



Ottawa, Monday, April 25, 1994

Appeal No. AP-93-107

IN THE MATTER OF an appeal heard on November 30, 1993, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated June 10, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

RITCHIE A.L. YOUNGER, M.D.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lise Bergeron

Lise Bergeron
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Charles A. Gracey

Charles A. Gracey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-107

RITCHIE A.L. YOUNGER, M.D.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

The sole issue in this appeal is whether the product imported by the appellant, i.e. two balls studded with spikes and respectively connected to a wooden handle by a chain, is a prohibited weapon within the meaning of paragraph 2(b) of Prohibited Weapons Order, No. 7. Under paragraph 2(b), the device commonly known as a "Morning Star" and any similar device consisting of a ball of metal or other heavy material, studded with spikes and connected to a handle by a length of chain, rope or other flexible material are prohibited weapons.

HELD: *The appeal is allowed. A provision such as the one at issue is intended to deal with specific devices. In order to be similar and thus prohibited, a device must meet every element used to define that specificity. The evidence in the present case is that the product in issue is a reproduction of a 400-year-old flail and that it is constituted of two balls respectively connected by a chain to a handle. Consequently, the product in issue does not fall within the scope of paragraph 2(b) of Prohibited Weapons Order, No. 7.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: November 30, 1993

Date of Decision: April 25, 1994

Tribunal Members: Lise Bergeron, Presiding Member

Arthur B. Trudeau, Member

Charles A. Gracey, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Nicole Pelletier

Appearances: Ritchie A.L. Younger, M.D., for the appellant

Gilles Villeneuve, for the respondent

Appeal No. AP-93-107

RITCHIE A.L. YOUNGER, M.D.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue for Customs and Excise classifying the product in issue, namely, two balls studded with spikes and respectively connected to a wooden handle by a chain, as a Morning Star or a similar device, the importation of which is prohibited in Canada under section 114 of the *Customs Tariff*.²

It is worth noting that section 114 of the *Customs Tariff* prohibits the importation of goods enumerated or referred to in Schedule VII to that act. Code 9965 of Schedule VII to the *Customs Tariff* refers, in turn, to goods that are prohibited weapons for the purposes of Part III of the *Criminal Code*.³ It is, however, by virtue of paragraph 2(b) of *Prohibited Weapons Order, No. 7*,⁴ which was adopted under the authority of paragraph (e) of the definition of "prohibited weapon" under subsection 84(1) of Part III of the *Criminal Code*, that the Governor in Council has declared the Morning Star and any similar device prohibited weapons.

The sole issue in this appeal is whether the product in issue is a prohibited weapon within the meaning of paragraph 2(b) of *Prohibited Weapons Order, No. 7*, which reads as follows:

2. *The following devices are hereby declared to be prohibited weapons:*
(b) the device commonly known as a "Morning Star" and any similar device consisting of a ball of metal or other heavy material, studded with spikes and connected to a handle by a length of chain, rope or other flexible material.

At the hearing, Dr. Ritchie A.L. Younger testified that he is a collector of 17th-century armour, that he possesses an assembled 17th-century set of armour and that, while travelling in France in the fall of 1992, he bought the product in issue to complement his suit of armour. In response to a question from the Tribunal, Dr. Younger indicated that the product in issue is a reproduction of a 400-year-old flail designed to create a mass effect and to knock down people wearing an armour. In argument, Dr. Younger stated that a Morning Star is for combat and that it constitutes an offensive weapon, while the product that he imported is representative of the 17th century.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. R.S.C. 1985, c. C-46.
 4. C.R.C. 1978, c. 439 at 3153.

The Tribunal agrees with counsel for the respondent that whether or not the product in issue is an antique is irrelevant to the present case. Under paragraph (e) of the definition of "prohibited weapon" under subsection 84(1) of Part III of the *Criminal Code*, Parliament, indeed, only made an exception with respect to antique firearms.

The Tribunal, however, disagrees with counsel for the respondent who found ludicrous the argument that any device consisting of two balls respectively connected to a handle by a chain is excluded from the application of paragraph 2(b) of *Prohibited Weapons Order, No. 7* because that provision only refers to "a ball ... connected to a handle by a length of chain." The Tribunal, indeed, is of the view that, in interpreting paragraph 2(b) of *Prohibited Weapons Order, No. 7*, one must bear in mind that the Prohibited Weapons Orders are designed to capture within their ambit very specific devices. Although these Orders will often contain a statement covering similar devices, a character of specificity nevertheless remains. It follows, in the Tribunal's view, that, in order to be similar and thus prohibited, a device must meet every element used to define that specificity. To do otherwise would simply tend to usurp the function of the Governor in Council who is responsible for the designation of prohibited goods. This approach is in keeping with the Tribunal's decision in *Marc Kemper v. The Deputy Minister of National Revenue for Customs and Excise*,⁵ wherein it was found that a device that transmits an electric current from its fixed electrodes to a person when physical contact is made is not a device similar to one that discharges darts or any other object that carries an electric current or substance.

In the case at hand, the testimony of Dr. Younger is that he imported a reproduction of a 400-year-old flail constituted of two balls, each ball respectively connected to a handle by a chain. There was, on the other hand, no evidence offered by counsel for the respondent as to what exactly is a Morning Star. Relying, therefore, on the language used in paragraph 2(b) of *Prohibited Weapons Order, No. 7* to describe a device similar to a Morning Star, i.e. a device consisting of a ball of metal, studded with spikes and connected to a handle by a length of chain, the Tribunal is unable to conclude that the product in issue falls within the meaning of that provision.

In light of the foregoing, the appeal is allowed.

Lise Bergeron

Lise Bergeron
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Charles A. Gracey

Charles A. Gracey
Member

5. Appeal No. AP-91-113, January 31, 1992.