CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, March 6, 1996

Appeal No. AP-94-172

IN THE MATTER OF an appeal heard on March 31, 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 May 24, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

MARTIN LECHASSEUR **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

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-94-172

MARTIN LECHASSEUR **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 May 24, 1994. The issue in this appeal is whether the 9-mm Heckler & Koch MP-5 type of submachine gun is a prohibited weapon and, if so, whether the appellant is prohibited from importing this weapon into Canada under section 114 of the Customs Tariff.

***HELD**: The appeal is dismissed. Based on the testimony of an expert, the majority of the Tribunal is persuaded that the submachine gun imported by the appellant can be quickly and readily reconverted to an automatic weapon "in a relatively short period of time with relative ease." This submachine gun should be deemed to be a prohibited weapon and may not be imported into Canada.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*March 31, 1995*
Date of Decision:	*March 6, 1996*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Lise Bergeron, Member* *Lyle M. Russell, Member*
Counsel for the Tribunal:	*Robert Desjardins*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Martin Lechasseur, for the appellant* *Stéphane Lilkoff, for the respondent*

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Appeal No. AP-94-172

MARTIN LECHASSEUR **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
LISE BERGERON, Member
LYLE M. RUSSELL, 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 May 24, 1994. The issue in this appeal is whether the 9-mm Heckler & Koch MP-5 type of submachine gun (the gun), imported by the appellant in September 1992, is a prohibited weapon and, if so, whether the appellant is prohibited from importing the gun into Canada under section 114 of the *Customs Tariff*.[2] The gun has been detained since its importation, in accordance with the provisions of section 101 of the Act. 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 covers offensive weapons, as defined in the *Criminal Code*,[3] or parts, components, accessories, ammunition or large-capacity cartridge magazines defined as "prohibited weapons" for the purposes of Part III of the *Criminal Code*.

The appellant, who appeared on his own behalf at the hearing, indicated that the gun had been purchased in Europe by his brother and that the alterations had been made by a gunsmith in Germany. In addition, as the appellant already owns a number of weapons, including four assault weapons, he claimed to be a gun collector.

Mr. James K. MacWha, a civilian member of the Firearms Section of the Central Forensic Laboratory of the Royal Canadian Mounted Police, appeared on behalf of the respondent as an expert witness in the field of firearms. He examined the detained gun and presented the results of his examination which are detailed in his report. He explained, first of all, that the gun had been built for automatic fire, that is, that one pressure of the trigger is enough to fire bullets in rapid succession. In his report, Mr. MacWha concluded that the gun had been altered to fire only in a semi-automatic mode and that it would be necessary to make some alterations to the gun for it to be capable again of automatic fire. In his opinion, an expert can perform such a reconversion in 30 minutes using simple hand tools and power tools. Therefore, this reconversion can be performed by removing the screw and nut on the trigger mechanism housing and installing a "safety sear" and a "bolt carrier." It is also possible to replace the complete trigger group, in which case the bolt carrier must also be replaced or refurbished.

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.

During cross-examination, Mr. MacWha agreed with the appellant's remarks to the effect that the reconversion of the gun to automatic fire requires that the gun's trigger mechanism be dismantled and the trigger travel and the selector lever travel be loosened. To do this, Mr. MacWha added, it is necessary to have access to an oxyacetylene welding torch. Mr. MacWha indicated to the Tribunal that he had never dismantled the trigger mechanism of the gun. Finally, in reply to insistent questions by the appellant on the subject of the time required for each step in reconverting the gun, Mr. MacWha indicated that problems could arise and that it would then require more time to perform the work.

In his oral argument, the appellant submitted that there are three elements that are vital for reconverting the gun to an automatic weapon. According to him, one must have: (1) the knowledge to perform this work, i.e. be a gunsmith; (2) the necessary tools; and (3) the components, i.e. [translation] "an unmodified breechblock, an automatic sear lever and an automatic sear." On this last point, the appellant emphasized that such components are not available on the legal market and that they cannot be manufactured. On the topic of the short period of time required for the reconversion mentioned in the expert witness's report, the appellant submitted that Mr. MacWha had not been able to explain this convincingly. Finally, referring to the good work done by the German gunsmith, the appellant pointed out that it is impossible to reconvert the gun to automatic fire without the components: [translation] "it will be a semi-automatic weapon for the rest of its life.[4]"

According to counsel for the respondent, the issue that the Tribunal must address is whether the gun can be reconverted to an automatic weapon in a relatively short period of time. On this point, he submitted that the appellant had not presented any factual evidence to the Tribunal to prove that the respondent's decision is not founded in law. According to counsel, this absence of evidence must be sufficient to dismiss this appeal. In addition, counsel submitted that the appellant's opinion is debatable; he never performed any repairs whatsoever on a firearm, and his opinion could not be preferred over that of the expert witness. After having mentioned the provisions of Code 9965, counsel noted the need to refer to the *Criminal Code* to determine whether the gun is an offensive weapon. Summarizing the law on this issue, counsel indicated to the Tribunal that weapons which are designed and manufactured in a such a way as to fire many projectiles in rapid succession with one pressure of the trigger (e.g. a submachine gun) are deemed to be offensive weapons. Following the decision of the Supreme Court of Canada in *Her Majesty the Queen v. Bernhard Hasselwander*,[5] automatic weapons altered to fire only in a semi-automatic mode, but which, "in a relatively short period of time," can be reconverted to automatic weapons, are also deemed to be offensive weapons.

After noting the absence of criteria to define that period of time, counsel for the respondent submitted that the expression "a relatively short period of time" has no meaning unless the criterion is that of the experienced gunsmith. In this context, the statement of an expert witness with a wide range of experience in the field of firearms must be accepted by the Tribunal.

After examining the evidence and considering the arguments of the parties, the Tribunal is of the opinion that the appeal must be dismissed. First, the majority of the Tribunal would like to note that the issue in this appeal is not whether the gun is a "restricted weapon" according to the definition under paragraph (*c*.1) of subsection 84(1) of the *Criminal Code*. On the contrary, for the parties and for the

4. Transcript of Public Hearing and Argument, March 31, 1995, at 70.
5. [1993] 2 S.C.R. 398.

majority of the Tribunal, the issue to address is whether the gun is a prohibited weapon within the meaning of the *Criminal Code*, in which case its importation into Canada is prohibited under section 114 of the *Customs Tariff*. As correctly noted by the appellant, the only issue before the Tribunal is whether it is possible [translation] "to transform the gun in a relatively short period of time with relative ease.[6]" Moreover, all of the evidence before the Tribunal turned exclusively on this single issue, which must be resolved bearing in mind the criterion set forth by the Supreme Court of Canada in *Hasselwander*.

Under paragraph (*c*) of the definition of "prohibited weapon" in subsection 84(1) of the *Criminal Code*, a prohibited weapon is "any firearm, not being a restricted weapon described in paragraph (*c*) or (*c*.1) of the definition of that expression in this subsection, 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."

In the view of the majority of the Tribunal, Mr. MacWha's report and his evidence are of great importance. It is worth noting that Mr. MacWha has a wide range of hands-on experience in the field of firearms. According to Mr. MacWha, to reconvert the gun would require "i. break or removal of the welded screw and nut on the trigger mechanism housing, [and] ii. acquisition and installation of a safety sear and bolt carrier." By using the appropriate tools, i.e. hand tools and power tools, the reconversion, according to Mr. MacWha, can be done in 30 minutes. This testimony convinced the Tribunal that the gun can be brought back to an automatic firing mode "in a relatively short period of time with relative ease." Moreover, while the issue of the reconversion of a firearm should not be considered strictly in an abstract manner, the Tribunal is of the opinion that the difficulty in obtaining some of the spare parts (i.e. a safety sear and a bolt carrier) do not constitute a determining factor. Indeed, the only requirement is that they can be acquired or manufactured, however legal or illegal their origin or manufacture.[7] The gun bought by the appellant is a prohibited weapon and cannot be imported into Canada.

For the above reasons, the appeal is dismissed.

SEPARATE REASONS OF MEMBER RUSSELL

I would dismiss the appeal for different reasons. The issue in this appeal is not whether the appellant's gun can be converted to an automatic weapon within a relatively short period of time. Rather, it is whether the gun was, on October 1, 1992, part of a gun collection in Canada.

The facts of the case are straightforward. The appellant is a gun collector. The appellant's brother purchased an automatic weapon in Europe and had it altered by a gunsmith in Germany so that it would fire only in a semi-automatic mode (i.e. so that only one bullet would be fired with each pressure of the trigger). The gun was imported into Canada on September 23, 1992, and was seized by customs officials. On being notified of the seizure, the appellant applied, on September 29, 1992, to have the gun registered in Canada and lodged an appeal against its seizure. He saw the gun for the first time when it was entered as an exhibit at the hearing of this appeal.

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6. Transcript of Public Hearing and Argument, March 31, 1995, at 63.
7. *Ibid.* at 54.

The gun in issue in *Hasselwander*, cited by my colleagues in their reasons for decision and by counsel for the respondent in his argument, was found by the provincial court judge to have been made by the original manufacturer as a semi-automatic weapon, but to be readily convertible to fire as a fully automatic. The decision of the Supreme Court of Canada in that case turned on the interpretation to be given to the expression "capable of firing bullets in rapid succession during one pressure of the trigger," as it appeared in the *Criminal Code* definition of "prohibited weapon" that was in force in 1989. This definition was amended by Parliament in 1991 to expressly include automatic weapons that have been altered to fire only one projectile with each pressure of the trigger.

Under the revised definition, it matters not whether an automatic weapon that has been altered to fire as a semi-automatic can be reconverted in a relatively short period of time to fire as an automatic. Even if such a reconversion were technically impossible, the altered gun would still be classed as a "prohibited weapon," unless it qualified under one of two grandfather clauses for guns owned by genuine gun collectors. The relevant grandfather clause for purposes of this appeal is found in paragraph (*c.*1) of the definition of "restricted weapon" in subsection 84(1) of the *Criminal Code* and reads as follows:

> *(c.1) any firearm that is assembled or designed and manufactured with the capability of firing projectiles in rapid succession with one pressure of the trigger, to the extent that*
>
> *(i) the firearm is altered to fire only one projectile with one such pressure,*
>
> *(ii) on October 1, 1992, the firearm was registered as a restricted weapon, or an application for a registration certificate was made to a local registrar of firearms in respect of the firearm, and the firearm formed part of a gun collection in Canada of a genuine gun collector, and*
>
> *(iii) subsections 109(4.1) and (4.2) were complied with in respect of that firearm.*

The relevant portion of the definition of "prohibited weapon" in subsection 84(1) of the *Criminal Code*, with the 1991 amendments underlined, reads as follows:

> *(c) any firearm, not being a restricted weapon described in paragraph (c) or (c.1) of the definition of that expression in this subsection, 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.*

Some confusion may arise as to the exact coverage of the grandfather clause because the French version, by including the term "*ou pouvant tirer*," is arguably broader than the English version. (It could be argued, for example, that the gun in *Hasselwander* is described in the French version, but not in the English.) However, when either version is read in conjunction with the definition of "prohibited weapon," it is clear that the intention was to avoid forcing gun collectors to forfeit certain restricted weapons that were redefined as prohibited weapons in 1991 - to "grandfather" certain guns if they were registered as part of a genuine collection by October 1, 1992, namely, fully automatic weapons that have been altered to fire as semi-automatics. However, those same guns would henceforth be illegal in the hands of non-collectors.

In light of the 1991 amendments to the *Criminal Code*, it is my contention that the standards set by the Supreme Court of Canada in its decision in *Hasselwander* in regard to determining if a gun is "capable of firing" in an automatic mode do not apply in the present case. What does apply from that decision, however, is the principle that "even with penal statutes, the real intention of the legislature must be sought, and the meaning compatible with its goals applied.[8]"

My colleagues have not applied this principle in their reasoning, but have instead applied elements of the *Hasselwander* decision out of context to interpret a definition of "prohibited weapon" and a grandfather clause in relation thereto which were not before the Supreme Court of Canada. Their interpretation renders the grandfather clause meaningless. They read it to say that only automatic weapons that have been irreversibly altered to fire as semi-automatics are grandfathered. But the evidence from the expert witness, Mr. MacWha, was to the effect that virtually any modification to an automatic weapon to convert it into a semi-automatic can be reversed.

The evidence is clear that the gun in issue has been altered to fire only one projectile with each pressure of the trigger. I thus have no hesitation in finding that it meets the requirement of subparagraph (*c*.1)(i) of the definition of "restricted weapon." There remains the question of whether it meets all the other requirements of the paragraph with respect to registration, being in the lawful possession of a genuine gun collector, being part of a gun collection in Canada, etc. Counsel for the respondent appeared to concede that the appellant was a genuine gun collector and that the registration requirements had been met through the filing of an application for a registration certificate. However, the gun was intercepted by customs officials when it was en route to the appellant from Europe. Therefore, I conclude that, on October 1, 1992, it was not physically "part of a gun collection in Canada of a genuine gun collector" as required by paragraph (*c*.1). Consequently, I would dismiss the appeal on this ground.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Lise Bergeron
Lise Bergeron
Member

Lyle M. Russell
Lyle M. Russell
Member

8. *Supra*, note 5 at 413.