Federal Court of Appeal | Cour d'appel fédérale

Date: 20260210

Docket: A-413-24

Citation: 2026 FCA 27

CORAM: **LASKIN J.A.**
LEBLANC J.A.
BIRINGER J.A.

BETWEEN:

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Appellant

and

B. COOPER

Respondent

Heard at Ottawa, Ontario, on February 10, 2026.
Judgment delivered from the Bench at Ottawa, Ontario, on February 10, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: LEBLANC J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 10, 2026).

LEBLANC J.A.

[1] This is an appeal pursuant to paragraph 68(1)(b) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp) (the Act) of a decision of the Canadian International Trade Tribunal (the Tribunal), dated October 2, 2024 (AP-2022-039). In its decision, the Tribunal granted in part the respondent's appeal of a redetermination decision made by the President of the Canada Border

Services Agency (the President) on the tariff classification of a Kershaw branded folding knife imported by the respondent (the Knife at issue).

[2] The issue before the Tribunal, which heard the respondent's appeal *de novo*, was whether the President had correctly classified the Knife at issue as a "prohibited weapon" within the meaning of item no. 9898.00.00 of the Schedule to the *Customs Tariff*, S.C. 1997, c. 36. The Tribunal was satisfied that the Knife was a "prohibited weapon". However, in order to cure what it called an "apparent incongruence" related to the fact that similar goods were apparently openly advertised and sold in Canada, notably through e-commerce, the Tribunal granted the appeal on the ground that the Canada Border Services Agency (the Agency) bore – but had failed to meet – the onus of establishing that the Knife at issue did not qualify for any of the exclusions set out in tariff item no. 9898.00.00 (the Exclusions). The Tribunal further held that procedural fairness required the President to inform the respondent that he could possibly qualify for an Exclusion. In the absence of an adequate record to underpin a decision, the Tribunal remitted the matter to the Agency for it to determine, "on appropriate grounds", whether any of the Exclusions applies to the case at hand.

[3] Before us, the Attorney General of Canada, on behalf of the President, contends that the Tribunal erred in concluding as it did on both the burden of proof and procedural fairness. We all share that view. Before we explain why, we wish to note that, although he filed a notice of appearance, the respondent did not participate in this appeal.

[4] Pursuant to subsection 68(1) of the Act, tariff classification decisions can be appealed to this Court, but on questions of law only. There is no doubt that both the issues respecting burden of proof and procedural fairness are questions of law. The burden of proof issue is reviewable on a standard of correctness whereas issues of procedural fairness are reviewable on a standard akin to correctness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 36–37 (*Vavilov*); *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54). This means that we owe no deference to the Tribunal on these issues.

[5] On burden of proof, the Tribunal's decision is fundamentally flawed. The Tribunal recognized that the "burden of proof imposed by subsection 152(3) of the Act with respect to a 'proceeding' under the Act lies with the appellant" (here the respondent), but said that this provision was not fully engaged "on the particular facts of this case" because of the lack of "evidence relevant to an issue (possible [Exclusion]) that underpins the classification decision" (Tribunal's decision at paras. 100–102).

[6] To reach that conclusion, the Tribunal attempted to distinguish this Court's decision in *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (*Miner*), where the Court held that the burden of establishing that the goods at issue were not prohibited weapons fell, according to paragraph 152(3)(d) of the Act, on the person challenging the Agency's classification of the goods. Otherwise, it cited no authority supporting the view that in a classification proceeding, the burden of proof somehow shifts to the Agency once the goods at issue have been found to be a "prohibited weapon" and what remains to be decided is whether an Exclusion applies.

[7] Paragraph 152(3)(d) of the Act is clear. It provides that in "any proceeding under [the] Act, the burden of proof in any question relating to … the compliance with any of the provisions of [the] Act or the regulations in respect of any goods lies on the person, other than Her Majesty, who is a party to the proceeding or the person who is accused of an offence, and not on Her Majesty". This rule is subject to only one exception, the one set out in subsection 152(4) of the Act which concerns instances where a person is accused of an offence under the Act and which has no application here. Further, subsection 152(1) of the Act provides that the burden of proof of the importation or exportation of goods lies on Her Majesty.

[8] Therefore, when Parliament intended Her Majesty to bear the burden of proof, wholly or in part, it said so explicitly. This is a strong presumption that Parliament clearly did not intend to impose any burden of proof on Her Majesty in matters governed by subsection 152(3) of the Act, let alone reverse the burden of proof at some point in the proceeding. As is well settled, where the words of a statute are precise and unequivocal, as they are here, the ordinary meaning plays a dominant role in the interpretation (*Mohr v. National Hockey League*, 2022 FCA 145 at para. 23; *Kosicki v. Toronto (City)*, 2025 SCC 28 at para. 37). Furthermore, in our view, the principle of implied exclusion is also engaged here. As this Court stated in *National Energy Board Act (Can.) (Re)* (FCA), [1986] 3 FC 275, at page 289, this principle has been interpreted to mean that "[e]xpress enactment shuts the door to further implication".

[9] The Tribunal's position, if accepted, would mean that each time, in a proceeding governed by paragraph 152(3)(d), there is an exclusion, exemption or exception in a tariff item, and there are many, the burden to prove that such exclusion, exemption or exception does not

apply, would shift to Her Majesty. This is an untenable position given the clear and unambiguous wording of that provision and of section 152 as a whole. As the appellant correctly points out, paragraph 152(3)(d) does not provide for any circumstances under which the burden provided therein is not fully engaged or for any preconditions to its application.

[10] Here, the respondent had the burden of establishing that the Knife at issue was not properly classified under tariff item no. 9898.00.00. He could meet that burden by establishing that the Knife at issue did not meet the definition of a "prohibited weapon". This is what he attempted to establish. In the alternative, he could meet that burden by establishing that one of the Exclusions applied. As a matter of fact, the respondent, throughout the classification proceedings, be it before the Agency, the President or the Tribunal, never provided evidence or submissions on any of the Exclusions that could have applied to his case. Yet, the Exclusions are not set out in some obscure guideline or soft-law instrument. They are clearly listed in the impugned tariff item itself.

[11] The Tribunal's position on *Miner* is also untenable. The Tribunal distinguished *Miner* on the basis that it only dealt with the first of the two steps of the "prohibited weapon" classification analysis. This distinction is inconsequential because, for reasons stated above, it is premised on the erroneous view that paragraph 152(3)(d) somehow shifts the burden of proof at the second step of the analysis. Again, a person challenging the classification of goods under tariff item no. 9898.00.00 bears the onus of proving that the goods at issue do not meet the definition of a "prohibited weapon" or, alternatively, that one of the Exclusions applies to their case.

[12] In the end, in order to correct a so-called “apparent incongruence”, the Tribunal proceeded, for all intents and purposes, to add words to paragraph 152(3)(d). However, only Parliament can do that.

[13] Finally, we find the procedural fairness issue to be flawed as well on the basis of the general principle that when an administrative tribunal proceeds *de novo*, this may provide sufficient relief for any procedural defects that may have occurred before the administrative decision maker below (here, the President). What matters, from a procedural fairness standpoint, is the procedure before the Tribunal, not the procedure before the President or the Agency (see generally *McBride v. Canada (National Defence)*, 2012 FCA 181 at paras. 43-45; *Bonamy v. Canada (Attorney General)*, 2009 FCA 156 at para. 7; *Higgins v. Canada (Attorney General)*, 2018 FCA 49 at para. 17; *Klouvi v. Canada (Attorney General)*, 2024 FCA 80 at para. 5). Further, as this Court pointed out in *Miner* at paragraph 16, if the Tribunal had any concerns as to “whether the information provided by either party required substantiation it was free to require any party to furnish further information”. That way, it could have required further information on whether any of the Exclusions applied. It did not.

[14] Besides, we are not prepared to say that the respondent did not know the case to meet and needed, therefore, to be told by the President about the Exclusions. As indicated previously, the Exclusions are clearly listed in tariff item no. 9898.00.00, a piece of legislation. The classification proceedings were all about that tariff item. Thus, there was nothing preventing the respondent from claiming that an Exclusion applied to his case. He did not, despite having had three opportunities to do so.

[15] Although we are mindful of the Tribunal's own jurisprudence, the issue of whether the Tribunal has jurisdiction to address issues of procedural fairness before the President is better left to another day, where the Court will have the benefit of the positions of both the importer and the President.

[16] For all these reasons, the appeal will be allowed. According to subsection 68(2) of the Act, the Court "may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the [Tribunal] for re-hearing". The appellant urges us to render the decision that the Tribunal should have rendered on the basis that if the Tribunal had correctly applied the statutory burden of proof, it ought to have classified the Knife at issue as a "prohibited weapon". We agree that in the circumstances of this case, there is no point in referring the matter back to the Tribunal for a re-hearing as the outcome of the case is inevitable. We conclude that the knife at issue is classified under tariff item no. 9898.00.00 as a "prohibited weapon".

[17] The appellant is not claiming its costs given that the appeal was uncontested. Therefore, no costs will be awarded.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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