REGINA v. BEHM

Quebec Court of Appeal, Tremblay, C.J.Q., Casey, Hyde, Rinfret and Montgomery, JJ.A.   August 7, 1969.

Morris J. Fish, for accused, appellant.
Jacques A. Belisle, for the Crown, respondent.

TREMBLAY, C.J.Q. (translation) :—The question is whether the *Export and Import Permits Act,* 1953-54 (Can.), c. 27, by which the Governor in Council may "establish a list of goods, . . . including therein any article the export of which he deems it necessary to control for any of the . . . purposes" enumerated in the Act, authorizes him to include in this list "silver coins".

This is the charge which is being brought against Dennis H. Behm:

> Dennis H. BEHM of the City of Brooklyn of United States of America in the State of New York did, on or about the 8th JULY 1968 at Blackpool in the said District and Province, did without the authority in writing of The Minister, unlawfully and knowingly commit acts in Canada that caused or assisted or were intended to cause or assist a shipment of goods to wit: an amount of approximately $22,000.00 (twenty-two Thousand dollars) in Canadian $0.25 and $0.10 silver coins, which are included in the Export Control List and shown as Item No. 5666 thereon, to be made, from Canada to the United States of America, which Country is included in the area Control List, the whole contrary to Section 15 of the Export and Import Permits Act, 1953-54 c. 27 and amendments, thereby committing a criminal offence.

When he first appeared in Court, he elected trial before a Judge alone and entered a plea of guilty. The trial Judge fined him $5,000 or one year in gaol.

12—[1970] 5 C.C.C.

He maintains on appeal that the judgment entered against him

> is null and void in that it was made upon a plea of guilty to an information laid in virtue of Order-in-Council P.C. 1967-35 of January 12, 1967 (SOR/67-49), which is illegal, ultra vires and of no legal effect, since the Governor-in-Council lacked authority to pass it under the Export and Import Permits Act, S.C. 1953-54, c. 27 and its amendments.

Section 3 of the *Export and Import Permits Act* states as follows:

> 3. The Governor in Council may establish a list of goods, to be called an Export Control List, including therein any article the export of which he deems it necessary to control for any of the following purposes, namely,
>
> (a) to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination wherein their use might be detrimental to the security of Canada;
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> (b) to implement an intergovernmental arrangement or commitment; or
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> (c) to ensure that there is an adequate supply and distribution of such article in Canada for defence or other needs.

In the English text, the word "goods" corresponds to the word "marchandises" and the word "article" to the word "article".

The Act prohibits the export of articles included in the "export control list" without a permit issued by the Minister of Trade and Commerce and imposes sanctions for violations.

By virtue of the powers which this Act confers upon him, the Governor in Council established an export control list which he modified or replaced from time to time. On June 2, 1967, by Order in Council P.C. 1967-1122, SOR/67-288, the validity of which Behm challenges, there was added to the list the following item:

> 5666. Silver coin; silver, wrought or unwrought; silver alloys, wrought or unwrought; silver chemicals, salts and compounds; silver and silver alloy scrap. (*All destinations including the United States*).

Behm's first submission is that the Act authorizes control of the export of goods only and that coins are not goods.

In order to weigh this argument I must make ventures into considerations foreign to my field which may possibly be amusing to the professional economist. I make excuses for myself but I have no choice.