of a Motion for Summary Judgment. What is the earliest date this Motion may be filed, given that the Motion for Leave to Amend has not yet been heard? Can the Summary Judgment Motion be filed now, such that both motions may be heard together?

**6. Question re. Rule 210.** From the wording of the question, it seems the Court may 210(4)(b) dismiss the action, in response to a motion brought by the Plaintiff under 210(1), where the Defendant fails to answer on a time fixed by an order of the Court. It seems to me that dismissing the action due to the Defendant's failure to comply with the rules would be an unjust outcome. Did I misunderstand the point and meaning of rule 210?

Please find attached the Defendant's January 31st written answers. This document also contains the original questions, with the answers being provided inline.

I will be looking forward to the Court's conference call at 12pm Toronto time on March 2nd. My phone number is (519) 883-8454

Sincerely,  
Radu Hociung (Plaintiff)

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

# **TAB 7**

**Agreement re contents of Appeal Book**



**Subject:** RE: Appeals A-101-18 and A-102-18, Radu Hociung vs. MPSEP

**From:** "Peterson, Eric" <Eric.Peterson@justice.gc.ca>

**Date:** 12/04/2018 1:41 PM

**To:** 'Radu Hociung' <radu.cbsa@ohmi.org>

Mr. Hociung,

Thank you for your email. My client is in agreement with your proposal for the Appeal Books.

Eric Peterson

Crown Counsel / Avocat de la Couronne

Department of Justice Canada / Ministère de la Justice Canada

National Litigation Sector / Secteur national du contentieux

Ontario Regional Office / Bureau régional de l'Ontario

The Exchange Tower / La tour exchange

130 King Street West / 130, rue King Ouest

Suite 3400, Box 36 / Pièce 3400, C.P. 36

Toronto (Ontario) M5X 1K6

Tel. / Tél: (416) 952-6334

Fax / Téléc: (416) 973-5004

E-mail / Courriel: eric.peterson@justice.gc.ca

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**From:** Radu Hociung [mailto:[radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)]

**Sent:** April 12, 2018 2:29 PM

**To:** Peterson, Eric <[Eric.Peterson@justice.gc.ca](mailto:Eric.Peterson@justice.gc.ca)>

**Subject:** Appeals A-101-18 and A-102-18, Radu Hociung vs. MPSEP

Mr. Peterson,

For the appeal books in the two appeals, A-101-18 and A-102-18, pursuant Federal Courts Rule 343(1) the appellant intends to use the following documents:

In each appeal book,

- Motion record of the respective motion being appealed
- Respective responding motion records
- Respective replies
- Statement of Claim and Proposed Amended Statement of Claim

Is your client in agreement with these proposed Appeal Book contents?

Thank you

Radu Hociung

--

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



# **TAB 8**

**Certificate of legibility**



**FORM 344 - Rule 344**

**CERTIFICATE OF COMPLETENESS OF APPEAL BOOK**

Court File A-101-18

**FEDERAL COURT OF APPEAL**

BETWEEN:

**Radu Hociung**

Appellant (plaintiff)

and

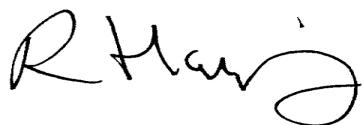
**Minister of Public Safety and Emergency Preparedness**

Respondent (Defendant)

**CERTIFICATE OF COMPLETENESS OF APPEAL BOOK**

I, Radu Hociung, appellant, certify that the contents of the appeal book in this appeal are complete and legible.

May 13, 2018



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Radu Hociung  
246 Southwood Drive  
Kitchener, Ontario  
N2E 2B1  
Tel: (519) 883-8454  
Fax: (226) 336-8327  
email: radu.cbsa@ohmi.org

