



Ottawa, Thursday, January 3, 2002

**Appeal No. AP-2000-059**

IN THE MATTER OF an appeal heard on October 15, 2001,  
under subsection 67(1) of the *Customs Act*, R.S.C. 1985  
(2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of  
the Canada Customs and Revenue Agency dated  
February 9, 2001, with respect to a request for redetermination  
under section 60(4) of the *Customs Act*.

**BETWEEN**

**WAYNE ERICKSEN**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Peter F. Thalheimer  
Peter F. Thalheimer  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-059

WAYNE ERICKSEN

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY

Respondent

This is an appeal heard by way of video conference in Hull, Quebec, and Calgary, Alberta, under subsection 67(1) of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency dated February 9, 2001, pursuant to subsection 60(4) of the *Customs Act*. The issue in this appeal is whether a knife (the knife in issue), which was detained by the respondent on December 14, 2000, is properly classified under tariff item No. 9898.00.00 as a prohibited weapon.

**HELD:** The appeal is dismissed. The respondent demonstrated to the Tribunal's satisfaction that the knife in issue opens by centrifugal force. The knife in issue is therefore a prohibited weapon as defined by paragraph 84(1)(a) of the *Criminal Code*. The arguments presented by the appellant do not refute this fact. Accordingly, the knife in issue is properly classified under tariff item No. 9898.00.00.

Places of

Videoconference Hearing: Hull, Quebec, and Calgary, Alberta  
Date of Hearing: October 15, 2001  
Date of Decision: January 3, 2002

Tribunal Member: Peter F. Thalheimer, Presiding Member

Counsel for the Tribunal: Reagan Walker  
Eric Wildhaber

Clerks of the Tribunal: Margaret Fisher  
Anne Turcotte

Appearances: Wayne Ericksen, for the appellant  
Susanne Pereira, for the respondent

**Appeal No. AP-2000-059**

**WAYNE ERICKSEN**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

**REASONS FOR DECISION**

This is an appeal heard by way of videoconference in Hull, Quebec, and Calgary, Alberta, under subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the Commissioner of the Canada Customs and Revenue Agency dated February 9, 2001, pursuant to subsection 60(4) of the Act. The issue in this appeal is whether a knife (the knife in issue), which was detained by the respondent on December 14, 2000, is properly classified under tariff item No. 9898.00.00, Schedule to the *Customs Tariff*<sup>2</sup>, as a prohibited weapon.

Tariff item No. 9898.00.00 reads, in part, as follows:

9898.00.00 Firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms, in this tariff item referred to as prohibited goods, but does not include the following [...]

For the purposes of this tariff item,

(b) “automatic firearm”, “licence”, “prohibited ammunition”, “prohibited device”, “prohibited firearm”, prohibited weapon, restricted firearm and “restricted weapon” have the same meanings as in subsection 84(1) of the Criminal Code.<sup>[3]</sup>

Subsection 84(1) of the *Criminal Code*<sup>4</sup> defines “prohibited weapon” as follows:

“prohibited weapon” means

- (a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or
- (b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon.

The knife in issue was introduced as a physical exhibit. It is a John Deere version of a Smith & Wesson folding knife manufactured by Taylor Cutlery. It measures 12.5 cm in length in the closed position

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].

2. S.C. 1997, c. 36.

3. In paragraph (b), the terms “prohibited weapon” and “restricted firearm”, unlike all the other terms listed, are purposely not in quotation marks; this respects the manner in which these terms appear in the Schedule, *Customs Tariff*, and were adopted by Parliament.

4. R.S.C. 1985, c. C-46.

and has a 9 cm single-edge blade marked “Cuttin’ Horse” and “Smith & Wesson”. The knife in issue has a triangular shaped thumbhole at the base for one-handed opening.

The appellant is a collector of John Deere memorabilia. To establish this point, he provided the Tribunal with photographs of several items from his collection. The knife in issue, which was purchased by the appellant via a U.S.-based web-auction site and shipped by mail, was to become part of this collection. Indeed, it was not intended for actual use, but for conservation as a collectible and possibly for resale; presumably, keeping the knife in issue intact and, particularly, in its original unopened packaging, would allow this piece of memorabilia to increase in value with the passage of time. However, it was never delivered, having been seized by the respondent at the time of entry into Canada. The appellant alleged that he would never have ordered the knife in issue had he suspected that it was a prohibited weapon. He argued that similar or identical knives are readily available in Canada at a variety of retail locations, including farm co-operatives, sporting goods stores and from street vendors, and that many farmers carry and use such knives to assist in their day-to-day farming activities. The appellant showed several other knives that he owns; he purported that these knives were similar or identical to the knife in issue in their general operation. He further claimed to own another John Deere knife that is identical in all respects to the knife in issue. He testified that that knife was also purchased from the same U.S.-based web-auction site as was the knife in issue, but that the former had not been seized by the respondent. Essentially, the appellant argued that he could not understand why the knife in issue was being detained as a dangerous weapon when other similar or identical items are readily available in the Canadian marketplace, or are not consistently seized when entering Canada by mail. The appellant argued that his sole interest in obtaining reclassification of the knife in issue and its release is to add to his collection of John Deere memorabilia. The appellant further submitted that the law is either outdated or inconsistently applied.

Mr. Jacques Saucier, Senior Program Officer, Canada Customs and Revenue Agency, appeared as a witness on behalf of the respondent. Mr. Saucier demonstrated the manner in which the knife in issue operates, specifically the manner in which it opens and closes. Mr. Saucier held the knife in issue in his right hand, blade facing his body, and, by flicking his wrist away from his body, the blade ejected out of the handle of the knife and locked into the open position. Mr. Saucier demonstrated that the knife in issue closes by pressing on a piece of metal found inside the knife’s handle and by bringing the blade back to the closed position. Mr. Saucier performed this action several times, positioned from several angles, to the satisfaction of both parties and the Tribunal.

The respondent argued that Mr. Saucier’s demonstration showed that the knife in issue meets the definition of “prohibited weapon” found in paragraph 84(1)(a) of the *Criminal Code*, because it is a knife with a blade that opens automatically by centrifugal force. The respondent defined “centrifugal force” as “a force that operates away from a body” and referred to the definition of this expression contained in the *Concise Oxford Dictionary*, Tenth Edition, which reads as follows: “a force, arising from the body’s inertia, which appears to act on a body moving in a circular path and is directed away from the centre around which the body is moving.” The respondent argued that the knife in issue opened away from the centre of the circular motion that Mr. Saucier made during his demonstration. The respondent further submitted that the Tribunal need concern itself only with the knife in issue, as the other knives presented by the appellant, be they similar or identical to the knife in issue, are of no relevance.

The Tribunal is convinced that the knife in issue is a knife with a blade that opens automatically by centrifugal force. Indeed, the demonstration by Mr. Saucier could not have made this fact clearer: when held in the hand, a simple and brisk outwardly flick of the wrist releases the blade out of the handle into the fully ejected and locked position, making the knife in issue ready for use. That action is automatic and accomplished through the use of what the Tribunal understands to be centrifugal force, thereby meeting the

definition of “prohibited weapon” found in paragraph 84(1)(a) of the *Criminal Code*. Accordingly, the Tribunal finds that the knife in issue is properly classified under tariff item No. 9898.00.00.

The appellant’s position centres on arguments of equity. The first argument is that the sole purpose of seeking to acquire the knife in issue is to add to his collection of John Deere memorabilia. Unfortunately, the *Criminal Code* does not provide for the possibility of excepting goods from the definition of “prohibited weapon” if they are acquired for collection purposes. The overriding rationale for this is undoubtedly the fact that Parliament wanted to ban switch-blade-type knives from Canada altogether, because they are potentially dangerous weapons that can easily be concealed and activated without warning, irrespective of whether they were first acquired for collection purposes or not. The second argument is no more acceptable than the first. In the appellant’s view, the knife in issue should be released because knives similar or identical to his are, purportedly, readily available in the Canadian marketplace or through imports that are not seized at the border. In his submissions to the Tribunal, the appellant claimed to own knives similar to the knife in issue. The appellant even admits to having successfully imported a knife identical in all respects to the knife in issue. However, none of these submissions constitute a basis upon which the Tribunal can found its classification of the knife in issue. The Tribunal is not a court of equity and must apply the law as it is.

For the foregoing reasons the appeal is dismissed.

Peter F. Thalheimer  
Peter F. Thalheimer  
Presiding Member