

FEDERAL COURT OF APPEAL

BETWEEN:

James B. Byrne

Appellant

and

President of the Canada Border Services Agency

Respondent

Notice of Application

TO THE RESPONDENT:

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

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario, Canada.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

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 APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Issued by: (Registry Officer)

Address of local office:

TO: President of the Canada Border Services Agency

Application

This is an application for judicial review in respect of

Canadian International Trade Tribunal

Appeal CITT AP-2019-007 decision issued Monday, July 17, 2023 at Ottawa

The applicant makes application for:

1. Setting aside the Tribunal's decision to dismiss;
2. Finding that the good in issue is an airgun within the meaning of Section 84 of the Criminal Code of Canada;
3. Directing the Tribunal to refrain from ruling on matters of criminal law;
4. Costs.

The grounds for the application are:

1. The Tribunal's decision is based upon an error in law.
2. The Tribunal's decision is contrary to the evidence presented.
3. The Tribunal lacks statutory authority to decide on matters of criminal law.
4. The Tribunal's treatment of the testimony of the Appellant's expert witness is unreasonable.
5. The Tribunal's decision places disproportionate weight upon the testimony of the Respondent's expert witness.
6. The Respondent's expert witness acted in a manner inconsistent with an independent, disinterested party.
7. The Respondent's expert witness possessed an evident conflict of interest.

8. There is evidence of bias and prejudice in the Tribunal's treatment of the Appellant throughout the appeal process.

This application will be supported by the following material:

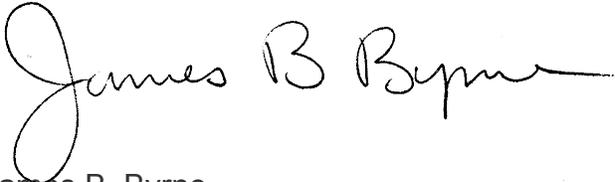
1. Appellants brief
2. Appellants rebuttal of the Respondent's brief
3. Report of the Appellant's expert witness
4. Rebuttal of the expert report of the Appellant's expert witness by the Respondent's expert witness
5. Correspondence to and from the Tribunal relating to the examination of the good in issue by the Appellant's expert witness
6. Correspondence from the Tribunal evidencing prejudgment of the matter
7. Correspondence to and from the Tribunal relating to the Respondent's expert witness acting as advocate for the Respondent
8. *R. v. Walsh*, 2012 BCSC 34 (CanLII), <<https://canlii.ca/t/fpmch>>, retrieved on 2023-08-24
9. *R. v. Hasselwander*, 1993 CanLII 90 (SCC), [1993] 2 SCR 398, <<https://canlii.ca/t/1fs2p>>, retrieved on 2023-08-24
10. Transcript of the hearing before the Tribunal on 2023-03-20
11. *Vito V. Servello and the Commissioner of the Canada Customs and Revenue Agency* (19 June 2002), AP-2001-078 (CITT)

The applicant requests Canadian International Trade Tribunal to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Canadian International Trade Tribunal to the applicant and to the Registry:

1. Notes and observations of Murray A. Smith respecting the examination and testing of the good in issue;
2. The chain of custody documentation respecting the good in issue from the time it was detained in Toronto up to the present.

Dated: 2023-08-29

Signed:

A handwritten signature in black ink that reads "James B. Byrne". The signature is written in a cursive style with a long horizontal stroke at the end.

James B. Byrne

218 Charlton Avenue West

Hamilton, Ontario

Canada L8P 2E2

Telephone: 905-561-1241

e-mail: james.b.byrne@byrnejb.ca

[SOR/2021-151, s. 22](#)