

Ottawa, Friday, October 27, 1995

Appeal No. AP-94-256

IN THE MATTER OF an appeal heard on April 19, 1995, 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 dated September 7, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

DANIEL SPIESS

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Lise Bergeron

Lise Bergeron
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-256

DANIEL SPIESS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the Customs Act from a decision of the Deputy Minister of National Revenue dated September 7, 1994. The issue in this appeal is whether the 7.5 mm Swiss calibre SIG Model 57 rifle imported by the appellant meets the definition of a “prohibited weapon” under paragraph (c) of that definition in subsection 84(1) of Part III of the Criminal Code and, therefore, whether the appellant is prohibited from importing that rifle into Canada pursuant to section 114 of the Customs Tariff.

HELD: *The appeal is dismissed. The Tribunal is of the view that the respondent correctly determined that the rifle in issue is a prohibited weapon and that its importation by the appellant is, therefore, prohibited. The Tribunal is persuaded by the testimony of Mr. MacWha, as well as its own examination of the literature provided and of the rifle in issue, that the rifle was designed and manufactured with the capability of firing bullets in rapid succession during one pressure of the trigger, that is, as an automatic rifle, and that it has been altered to fire only one bullet with such pressure, that is, as a semi-automatic rifle. In particular, the Tribunal was persuaded by the fact that the rifle in issue has a selector lever on the left side of the trigger group with three positions, safe, semi-automatic and full, and that some parts of the trigger mechanism have been removed or ground away. Moreover, the Tribunal is persuaded that the rifle in issue could easily be converted to a fully automatic rifle by a knowledgeable gunsmith.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 19, 1995
Date of Decision: October 27, 1995

Tribunal Members: Arthur B. Trudeau, Presiding Member
Charles A. Gracey, Member
Lise Bergeron, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Anne Jamieson

Appearances: Daniel Spiess, for the appellant
Jennifer Oulton, for the respondent

Appeal No. AP-94-256

DANIEL SPIESS

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

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

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue dated September 7, 1994. The issue in this appeal is whether the 7.5 mm Swiss calibre SIG Model 57 rifle imported by the appellant meets the definition of a “prohibited weapon” under paragraph (c) of that definition in subsection 84(1) of Part III of the *Criminal Code*² and, therefore, whether the appellant is prohibited from importing that rifle into Canada pursuant to section 114 of the *Customs Tariff*.³

Section 114 of the *Customs Tariff* prohibits the importation of any goods enumerated or referred to in Schedule VII to the *Customs Tariff*. Code 9965 of Schedule VII to the *Customs Tariff* covers offensive weapons as defined in the *Criminal Code*, or parts, components, accessories, ammunition or large-capacity cartridge magazines defined as “prohibited weapons” for the purposes of Part III of the *Criminal Code*. Code 9965 does not apply to “firearms, other than prohibited or restricted weapons as defined for the purposes of Part III of the *Criminal Code* imported by ... (ii) a person who is a resident of Canada, who acquired the firearms outside Canada and who holds a firearms acquisition certificate as defined for the purposes of that Part.”

A prohibited weapon is defined, in paragraph (c) of subsection 84(1) of Part III of the *Criminal Code*, as follows:

any firearm ... that is capable of, or assembled or designed and manufactured with the capability of, firing projectiles in rapid succession during one pressure of the trigger, whether or not it has been altered to fire only one projectile with one such pressure.

The appellant appeared on his own behalf at the hearing. He explained that he is a recreation shooter and is a member of the Swiss Rifle Association—Ottawa Valley, as well as the Shooting Federation of Canada and the National Capital Region Rifle Association in Ottawa. He testified that he purchased the rifle in issue while on vacation in Switzerland in 1993. Prior to his departure, he picked up a brochure entitled Importing a Firearm or Weapon into Canada⁴ at the Macdonald-Cartier International Airport in Ottawa. In the brochure, it is stated that “[f]or the importation of restricted firearms the importer must be in possession of a valid Firearms Acquisition Certificate, as well as a Permit to Convey issued by a local Registrar of Firearms.” Mr. Spiess submitted that, based on the information in the brochure, he believed that he was permitted to import the rifle in issue into Canada. He explained that he has a firearms acquisition

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. C-46.
3. R.S.C. 1985, c. 41 (3rd Supp.).
4. Department of National Revenue, Customs and Excise, June 1991.

certificate and that, when he arrived at the airport, he claimed the rifle and then left it with officials of the Department of National Revenue on the understanding that he would obtain a permit to convey. However, he was unable to obtain such a permit.

The appellant argued that, unlike the June 1991 version of the brochure, the February 1993 version⁵ is much more specific. In particular, Mr. Spiess pointed out that, at page 4 of the February 1993 version, it is stated that prohibited weapons include “[f]ully automatic firearms, even if they are subsequently altered to not fire automatically.” He also pointed out that there is a list of restricted firearms at pages 7 and 8 and that the rifle in issue does not appear on that list.

The appellant submitted that the rifle in issue may be manufactured as either a fully or a semi-automatic rifle and that the rifle in issue was manufactured as a semi-automatic rifle and could not be converted to a fully automatic rifle. He explained that the manufacturer of the rifle in Switzerland informed him that the company manufactures both a selective fully automatic version for army use and a semi-automatic version for private use, which would be identified by the letter “P” after “SIG 57.” The rifle in issue is marked with serial number “A-536378” as well as “P6378.”

Accompanying the appellant was Mr. Peter Lortinger who testified that he served in the Swiss Army for six years and is familiar with the SIG 57. He stated that SIG 57s are originally manufactured as army weapons, but confirmed that the army version may be converted to a semi-automatic version for private use called an SIG 57P. The “P” indicates that it is for private use. Mr. Lortinger stated that the SIG 57 would be marked with a “P” when converted either by the manufacturer or by an authorized gun dealer.

The respondent had the rifle in issue examined and tested by Mr. James MacWha, a civilian member of the Firearms Section of the Central Forensic Laboratory of the Royal Canadian Mounted Police. Mr. MacWha testified on behalf of the respondent as an expert in the area of firearms identification and discussed the results of his examination and testing of the rifle in issue, as detailed in his report. Mr. MacWha stated that he does not have a great deal of knowledge about the rifle in issue and, as a result, relied upon written information about rifles similar to the one in issue, as well as on his examination of the rifle, in drawing any conclusions. He referred to Jane’s Infantry Weapons⁶ which, he stated, is probably one of the better references for military weapon systems that is used on a day-to-day basis. He provided an extract from that text which describes a 7.5 mm Stgw 57 Service Rifle.⁷ Mr. MacWha described the tests that he applied to identify the rifle in issue. He did a mechanical assessment of the rifle to determine its characteristics, whether it functioned, whether there had been alterations and, if so, what those alterations were. He looked at the overall configuration of the rifle, compared it to that of the 7.5 mm Stgw 57 Service Rifle in the text and concluded that the rifle in issue is a derivative and a newer version of that rifle, having basically the same characteristics.

Based on his mechanical assessment and his test shots, Mr. MacWha found that the rifle in issue fired in a semi-automatic mode only, but opined that it had been designed and manufactured as a selective fire weapon and had been altered to fire in a semi-automatic mode only. He explained that a semi-automatic rifle requires a separate pull of the trigger for each shot, whereas a fully automatic rifle fires bullets in rapid succession with a single pull of the trigger.

Mr. MacWha referred the Tribunal to the description of the 7.5 mm Stgw 57 Service Rifle in Jane’s Infantry Weapons. The description provides that the 7.5 mm Stgw 57 is the “Swiss Army version of the SIG SG510-4 from which it differs in calibre and in several minor respects.” He then referred the Tribunal to

5. Department of National Revenue, Customs, Excise and Taxation, February 1993.

6. Fifth ed. (New York: Franklin Watts, 1979).

7. *Ibid.*

the description of the SIG 7.62 mm SG510-4 rifle, which states that it “produces selective fire, i.e. it can be fired at either single shot or full auto” and that its operation is “[d]elayed blowback, selective fire.”⁸ He pointed out that the rifle in issue has a selector lever on the left side of the trigger group with three positions: safe, semi-automatic and full. He opined, based on his experience, that a weapon manufactured and designed to fire in semi-automatic mode only would have a selector with only two positions: fire and safe.

Mr. MacWha also noted that the connector lever, which would enable the rifle to fire automatically, had been removed from the trigger mechanism and that part of the bolt at the rear of the trigger mechanism had been ground away. The area that had been ground away relates to the functioning of the safety sear which is necessary to lock in place the bolt that fires the weapon in a fully automatic mode. Mr. MacWha could not say whether the area had been ground away at the time of manufacture or at a later time and agreed that some wear and tear would be evident on the rifle, had it been used.

During cross-examination, Mr. MacWha agreed with Mr. Spiess that any semi-automatic rifle could be converted to a fully automatic rifle. However, Mr. MacWha stated that it is much more difficult to convert some than others. In his view, a knowledgeable person could convert the rifle in issue to a fully automatic rifle in about 30 minutes by adding parts or repairing the bolt.

For the purpose of comparison, Mr. MacWha introduced, as an exhibit, a semi-automatic rifle manufactured in Switzerland by SIG and of the same basic design as the SIG-AMT Auto Rifle shown in Jane’s Infantry Weapons.⁹ He pointed out that the selector lever had only two positions, safe and fire, that the area that had been ground away on the rifle in issue was not present and that there was no slot for the connector lever in the trigger mechanism.

In argument, the appellant did not dispute the provisions of the *Customs Tariff* and the *Criminal Code*. However, he submitted that he was misled by the information that he obtained at the airport and simply wants to export the rifle in issue to Switzerland, where he is permitted to use it for recreation shooting. With respect to the question of whether the rifle in issue falls within the definition of a prohibited weapon, the appellant submitted that one could not be sure, based on the evidence, that the rifle in issue was manufactured as a semi-automatic or fully automatic rifle.

Counsel for the respondent submitted that the rifle in issue is properly classified as a prohibited weapon under code 9965 of Schedule VII to the *Customs Tariff*. She submitted that the definition of a prohibited weapon under paragraph (c) of that definition in subsection 84(1) of Part III to the *Criminal Code* is a broad definition and that the key concept in the definition is the capacity of the weapon. Based on the evidence of Mr. MacWha, she contended that the rifle in issue was designed or manufactured with the capacity of firing projectiles in rapid succession during one pressure of the trigger, in other words, as a fully automatic weapon. In particular, she referred to Mr. MacWha’s testimony that certain features of the rifle indicate that it was designed and manufactured with the capability of firing in a semi-automatic or fully automatic mode and that a competent gunsmith could convert the rifle to fully automatic mode in a short period of time.

Counsel for the respondent also referred to the decision of the Supreme Court of Canada in *Her Majesty the Queen v. Bernhard Hasselwander*.¹⁰ The issue in *Bernhard Hasselwander* was whether a Mini-Uzi submachine gun was a “prohibited weapon” within the meaning of subsection 84(1) of the *Criminal Code*. The Supreme Court of Canada interpreted the word “capable” in subsection 84(1) in light of the purpose and goals of public policy, safety and concern about guns and interpreted it as meaning “readily

8. *Ibid.*

9. *Ibid.* at 383.

10. [1993] 2 S.C.R. 398.

capable.” It found that a weapon that could be converted to fully automatic mode by a competent gunsmith was a prohibited weapon.

With respect to the appellant’s request that he be allowed to export the gun in issue to Switzerland, counsel for the respondent pointed out that subsection 7(2) of the *Export and Import Permits Act*¹¹ provides that the “Minister may not issue a permit ... to export a prohibited weapon.” However, she stated that, should Mr. Spiess make his request to the appropriate authority, it would be given consideration.

After having considered the evidence and the relevant legislative provisions, the Tribunal is of the view that the respondent correctly determined that the rifle in issue is a prohibited weapon and that its importation by the appellant is, therefore, prohibited. The Tribunal is persuaded by the testimony of Mr. MacWha, as well as its own examination of the literature provided and of the rifle in issue, that the rifle was designed and manufactured with the capability of firing bullets in rapid succession during one pressure of the trigger, that is, as an automatic rifle, and that it has been altered to fire only one bullet with such pressure, that is, as a semi-automatic rifle. In particular, the Tribunal was persuaded by the fact that the rifle in issue has a selector lever on the left side of the trigger group with three positions, safe, semi-automatic and full, and that some parts of the trigger mechanism have been removed or ground away. Moreover, the Tribunal is persuaded that the rifle in issue could easily be converted to a fully automatic rifle by a knowledgeable gunsmith.

The Tribunal notes that the appellant took steps to inform himself about the law governing the importation of weapons into Canada, was co-operative with officials of the Department of National Revenue at all times and proposed to officials that the rifle in issue be exported to Switzerland. In light of these factors, the Tribunal anticipates that the matter may be resolved if the appellant applies for a permit to export the rifle in issue to Switzerland.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member

11. R.S.C. 1985, c. E-19.