

[1] The present application is made pursuant to s 231 of the Customs and Excise Act 1996 for an order disallowing the seizure of goods which, in this case, was a Stiller Predator hunting rifle and a Die set for reloading the appropriate calibre shells.

[2] The facts are not in dispute. Mr Bevins had a friend who worked for Martini Gunmakers Limited in Canbrook, Canada. He made arrangements to import a custom made Stiller Predator hunting rifle with a calibre 6.5 by 47. The ammunition for this is not readily available in New Zealand and, accordingly, the manufacturer also supplies a Die for the refilling of appropriate cartridges.

[3] Mr Bevins is a keen deer hunter, a person of good character and the holder of an Arms licence. He has a good relationship with the arms officer in Palmerston North and through him, successfully obtained, on 9 April 2009, a permit from the police to import the rifle. This permit specifically refers to “one rifle Stiller bolt action, 6.5 by 47 and describes it as a sporting rifle built on a Stiller action receiver imported for the purpose of hunting”.

[4] Stamped on this form is the following note:

“It is a condition of this permit to import that the firearm and/or part to which it relates is accurately described in detail, identifying it as a firearm or firearm part on any supporting documentation or declaration including an overseas postal declaration. It is your responsibility to make sure that any person sending firearm and/or part to you complies with this condition.”

[5] Mr Bevins had not previously imported any firearm to New Zealand and simply sent the permit to the manufacturer in Canada and left it to them to make appropriate arrangements to export the firearm and import it into New Zealand. Mr Bevins, in evidence, said that there was some discussion as to whether the rifle would come by air or by sea but he left this decision and all other steps to Martini Gunmakers Limited.

[6] For reasons which are not entirely clear, the Canadian factory elected to send the rifle by post, which required of the parcel to have attached to it a “overseas postal declaration”.

[7] Had they adopted the normal course of making use of import agents, all such declarations are handled electronically and no problem would have arisen.

[8] It is common ground that Mr Bevins was not seeking to avoid customs duty or to import the firearm illegally.

[9] Evidence from Mr William Cleverdon and Mr Greg Carvell, (who are both experienced importers of firearms based in New Zealand), was that they invariably insist that packaged firearms, which they import, do not have any external indication that a firearm is enclosed within the package. This practice is, according to them, accepted in the trade because of the danger of theft of a package by undesirable elements. The true nature of the article, its value and various licences and permits necessary are invariably attached to the outside of the parcel in a sealed envelope marked in bold letters “Customs Documents”.

[10] Mr Cleverdon said that he had imported approximately fifty firearms in the five years he has been in practice and only on three occasions have they used the mail system, rather than import agents. When he used the mail system there is also no indication on the outside of the package that it contains a firearm. All that information is contained in the sealed envelope attached to the outside of the package and on the postal declaration, the article is described in generic terms as it has been done in the present case.

[11] Mr Carvell has been in practice as a firearms dealer for over 16 years. He has imported hundreds of firearms and almost invariably this has been done through import agents but even on the rare occasion when there was an importation by post, there would be no external indication that the package contained a firearm.

[12] It appears that a similar practice and understanding is adopted by Martini Gunmakers Limited.

[13] Their letter of explanation, dated August 26 is to the following effect:

“Aug 26 2009

Hello Gary

We are sorry that you are experiencing problems with receiving the rifle from your Customs, due to the fact that the dies were not included in the pro forma. The reason for the exclusion was due to the fact that the dies were included in the package of building the rifle since the commercial market does not offer loaded ammunition at this time readily.

The reason that the postal declaration read “Sporting goods, is simply because they are classified as sporting goods first of all. Here sporting goods stores sell firearms in this country and in the USA and also due to the obvious fact that one does not want to advertise that the shipment holds a firearm. In North America, our customs officials would be highly satisfied that the contents are NOT advertised, in fact this is basically required when shipping any sort of firearm. I cannot understand why New Zealand customs officials would want everyone to know that there is a firearm inside a shipment. This would seem like a risk that is unnecessary since customs has an envelope attached to the outside for them, which clearly states what is inside, for their eyes only. Once again, the contents are sporting goods.

Regarding the value of the shipment being declared as \$1,000. On international shipments one cannot insure for more than this amount, therefore, as we have always been instructed by Canada Post, the value must meet the insured value on the outside of the declaration. Once again, there is no problem for customs to arrive at the proper amount since there is the Manila envelope on the outside of the box with all the correct amounts, which clearly state the value of this shipment.

The value of the reloading components, although included in the rifle build would total \$300 CAD.

Kind regards,

Amanda Martini”

[14] The above letter explains the reason for the attached postal declaration in the present case describing the rifle and die generically as “sporting goods”. It also indicates why the figure of 1000 Canadian dollars was inserted as the value as the “insured value” and, indeed, that is also apparent on the face of this declaration.

[15] When this package arrived in New Zealand, on 20 August, through the mail system it was, in the usual way, placed on a conveyor belt where physical screening is required by Customs officers. There is no electronic import entry as there would be if the rifle had come through importing agents.

[16] As the Customs Service processes approximately three million personal articles every month, Customs officers generally have only approximately three seconds to identify what the contents of a parcel are and, accordingly, the system they have chosen to adopt is to refer solely to the overseas postal declaration. As the very experienced Customs officer, Mr Clifford Russell, said:

“Customs officers monitoring the progress of goods through the conveyor belts do not have time to open any additional materials that may be provided in order to decide whether further investigations are required. They are reliant on the postal declaration in notifying them with as much specificity as possible whether the goods require further examination.”

[17] In the present case the box containing the firearm had the overseas postal declaration attached to it but immediately alongside a large bright orange envelope marked the words “CUSTOMS DOCUMENTS”. The system adopted by customs did not include automatically removing such parcels for further examination. However, they did do so in the present case.

[18] The concern of Customs is that with the generic description of “sporting goods” the parcel could have slipped through the system and been delivered to Mr Bevins. This is so only because customs have chosen to rely solely on the Postal Declaration even where a parcel clearly displays an envelope on the outside of the package marked “Customs Documents”

[19] However, sensibly, as one would expect, Customs Officer Paul Rourke, did open the envelope containing the “Customs documents” and found all the necessary documentary information, including an accurate description of the firearm and parts, an invoice indicating its true value, a valid copy of a New Zealand police permit to import the firearm, a Canadian export permit and a copy of the certificate of the manufacturers appointed verifier. Little wonder no argument is raised that Mr Bevins was trying to illegally import this firearm or produce any false information. The entire basis for Customs seizure is that the Canadian manufacturer chose to describe the rifle generically as “sporting goods” on the Postal Declaration and declared only an insured value of 1000 Canadian dollars whereas the sale price was 2000 Canadian dollars translating to 2,700 New Zealand dollars approximately.

Mr Bevins had no part in the completion of that overseas Postal Declaration other than to send a copy of the N.Z. Police Permit with the condition stamped on it.

[20] The argument is that, in terms of s 204(1)(c) of the Customs and Excise Act 1996 an offence has been committed. This provides

“Every person commits an offence who ...

(c) Produces or delivers to a Customs officer any document that is erroneous in any material particular.”

Subs 2

It is a defence to a prosecution for an offence against subs 1 of this section if the person proves that the person took all reasonable steps to ensure ...

(a) That the declaration statement or document, as the case may be, was not erroneous.”

[21] Mr Bevins has not been prosecuted but it would appear in any event, if an offence was committed, he could raise this defence.

[22] Initially, it appeared that Mr Bevin’s rifle had a reasonable chance of smooth passage through Customs. Custom’s officer, Paul Rourke’s letter of 20 August 2009 was to the following effect:

“20 August 2009

Gary Bevin

226 Akers Road

Linton RD 4

Palmerston North 4474

Dear Mr Bevin

A mail package addressed to you has been examined by New Zealand Customs officers operating at the Auckland International Mail Centre and was found to contain: One(1) Stiller Predator bolt action rifle.

The rifle is subject to restrictions under the Arms Act 1983 and Permit to Import under that Act needs to be submitted to Customs for endorsement. Please note that only the original copy of the Permit to Import under the Arms Act is acceptable. Facsimile copies are not acceptable.

Also included in the package was a Bench Rest Seater Die set, a product of Forster Products (USA). This product is not mentioned in the documentation provided by the supplier. Please supply an invoice and evidence of payment that covers both the rifle and die set, so that Customs Charges can be assessed.

You also need to note that there were discrepancies in the manner in which the goods were listed on a postal declaration affixed to the outside of the package. The goods are being detained pending the outcome of inquiries relating to the misdescription and undervaluation of the goods.

The permit should be posted with thirty days to C/- NZ Customs Service, Private Bag 92178, Auckland International Mail Centre.

Please advise this office immediately if you are not in possession of a Permit to Import from the Police.

Enquiries may be directed to the New Zealand Customs Service PKh.(09) 2567286 or by facsimile (09) 2567289 and quote reference number F 177 in all communications.

Yours sincerely

Paul Rourke

Senior Customs Officer

For Cumstoms Air Cargo Manager

Auckland Trade & Marine”

[23] Martini, the gunmaker’s reply of August 26’ which is set out above, appears to have satisfied the problem concerning the description of the Die set but the main thrust of the Custom’s argument, before the Court today, is that the postal declaration should have specifically stated that a rifle was contained in the package and should have given the true invoice value rather than the insurance value. In terms of s 226 of the Act, Customs argue that because of this “discrepancy” they had reasonable cause to suspect that the goods are forfeited because the postal declaration is a “document that is erroneous in any material particular”.

[24] In my judgment, in order to get to that point, they needed to reply upon the condition attached to the Police permit which is set out above. This is because the kind of particularity demanded by that condition, is not required by s 204(1)(c). The statute requires that the “document” not be “erroneous in any material particular.”

[25] In my judgment it is not erroneous to describe a rifle generically as “sporting goods” and nor is it “erroneous” to make it plain that the value declared is the “insured value”.

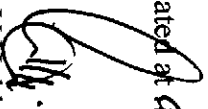
[26] The requirement of actually describing in detail the article quoted on any supported documentation or declaration including an “overseas personal declaration” arises only because of the condition on the police permit. In my judgment, Mr Taylor is right in placing some significance of the use of the word “or” rather than “and” in the police condition. This plainly allows, from the police point of view, what appears to be a sensible convention among arms importers that no external indication appears on a package that contains a firearm. It is a sufficient compliance with the condition if the necessary detail and particulars is clearly presented to Customs “on any supporting documentation”. In the present case all those accurate particulars were contained in the package marked “Customs documents”. In terms of the legislation, the particulars supplied on the postal declaration are not erroneous. I would agree however that without the “supporting documentation” in the envelope the detailed particularisation would need to appear on the “overseas postal declaration”.

[27] I accept Ms Paterson’s submission that an onus rests on the applicant to establish, on the balance of probabilities, that Customs had “no reasonable cause” for seizure or continued detention but I do not accept that it is open to Customs to demand full particularisation of the firearm on the overseas postal declaration when all that particularisation is, in fact, supplied in the accompanying enclosed envelope.

[28] Customs cannot unilaterally decide to restrict their viewing of a package to the postal declaration where the documents an importer clearly relied upon are openly declared in an attached, clearly marked, envelope. That system is sensibly adopted by arms importers for obvious reasons mentioned above. I find therefore that there were no grounds for seizure a reasonable ground to suspect that was the case.

[29] There will, accordingly, be an order pursuant to s 231 that the goods be returned to Mr Bevins. Any transport or storage costs should rest with the Crown but there is no basis for compensation. There will be an order, accordingly.

Dated at *Quekwan* this *18th* day of *Oct* 2010 at *10* am/pm



G V Hubble
District Court Judge