

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250206

Docket: A-218-23

Citation: 2025 FCA 30

**CORAM: DE MONTIGNY C.J.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

JAMES B. BYRNE

Applicant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Toronto, Ontario, on February 6, 2025.

Judgment delivered from the Bench at Toronto, Ontario, on February 6, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

MACTAVISH J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 6, 2025).

MACTAVISH J.A.

[1] James Byrne attempted to import an F Series 226 Rail Gas Blowback airsoft pistol into Canada. The Canada Border Services Agency prohibited the entry of the pistol into Canada, finding that it was a “prohibited weapon or device” as it met the definition of a replica firearm under subsection 84(1) of the *Criminal Code*, R.S.C., 1985, c. C-46. As a result, the pistol was

deemed to be prohibited from importation under subsection 136(1) of the *Customs Tariff*, S.C. 1997, c. 36. In a decision reported as AP-2019-007, the Canadian International Trade Tribunal dismissed Mr. Byrne's appeal, finding that the pistol resembled with near precision a firearm known as the SIG Sauer model P226 MK25 pistol, and that it was prohibited from importation under the *Customs Tariff* because it met the definition of a "replica firearm" and was, by extension, a prohibited device.

[2] Mr. Byrne seeks judicial review of the CITT's decision, asserting that the Tribunal made numerous errors in arriving at its decision. Amongst other things, Mr. Byrne argues that the Tribunal erred in purporting to exercise criminal law jurisdiction, in focussing exclusively on the external appearance of the pistol, and in determining that the characteristics of a good have to be assessed at the time of importation and that post-importation modifications are irrelevant. To the extent that Mr. Byrne alleges that the CITT committed errors of law, his recourse was through appeal to this Court under subsection 68(1) of the *Customs Act*, R.C.S. 1985, c. 1 (2nd Supp.): *Canada (Attorney General) v. Pier 1 Imports (U.S.), Inc.*, 2023 FCA 209 at para. 29. This Court's jurisdiction on an application for judicial review such as this is confined to reviewing errors of fact or mixed fact and law.

[3] Mr. Byrne's application does raise several issues that are within our jurisdiction. He asserts that "the core" of his application relates to the CITT having preferred the evidence of the respondent's expert witness to that of his own expert. Mr. Byrne also asserts that the CITT erred in its assessment of the characteristics of the pistol in question, that it treated him unfairly as it

denied him a reasonable opportunity to have his expert examine the pistol, and that the Tribunal was biased against him. Each of these arguments will be addressed in turn.

[4] The CITT's treatment of the expert evidence is subject to review on the reasonableness standard. That is, the decision must be transparent and intelligible, and it must be justified in relation to the relevant factual and legal constraints that bear on it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 99. However, absent exceptional circumstances, this Court is not entitled to interfere with the CITT's factual findings: *Vavilov*, above at para. 125.

[5] The weight to be ascribed to the evidence before it was a matter for the CITT to decide, and it is not the role of this Court to re-weigh that evidence. The CITT provided lucid and logical reasons for preferring the evidence of the respondent's expert to that of Mr. Byrne's expert, and that explanation was reasonable. There is thus no basis for interfering with this aspect of the Tribunal's decision.

[6] To the extent that the CITT's decision turned on its assessment of the characteristics of the pistol in question, that assessment involved findings of fact that are entitled to considerable deference. Mr. Byrne has not demonstrated that these findings were unreasonable.

[7] Mr. Byrne's other two arguments raise questions of procedural fairness. Where questions of procedural fairness arise, the Court must examine the process followed by the CITT and determine for itself whether that process satisfied the level of fairness required in all of the

circumstances. In other words, we must in effect apply the correctness standard of review:

Canadian Pacific Railway Company v. Canada (Attorney General), 2018 FCA 69 at paras. 44-56; see also *Girouard v. Canada (Attorney General)*, 2020 FCA 129 at para. 38.

[8] Mr. Byrne resides in Hamilton, Ontario, and his expert was located in the United States. Consequently, he asked that the pistol in question be sent to a location near Hamilton for examination by his expert. The respondent was not prepared to comply with this request, primarily because of the security measures that are required for locations where such a pistol could be handled and discharged. The respondent offered to have the pistol produced for examination in Ottawa under secure conditions at a firing range. Rather than taking the respondent up on its offer, Mr. Byrne had his expert examine what was purportedly an identical pistol in Buffalo, New York. I note that the differences between the pistol at issue in this application and that examined by Mr. Byrne's expert was one reason why the CITT preferred the evidence of the respondent's expert to that of Mr. Byrne's expert.

[9] The CITT examined the sequence of events surrounding the inspection issue, ultimately determining that Mr. Byrne had been provided with ample opportunity to have his expert examine the pistol in issue and to have a full and fair chance to make his case. Mr. Byrne has not persuaded us that he was treated unfairly in this regard.

[10] Finally, Mr. Byrne argues that the CITT had prejudged his appeal and that it was biased against him. The test for bias is what an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude. That is, would he or she

think it more likely than not that the decision-maker, either consciously or unconsciously, would not decide the matter fairly: see *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at p. 394, 68 D.L.R. (3d) 716; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at paras. 20-21, 26.

[11] Allegations of bias are serious and there is a correspondingly heavy burden on the party alleging bias to prove the allegations. A mere suspicion will not suffice: substantial and cogent evidence of bias is required: *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193 at paras. 112, 117. Mr. Byrne has not pointed to anything in the record that would support an allegation of either actual or apprehended bias on the part of the CITT. The fact that the CITT did not accept his arguments is not evidence of bias.

[12] Having failed to persuade us that the Tribunal treated him unfairly, or that its decision was unreasonable, Mr. Byrne's application will be dismissed with costs fixed in the all-inclusive amount of \$500.00.

“Anne L. Mactavish”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-218-23

STYLE OF CAUSE:

JAMES B. BYRNE v.
PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

FEBRUARY 6, 2025

**REASONS FOR JUDGMENT OF THE COURT
BY:**

DE MONTIGNY C.J.
LASKIN J.A.
MACTAVISH J.A.

DELIVERED FROM THE BENCH BY:

MACTAVISH J.A.

APPEARANCES:

James B. Byrne

ON HIS OWN BEHALF

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