

**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]  
**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

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**From:** Radu Hociung [<mailto:radu.cbsa@ohmi.org>]  
**Sent:** February 28, 2017 1:18 PM  
**To:** Nelson, Shaun <[shaun.nelson@cas-satj.gc.ca](mailto:shaun.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. Lefebvre"
- 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)

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Radu Hociung Tel: 519-883-8454 Fax: 226-336-8327 Email (preferred): [radu.cbsa@ohmi.org](mailto:radu.cbsa@ohmi.org)