Date: 20080416

Docket: A-284-07

Citation: 2008 FCA 136

CORAM: **LÉTOURNEAU J.A.**
SHARLOW J.A.
TRUDEL J.A.

BETWEEN:

THE MINISTER OF TRANSPORT

Appellant

and

MACRO AUTO LEASING INC.

Respondent

Heard at Toronto, Ontario, on April 16, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on April 16, 2008.

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 16, 2008)

LÉTOURNEAU J.A.

[1] We have not been convinced that Simpson J. (judge) of the Federal Court committed an error which warrants our intervention in concluding that the material seized in a shipping container was not a vehicle within the meaning of section 2 of the *Motor Vehicle Safety Act*, S.C. 1993, c. 16 (Act). Vehicle is defined in section 2 as follows:

"vehicle" means any vehicle that is capable of being driven or drawn on roads by any	"véhicule" Véhicule automobile, ou faisant partie d'un attelage automobile, qui peut

means other than muscular power exclusively, but does not include any vehicle designed to run exclusively on rails.	circuler sur la route; la présente définition ne vise toutefois pas les véhicules qui circulent exclusivement sur rail.

[Emphasis added]

[2] By no stretch of the imagination can it be said under the present definition of vehicle that the body/chassis seized in this case, without the wheels, the tires, the wheel hub adaptors, the differential, the brakes, the rotors, the bearings, the electrical fittings, the steering shaft and column, the battery, the engine, the transmission, the clutch, the driving shaft, the ignition, the carburator, the water pump, the motor mounts, the alternator and the distributor, to name just a few of the missing components of what is to become a Shelby Cobra once assembled, is a vehicle within the meaning of the Act.

[3] While the body/chassis seized in this case at the time of importation had the potential for conversion into a vehicle, that conversion would not be possible within a relatively short period of time with relative ease: see *R. v. Hasselwander*, [1993] 2 S.C.R. 398, at paragraph 39.

[4] In her memorandum of fact and law and at the hearing, counsel for the appellant submitted that, in determining the meaning of "vehicle" in section 2 of the Act, the judge should have deferred to the expertise of the inspector who is a college educated automotive engineering technologist. The appellant's position in this respect is that, because of his education and experience, the inspector was in a better position than the judge to determine whether the seized item was a vehicle under the Act. We disagree. The determination of the meaning of "vehicle" involved a question of law

reviewable on a standard of correctness. Its application to the facts of this case raised a question of mixed fact and law.

[5] In our respectful view, the appellant misconstrued at law the term “vehicle”. Had he properly construed the term and applied it to the facts of this case, he would have come to the conclusion that the judge and this Court reach.

[6] Having said that, we do not endorse paragraph 40 of the judge’s reasons in which she appears to have redefined the term “vehicle”.

[7] We appreciate that the appellant, in adopting a very broad interpretation of the term “vehicle”, is attempting to fulfill his very important statutory mandate to ensure the safety of vehicles. However, his statutory powers cannot be used to give the statutory definition a meaning it cannot reasonably bear.

[8] The appeal will be dismissed with costs.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-284-07
STYLE OF CAUSE:	THE MINISTER OF TRANSPORT v. MACRO AUTO LEASING INC.
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 16, 2008
REASONS FOR JUDGMENT OF THE COURT BY:	LÉTOURNEAU J.A. SHARLOW J.A. TRUDEL J.A.
DELIVERED FROM THE BENCH BY:	LÉTOURNEAU J.A.

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