Federal Court  Cour fédérale

Date: 20110705

Docket: T-1075-08

Citation: 2011 FC 816

Ottawa, Ontario, July 5, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

STEPHEN ZOLOTOW

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR ORDER AND ORDER

[1] This action involves a visitor to Canada, 20 uncut diamonds, and the actions of the RCMP and customs officials. The plaintiff has commenced an action against the Attorney General of Canada seeking an order for the return of his diamonds or, in the alternative, an accounting for and payment of all proceeds received on the sale of the diamonds.

[2] These Reasons respond to two questions of law that were ordered to be determined before trial. The questions relate to whether the plaintiff's claim is barred by virtue of the operation of any or all of the *Customs Act*, RSC 1985, c 1 (2nd Supp), the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, and the *Public Authorities Protection Act*, RSO 1990, c P 38, as these statutes stood in 2000, at the time the relevant events transpired.

Background

[3] The relevant facts, for the purposes of this motion, are as follows:

(i) At the relevant times, Mr. Zolotow, a professional gambler, was a resident of Las Vegas, Nevada, in the United States of America.

(ii) On April 13, 2000, Mr. Zolotow flew from New York to Toronto and entered Canada through Pearson International Airport (the Airport) at approximately 11:00 am. Later that day he returned to the Airport for a scheduled flight back to New York. At approximately 1:45 pm he attempted to clear US Customs and was referred to secondary inspection.

(iii) US Customs discovered Mr. Zolotow's 20 uncut diamonds and seized them pursuant to 19 USC §1497 for failure to declare the diamonds upon his entry into the US. US Customs officials handed the diamonds over to the RCMP who then took the diamonds and subsequently issued a Seizure Receipt which valued the diamonds at $886,000.00. The Seizure Report stated that the diamonds were "seized as forfeit for … failure to pay applicable duties and taxes upon entry into Canada." The Seizure Receipt also set out that Mr. Zolotow had 30 days to appeal. It included the following statement:

> RIGHT TO APPEAL
> The forfeiture of the goods or conveyances seized or any money or security held in lieu thereof, is final and not subject to review, or to be restrained, prohibited, removed, set aside or otherwise dealt with unless a written notice is given to the seizing officer and/or an officer of the Customs and Excise office at the address noted below, requesting a decision of the minister. This request must be given within thirty days after the date of the seizure.

(iv) The RCMP handed the diamonds over to the Canada Customs and Revenue Agency, as it was then named, and charged Mr. Zolotow with having breached s. 153(c) (wilful or attempted evasion of duties) and s. 155 (keeping, acquiring or disposing of goods illegally imported) of the *Customs Act*. Those charges were later stayed on March 15, 2002.

(v) On October 12, 2001, Mr. Zolotow's then counsel wrote to the RCMP officer who issued the Notice of Seizure stating his position that within the 30-day period Mr. Zolotow had orally requested a Minister's decision under s. 131 of the *Customs Act*, as provided for in s. 129 of the *Act*. He asked that the process be suspended *sine die*, pending the disposition of the outstanding criminal charges.

(vi) On November 1, 2001, Canada Customs and Revenue Agency replied stating that as no written request for a decision of the Minister was submitted as required by s. 129 of the *Customs Act* within the statutory 30-day time limit, "the forfeiture of the goods or the monies received in lieu thereof must be considered final."

(vii) On January 10, 2003, the diamonds were transferred to the Queen's Warehouse for auction and were later sold for $250,225.00.

(viii) The investigation by the RCMP found that on March 11, 1993, Mr. Zolotow rented a safety deposit box at the Canadian Imperial Bank of Commerce at 135 St. Clair Avenue West in Toronto, Ontario. On April 19, 2000, pursuant to a search warrant obtained under the *Customs Act*, the RCMP searched the safety deposit box. It was empty; however, the records of the bank indicated that the safety deposit box had been accessed by Mr. Zolotow on May 11, 1993, May 27, 1994, and April 13, 2000.

[4] Aside from the legal consequences of the agreed-upon facts, the parties differ as to when the diamonds entered Canada. Mr. Zolotow pleads that he had the diamonds in Toronto in May 1993, when he rented the box. He says they remained there until April 13, 2000 when he retrieved them and attempted to bring them into the US. The Attorney General pleads that on April 13, 2000, the date of the seizure, Mr. Zolotow stated that he had imported the diamonds into Canada that same day and was attempting to take then back to the US with him.

The Parties' Positions on the Claim

[5] Mr. Zolotow pleads that the diamonds are his and that they were never legally seized or forfeited. He seeks their return or the return of the proceeds the Crown received from their sale.

[6] The Attorney General pleads that the diamonds were seized under the *Customs Act*, and that the plaintiff's claim is statute-barred by virtue of the provisions of the *Customs Act* and the combined provisions of the *Crown Liability and Proceedings Act* and the *Public Authorities Protection Act*. Mr. Zolotow pleads that his claim is not statute-barred for reasons set out below.

Procedural History

[7] Mr. Zolotow originally brought an action in the Ontario Superior Court seeking the return of the diamonds or an accounting if the diamonds had been sold. The Attorney General responded with a motion to strike on the basis that the Superior Court had no jurisdiction over the subject matter of the action or, in the alternative, striking the action on the grounds that the limitation period had passed. Justice Jarvis determined that the Superior Court and the Federal Court had concurrent jurisdiction over Mr. Zolotow's claim. However, he determined that it was appropriate for the Superior Court to decline to exercise its inherent jurisdiction because the Federal Court was the court of preferred jurisdiction given the comprehensive scheme provided by the *Customs Act* and the partial privative clause shielding the decision of the Minister from review other than by an appeal to the Federal Court: *R v Zolotow*, [2007] OJ No 1882 (Sup Ct). That decision was upheld by the Ontario Court of Appeal: *R v Zolotow*, 2008 ONCA 163.

[8] On July 14, 2008, Mr. Zolotow brought this action in the Federal Court as a consequence of the Ontario court decisions. The Attorney General filed a Statement of Defence and soon thereafter a motion to dismiss the action on the ground that the Ontario courts had decided that the seizure of the diamonds was a seizure under the *Customs Act* and thus the limitation period provided therein applied and the claim was statute-barred. By Order dated November 27, 2008, Prothonotary Milczynski found that it was not clear from the Ontario decisions that the seizure was a "seizure" under the *Customs Act*; and she accordingly found that the application of the *Customs Act* limitation periods was not plain and obvious. Justice Heneghan dismissed the Attorney General's appeal from the Prothonotary's decision: *Zolotow v. Canada (Attorney General)*, 2009 FC 265.

[9] The Attorney General then brought a motion pursuant to Rule 220(1)(a) of the *Federal Courts Rules*, SOR/98-106, for an order to determine two questions of law which, it was alleged, "determine whether the relevant limitation periods statute-barred the claim." On consent, Prothonotary Milczynski allowed the motion and two questions were stated for the Court's determination:

> 1. Whether the *Customs Act* limitation periods at ss. 106(2) and 135(1) apply to bar proceedings like this one, seeking the return of goods purportedly seized under the *Act*, even if, as the plaintiff alleges, the contravention may have occurred more than six years before the purported seizure, whereby the seizure runs afoul of s. 113 of the *Act*?
>
> 2. Is this claim barred by the limitations of actions against the defendant provided in s. 7(1) of the *Public Authorities Protection Act* and s. 106(1) of the *Customs Act*?

[10] Prothonotary Milczynski further ordered that "The facts of the case for the purposes of the determinations are set out in the Defendant's factum." The defendant filed as a part of its Motion Record for the purpose of determining these questions of law the affidavit of Sergeant Teck Fong, an RCMP officer who participated in seizure of the diamonds. The affidavit was not in the Record or factum before the Prothonotary and accordingly was improperly filed. It was not considered in determining the questions posed by the Prothonotary.

Statutory Limitations Periods

[11] The provisions relevant to the questions of law are as follows (again, as they stood at the relevant time):

Subsections 106 (1) and (2) of the *Customs Act*:

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.	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.
(2) No action or judicial proceeding shall be commenced against the Crown, an officer or any person in possession of goods under the authority of an officer for the recovery of anything seized, detained or held in custody or safe-keeping under this Act more than three months after the later of	(2) Les actions en recouvrement de biens saisis, retenus ou placés sous garde ou en dépôt conformément à la présente loi, contre la Couronne, l'agent ou le détenteur de marchandises que l'agent lui a confiées, se prescrivent par trois mois à compter de celle des dates suivantes qui est postérieure à l'autre :
(a) the time when the cause of action or the subject-matter of the proceeding arose, and	a) la date du fait générateur du litige;
(b) the final determination of the outcome of any action or proceeding taken under this Act in respect of the thing seized, detained or held in custody or safe-keeping.	b) la date du règlement définitif de toute instance introduite en vertu de la présente loi au sujet des biens en cause.

Subsection 135 (1) of the *Customs Act*:

135. (1) A person who requests a decision of the	135. (1) Toute personne qui a demandé que soit rendue une

Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court – Trial Division in which that person is the plaintiff and the Minister is the defendant.	décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Division de la première instance de la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

Subsection 7(1) of the *Public Authorities Protection Act* (since repealed):

7. (1) No action, prosecution or other proceeding lies or shall be instituted against any person for an act done in pursuance or execution or intended execution of any statutory or other public duty or authority, or in respect of any alleged neglect or default in the execution of any such duty or authority, unless it is commenced within six months next after the cause of action arose, or, in case of continuance of injury or damage, within six months after the ceasing thereof.	7. (1) Nulle action, poursuite ou autre instance n'est recevable contre quiconque pour un acte accompli dans l'exercice ou en vue de l'exercice d'une fonction ou d'un pouvoir prévus par la loi ou d'ordre public, ou pour cause de négligence ou de manquement dans l'exercice de cette fonction ou de ce pouvoir, si elle n'est pas introduite dans les six mois suivant immédiatement le moment où la cause d'action a pris naissance ou, dans le cas où le préjudice s'est poursuivi pendant une certaine période, dans les six mois de la cessation du préjudice.

Analysis

[12] The fundamental dispute between the parties is whether the seizure of the diamonds was a seizure under the *Customs Act*. The defendant submits that it was a seizure under the *Customs Act* and that the limitation periods in ss. 106(1) and (2) and 135(1) of the *Act* apply to bar this claim. Mr. Zolotow submits that there was no seizure under the *Customs Act* and that his claim

is therefore not statute-barred. The answer to this dispute requires an understanding of what a seizure under the *Customs Act* is, which calls for a brief examination of the scheme of the *Act*.

[13] Section 12 of the *Act* provides that persons entering Canada are required to declare to customs any goods they are importing into the country. Subsection 110(1) of the *Act* provides that where an officer on reasonable grounds believes that the *Act* or regulations have been contravened, he or she may seize the goods. However, s. 113 provides that no seizure may be made under the *Act* more than six years after the contravention. When goods are seized, the importer may, under s. 129 of the *Act*, within 30 days, ask the Minister in writing to make a decision under s. 131 of the *Act*, i.e. to consider and weigh the circumstances and, where it is found that there was no contravention of the *Act*, return the goods to the importer, as per s. 132. An appeal from an unfavourable determination by the Minister may be commenced in this Court within 90 days of the Minister's decision: s. 135(1).

Question 1

[14] Mr. Zolotow submits that there was no seizure under the *Customs Act* for two reasons. First, he submits that the diamonds had been in Canada for more than six years prior to being taken by the RCMP and customs officials. Therefore, he says, even if they entered Canada illegally, s. 113 of the *Customs Act* exempts them from seizure due to the passage of time. That provision reads as follows:

113. No seizure may be made under this Act or notice sent under section 124 more than six years after the contravention or use in respect of which such seizure is made	113. Il ne peut être procédé aux saisies prévues par la présente loi ni à l'envoi des avis prévus à l'article 124 plus de six ans après l'infraction ou l'utilisation passible de saisie

or notice is sent.	ou susceptible de donner lieu à l'envoi.

[15] Second, Mr. Zolotow submits that an officer may only seize goods under the authority of s. 110(1) of the *Customs Act* if he or she "believes on reasonable grounds that [the] Act or the regulations have been contravened in respect of goods." He says that "once it is established that the goods entered Canada more than six years previously, reasonable grounds could not have existed for any seizure under the *Customs Act*." Subsection 110(1) provides, in relevant part, as follows: "An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize as forfeit (a) the goods…"

[16] The plaintiff's submission, in brief, is that if it is established that the goods were exempt from seizure because they had been in Canada for more than six years, then the seizure was not made pursuant to the *Customs Act* – it was, to use the plaintiff's terminology, an "illegal seizure" and, in that case, the limitation period provided in the *Customs Act* has no application. He further argues that the Ministerial review of a seizure provided for in ss. 129(1) and 131 of the *Act* refers only to such a legal seizure and not to a seizure, allegedly such as the one at issue here, involving goods that had been in Canada for more than six years. With respect, this interpretation is unsupportable for two reasons.

[17] First, it would render a Ministerial review meaningless. A "legal seizure" is defined by Mr. Zolotow as a seizure made where there has been a contravention of the *Act* by the importer. If a Ministerial review applies only to such "legal seizures," why would the Minister be required, under s. 131, to "decide … whether the Act or the regulations were so contravened"?

[18] Second, Mr. Zolotow's interpretation is contrary to other statutory provisions. Section 132 of the *Customs Act* expressly provides that if the Minister determines, in response to a request made under ss. 129(1) and 131, that there was no contravention of the *Act* or regulations in respect of the goods, i.e. that there was no "legal seizure" in the sense used by Mr. Zolotow, then he or she shall "forthwith authorize the removal from custody of the goods." In short, "illegally seized goods," to use the plaintiff's terminology, will be returned to the importer. If the review provisions only applied to "legally seized goods" as the plaintiff submits, i.e. to goods seized where there has been a contravention of the *Act*, it begs the question of what possible circumstances could exist where the importer, on a request for review under ss. 129(1) and 131, could obtain, under s. 132, a return of the goods on the basis that the *Act* was not contravened.

[19] Accordingly, it is clear to the Court that the phrase "goods seized under this Act" in these sections does not have the meaning the plaintiff proposes. In my view, it means any seizure made pursuant to s. 110 of the *Act*. This is so because it is such a seizure which then leads to the review and appeal provisions available to disgruntled importers. In the context of the case before the Court, "goods seized under this Act" means goods seized by an officer who believes on reasonable grounds that the *Customs Act* or its regulations have been contravened.

[20] The plaintiff submits that "once it is established that the goods entered Canada more than six years previously, reasonable grounds could not have existed for any seizure under the *Customs Act*." The difficulty with this proposition is that the plaintiff purports to examine the reasonableness of the grounds for the seizure with the advantage of perfect hindsight. He relies

upon the alleged fact that the diamonds were brought in to Canada more than six years prior to the seizure and says that the diamonds were accordingly exempt from seizure pursuant to s. 113 of the *Act*. However, the reasonableness of the officer's decision to seize goods must be examined from the perspective of the officer at the time of the seizure based on the facts known or believed to be true at that time. While subsequent knowledge may establish that those believed facts were incorrect, it does not affect the reasonableness of the decision when it was made.

[21] In other words, whether a seizure is a seizure made under the *Customs Act* depends on whether the officer who seized the goods had a reasonable belief that the *Act* or regulations had been breached. A seizure made in accordance with s. 110 of the *Act* does not become a seizure not made under the *Act* merely because the factual underpinning for the seizure is subsequently proven to have been false. All that can be established by subsequent knowledge is that the officer was in error in believing that the *Act* or regulations had been contravened; the reasonableness of the officer's view at the time the goods were seized is not affected. The remedy for an error by an officer is provided by the review and appeal provisions of the *Act*.

[22] There is ample evidence that the seizure of the diamonds was purported by the RCMP and customs officials to be made under the authority of the *Customs Act*. The Seizure Receipt for the diamonds which was issued to the plaintiff states, on page one, "[t]he amount assessed with regard to goods/conveyance seized pursuant to Sect. 110 of the *Customs Act* …" and on page four "Mr. ZOLOTOW is an American Citizen and has been charged under Section 153(c) and 155 of the *Customs Act*." Moreover, the language of the Notice of Seizure parallels that of s.

123 of the *Customs Act* which made express reference to goods seized "under this Act" as follows:

123. The forfeiture of goods or conveyances seized under this Act or any money or security held as forfeit in lieu of such goods or conveyances is final and 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 section 129.	123. La confiscation des marchandises ou des moyens de transport saisis en vertu de la présente loi, ou celle des montants ou garanties qui en tiennent lieu, est définitive et n'est susceptible de révision, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 129.

[23] In short, the officer purported to seize the goods under the *Customs Act* and thus, by implication, purported to have reasonable grounds to effect the seizure. Whether the diamonds had been in Canada for more than six years is germane only if the officer knew, and had no reason to doubt, that to be so. In that case, the officer would not have had reasonable grounds for believing that the *Act* or regulations had been contravened.

[24] The first question of law is as follows: Whether the *Customs Act* limitation periods at ss. 106(2) and 135(1) apply to bar proceedings like this one, seeking the return of goods purportedly seized under the *Act*, even if, as the plaintiff alleges, the contravention may have occurred more than six years before the purported seizure, whereby the seizure runs afoul of s. 113 of the *Act*?

[25] The answer to this question is that the *Customs Act* limitation periods at ss. 106(2) and 135(1) apply to bar proceedings like this one, seeking the return of goods purportedly seized

under the *Act*, even if, as the plaintiff alleges, the contravention may have occurred more than six years before the purported seizure, unless the officer seizing the goods did not believe on reasonable grounds that the *Act* or regulations had been contravened in respect of the goods. If the officer did not have such reasonable grounds, no seizure occurred under s. 110 of the *Customs Act*.

Question 2

[26] The plaintiff asserts that if the actions of the officers were not done in the performance of their duties under the *Customs Act* then he might commence an action against them in tort for illegally taking the goods. In his memorandum of argument on this motion, the plaintiff states that "the so-called seizure was outside of the RCMP's statutory authority and is not an act that falls within the scope of 7(1) [of the *Public Authorities Protection Act*]." This now-repealed provision is relevant as a consequence of the *Crown Liability and Proceedings Act*.

[27] Paragraph 3(b)(i) of the *Crown Liability and Proceedings Act* provides that the Crown is liable for a tort committed by its servants in Ontario and the other common law provinces. Section 32 provides that the Crown is entitled to the benefit of the laws relating to "prescription and limitation of actions in force in a province between subject and subject." It has been held that s. 32 of the *Crown Liability and Proceedings Act* permits the Crown to take advantage of s. 7(1) of the *Public Authorities Protection Act*: *144096 Canada Ltd (USA) v Canada (Attorney General*) (2003), 63 OR (3d) 172 (CA) and *Al's Steak House & Tavern v Deloitte & Touche* (1997), 102 OAC 144 (CA).

[28] As noted above, s. 7(1) of the *Public Authorities Protection Act* provided a six-month limitation period for actions against officials executing or intending to execute a statutory duty. The position of the plaintiff is that the RCMP and customs officers were not acting under the *Customs Act* in seizing the diamonds as they had been brought into Canada more than six years earlier and were thus not subject to seizure. Accordingly, he submits that if he can establish that the diamonds were illegally seized, then the act falls outside the protection of s. 7(1) of the *Public Authorities Protection Act* because it was an act "not authorized by any statute of [*sic*] legal justification [and] Courts will decline to bar claims where the acts in question were outside the scope of the actor's statutory authority, despite the fact they were ostensibly carrying out their duties." He cites as support for that proposition *Croft v Durham (Regional Municipality) Police Services Board* (1993), 15 OR (3d) 216 (Sup Ct) at paras. 11-14.

[29] In *Croft*, the plaintiff alleged conduct on the part of the police officers which the judge described as "acts of wilful cruelty and gratuitous violence." He noted that "Surely the sections of the *Criminal Code*, R.S.C. 1985, c. C-46, which deal with a police officer's right to arrest do not justify the commission of wilfully cruel acts by a police officer. The [Public Authorities Protection] *Act* affords the protection provided that the officers are engaged in a bona fide effort to conduct themselves in accordance with their statutory obligations." As such, *Croft* was a case where there were allegations in the pleading that the officers' acts fell outside those subject to the statutory protection. There are no such allegations here. There is no allegation that the officers here were not acting "in pursuance or execution or intended execution" of their duties under the *Customs Act*. In short, there is nothing pled that removes from the officers and the Crown the protection of s. 7(1) of the *Public Authorities Protection Act.*

[30] The following statement of Lord Justice Scrutton in *Scammell and Nephew, Limited v Hurley and Others*, [1929] 1 KB 419 at 427, with reference to the UK statute, applies equally to the Ontario statute: "[I]f illegal acts are really done from some motive other than an honest desire to execute the statutory or other legal duty and an honest belief that they are justified by statutory or other legal authority; if they are done from a desire to injure a person or to assist some person or cause, without any honest belief that they are covered by statutory authority, or are necessary to the execution of statutory authority, the Public Authorities Act is no defence, for the acts complained of are not done in intended execution of a statute, but only in pretended execution thereof."

[31] Subsection 106(1) of the *Customs Act* also limits claims made against customs officers after more than three months "for anything done in the performance of his duties under [the Act]." In my view, this section, like s. 7(1) of the *Public Authorities Protection Act*, does not protect an officer who has seized goods without any reasonable belief that the *Customs Act* or regulations were contravened. It does not protect the rogue officer who was not acting in pursuance or execution or intended execution of his or her duties under the *Customs Act*. Again, I hasten to add that there is no allegation of such in the pleadings in this action and that other limitation periods may be relevant to an action against such an officer for what would amount to theft.

[32] The second question of law is as follows: Is this claim barred by the limitations of actions against the defendant provided in s. 7(1) of the *Public Authorities Protection Act* and s. 106(1) of the *Customs Act*?

[33] The answer to this question is that the *Customs Act* limitation period at s. 106(1) and the limitation period provided in s. 7(1) of the *Public Authorities Protection Act*, bar the claim as against the officer and against the defendant by virtue of s. 3(b)(i) of the *Crown Liability and Proceedings Act*, as there is no allegation in the pleadings of the plaintiff that the officer who seized the diamonds did so without any reasonable belief that the *Customs Act* or regulations were breached.

Impact of these Answers on This Action

[34] As noted, there is no allegation made by the plaintiff in his pleading that the officer knew or had reason to believe that the diamonds had entered Canada more than six years prior to their seizure, thus making them exempt from seizure. The date of their entry remains in dispute.

[35] In 2000, when a seizure was made in accordance with s. 110 of the *Act*, the importer had 30 days to seek a review of that seizure by the Minister and a further 90 days to appeal the Minister's decision to this Court, as provided in s. 135(1) of the *Act*. Subsection 106(2) of the *Act* provided (and still provides) that no action or judicial review could be commenced against the Crown or an officer more than three months after the later of the date the cause of action arose or "the final determination of the outcome of any action or proceeding taken under this Act." Accordingly, if the officer's action was taken pursuant to the *Customs Act*, based on

reasonable grounds that the *Act* or regulations had been contravened in respect of the goods, as is required by s. 110(1) of the *Act*, the claim against the Crown is statute-barred. As no review of the seizure was sought within the prescribed period under s. 129 of the *Act*, the limitation period ran from the date of seizure, April 13, 2000, and this claim became statute-barred three months thereafter.

[36] In the absence of an allegation that the officer did not have reasonable grounds to believe that the *Act* or regulations had been contravened in respect of the diamonds, as is required by s. 110 of the *Customs Act*, this claim is statute-barred and must be dismissed. However, as the claim may escape these limitation periods if the officer did not have reasonable grounds to believe that the *Act* or regulations had been contravened, the plaintiff shall be granted leave to amend his Statement of Claim within the next 30 days in order to advance such an allegation, if warranted.

[37] The defendant has been successful in this motion, based on the pleadings as they presently stand. The defendant asks for $10,000 in costs. The plaintiff submits that as he agreed to have these preliminary questions determined, no costs ought to be awarded. In my view, the defendant is entitled to its costs; however the sum claimed is not appropriate in all of the circumstances. Exercising my discretion, and considering the importance of the issue to the parties and the time spent in preparation and oral submissions, I award the defendant $5,000.00 in costs.

ORDER

THIS COURT ORDERS that:

1. The answers to the two questions of law are as follows:

   Question 1: Whether the *Customs Act* limitation periods at ss. 106(2) and 135(1) apply to bar proceedings like this one, seeking the return of goods purportedly seized under the *Act*, even if, as the plaintiff alleges, the contravention may have occurred more than six years before the purported seizure, whereby the seizure runs afoul of s. 113 of the *Act*?

   Answer: The *Customs Act* limitation periods at ss. 106(2) and 135(1) apply to bar proceedings like this one, seeking the return of goods purportedly seized under the *Act*, even if, as the plaintiff alleges, the contravention may have occurred more than six years before the purported seizure, unless the officer seizing the goods did not believe on reasonable grounds that the *Act* or regulations had been contravened in respect of the goods. If the officer did not have such reasonable grounds, no seizure occurred under s. 110 of the *Customs Act*.

   Question 2: Is this claim barred by the limitations of actions against the defendant provided in s. 7(1) of the *Public Authorities Protection Act* and s. 106(1) of the *Customs Act*?

Answer: The *Customs Act* limitation period at s. 106(1) and the limitation period provided in s. 7(1) of the *Public Authorities Protection Act*, bar the claim as against the officer and against the defendant by virtue of s. 3(b)(i) of the *Crown Liability and Proceedings Act*, as there is no allegation in the pleadings of the plaintiff that the officer who seized the diamonds did so without any reasonable belief that the *Customs Act* or regulations were breached.

2. The plaintiff's action is dismissed with leave granted to file an Amended Statement of Claim within 30 days of the date hereof to plead that the officer who seized the diamonds did not have reasonable grounds to believe that the *Customs Act* or regulations had been contravened, as is required by s. 110 of the *Customs Act*.

3. The defendant is awarded its costs, inclusive of fees, disbursements and taxes, in the sum of $5,000.00.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1075-08
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DATED:	July 5, 2011

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