

Court File No.:

A-159-24

FEDERAL COURT OF APPEAL

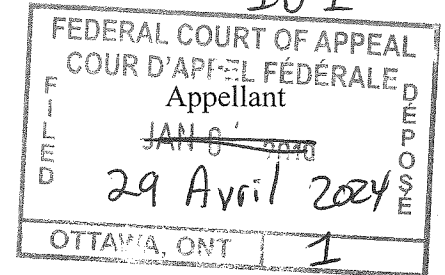
BETWEEN:

ATTORNEY GENERAL OF CANADA

-and-

MEDLINE CANADA CORPORATION

Respondent



NOTICE OF APPEAL
(*Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), s. 68)

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

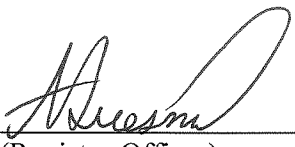
IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: April 29 2024

Issued by: 
(Registry Officer)

Address of local office: 90 Sparks Street, 5th Floor
Ottawa, Ontario K1A 0H9

TO: **Medline Canada Corporation**
Mr. Mudabbir Tariq
Descartes Visual Compliance
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North York, Ontario M3H 2V2

Mr. Riyaz Dattu
Barrister & Solicitor
150 King Street West, Suite 200
Toronto, Ontario M5H 1J9

AND TO: **Canadian International Trade Tribunal**
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Tel: 613-998-2452
Fax: 613-990-2439

AND TO: **Federal Court of Appeal**
90 Sparks Street
Ottawa, Ontario K1A 0H9
Tel: 613-996-6795
Fax: 613-952-7226

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal pursuant to s. 68 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), from the decision of the Canadian International Trade Tribunal (“Tribunal”) dated January 29, 2024, in AP-2022-004 and AP-2022-017. The Tribunal concluded that sterile surgical gloves – the goods in issue – are “for use in” surgical instruments such as scalpels, under *Customs Act* s. 2(1) and tariff item 9977.00.00.

THE APPELLANT ASKS for:

1. An order setting aside the decision of the Tribunal in this matter and finding that the gloves are not classifiable under tariff item 9977.00.00 of the *Customs Tariff*;
2. In the alternative, an order setting aside the decision of the Tribunal in this matter and referring the matter back to the Tribunal for redetermination by a different member, in accordance with such directions as this Honourable Court considers appropriate;
3. The costs of this Appeal; and
4. Such further and other relief as counsel may advise and this Honourable Court permits.

THE GROUNDS OF APPEAL are as follows:

5. The Tribunal erred in law by misinterpreting the *Customs Tariff*, in concluding that the gloves are “for use in” (i.e. “wrought or incorporated into, or attached to” as defined in ss. 2(1) of the *Customs Tariff*) a scalpel. The Tribunal’s conclusion is contrary to the modern approach to statutory interpretation, it ignores the analytical framework set out in the Tribunal’s own jurisprudence, and it leads to absurd results. The decision is incorrect and should be set aside.
6. Chapter 99 of the *Customs Tariff* provides special classification provisions adopted by Canada that allow certain goods to be imported with tariff relief. In order for the gloves to qualify for the benefits of tariff item 9977.00.00, the gloves must be articles “for use in” surgical instruments, like scalpels.

7. Subsection 2(1) of the *Customs Tariff* defines “for use in,” which appears in tariff item 9977.00.00, as follows:

| | |
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| <p><i>for use in, whenever it appears in a tariff item, in respect of goods classified in the tariff item, means that the goods <u>must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.</u></i></p> | <p><i>devant servir dans ou devant servir à Mention dans un numéro tarifaire, applicable aux marchandises qui y sont classées et qui doivent <u>entrer dans la composition d'autres marchandises mentionnées dans ce numéro tarifaire par voie d'ouvraison, de fixation ou d'incorporation.</u></i></p> |
|---|---|

8. By finding that the gloves were “attached to” scalpels merely by virtue of being held together by a hand, the Tribunal adopted an interpretation that the words of the *Customs Tariff* cannot bear.
9. *Customs Act*, s. 68.
10. *Customs Tariff*, s. 2, and Schedule.
11. *Federal Courts Rules*, Rule 335 (c).
12. Such further and other grounds as counsel may advise and this Honourable Court permits.

The Attorney General of Canada proposes that this Appeal be heard in Ottawa, Ontario.

Date: April 29, 2024



ATTORNEY GENERAL OF CANADA

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