

CANADIAN ADMINISTRATIVE LAW – SAMPLE QUESTION AND ANSWER

Session: Substantive Constraints

Topic: Standard of Review – Correctness

Recommended time: 60 Minutes

Score: 60 Marks

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Facts

Sullivan Tiles Ltd is a major importer and distributor of tiles and wares in Canada. Last month, the company imported a large consignment of wares known as “porcelaineous stoneware”. For the purpose of assessing the tariffs payable on these items, the customs classified them as glazed wares under Item 197 of the Schedule to the Customs Tariff Act. The implication of this is that the consignment was subject to higher tariffs.

Sullivan Tiles Ltd is dissatisfied with this classification and appealed to the Canadian International Trade Tribunal (CITT). It argued that the term “porcelaineous” is merely a description of the type of ware and does not suggest that the wares are glazed; therefore, it should have been classified under Item 101. Sullivan believed that customs officials incorrectly classified the wares by failing to accept the meaning within the headings and subheadings under Item 101 of the Schedule to the Customs Tariff Act. The company argued further that the word porcelain merely means a white vitrified ceramic, and if it had been given this ordinary meaning, it would have been classified under Item 101 of the Schedule as ordinary wares to attract the usual lesser tariffs.

The CITT dismissed the company’s appeal, holding that customs correctly classified the wares as glazed within the meaning of the Customs Tariff Act. Sullivan Tiles Ltd has now appealed to the Federal Court of Appeal, pursuant to the following sections of the Customs Act:

Appeals and References

Appeal to the Canadian International Trade Tribunal

67 (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

- *Publication of notice of appeal*

(2) Before making a decision under this section, the Canadian International Trade Tribunal shall provide for a hearing and shall publish a notice thereof in the Canada Gazette at least twenty-one days prior to the day of the hearing, and any person who, on or before the day of the hearing, enters an appearance with the Canadian International Trade Tribunal may be heard on the appeal.

- *Judicial review*

(3) On an appeal under subsection (1), the Canadian International Trade Tribunal may make such order, finding or declaration as the nature of the matter may require, and an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 68

Appeal to Federal Court

68 (1) Any of the parties to an appeal under section 67, namely,

(a) the person who appealed,

(b) the President, or

(c) any person who entered an appearance in accordance with subsection 67(2),

may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.

Disposition of appeal

(2) The Federal Court of Appeal 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 Canadian International Trade Tribunal for re-hearing.

Questions:

1. Correctly identify what issue is before the Federal Court of Appeal.
2. What standard of review is applicable to the issue?