

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141020

Docket: A-9-14

Citation: 2014 FCA 234

**CORAM: DAWSON A/C.J.
SHARLOW J.A.
NEAR J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

And

MARIA K. STANFORD

Respondent

Heard at Winnipeg, Manitoba, on September 15, 2014.

Judgment delivered at Ottawa, Ontario, on October 20, 2014.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**SHARLOW J.A.
NEAR J.A.**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] On June 11, 2012, the Canadian Food Inspection Agency issued a notice of violation to the respondent, Ms. Stanford. The notice of violation asserted that Ms. Stanford possessed an animal she knew was imported illegally into Canada and imposed an administrative monetary penalty upon her in the amount of \$10,000.

[2] Ms. Stanford requested a review of the notice of violation by the Canada Agricultural Review Tribunal.

[3] The Review Tribunal found a legislative contradiction existed between section 15 of the *Health of Animals Act*, S.C. 1990, c. 21 and subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40. In consequence, the Review Tribunal declared that the notice of violation was “a nullity” (2013 CART 38). This is an application for judicial review of that decision.

[4] For the following reasons, I have concluded that the Review Tribunal erred in finding any legislative contradiction. It follows that I would allow the application for judicial review, set aside the decision of the Review Tribunal and remit the matter for redetermination by a differently constituted panel of the Review Tribunal in a manner consistent with these reasons.

I. Factual Background

[5] Because the merits of Ms. Stanford’s challenge to the notice of violation is to be redetermined by the Review Tribunal, I will provide a minimal review of the facts, setting out only those facts necessary to place the issues in their proper context. It follows that I express no opinion on the merits of Ms. Stanford’s challenge to the notice of violation.

[6] Ms. Stanford entered Canada from the United States with three race horses on May 3, 2012. While Ms. Stanford possessed certificates of health, endorsed by an official veterinarian of the United States with respect to two of the horses, the certificate that accompanied the third

horse was not so endorsed. It is alleged that, as a result of that conduct, she possessed an animal she knew was illegally imported into Canada, contrary to section 15 of the *Health of Animals Act*.

[7] By operation of subsection 7(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187, contravention of section 15 of the *Health of Animals Act* is a violation that may be proceeded with under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. A notice of violation was issued to Ms. Stanford under that Act which imposed an administrative monetary penalty upon her in the amount of \$10,000.

II. The Legislative Scheme

[8] For the reader's convenience, all legislative provisions referred to in these reasons are set out in the appendix to the reasons.

A. *Health of Animals Act*

[9] As this Court noted in *Canada (Border Services Agency) v. Castillo*, 2013 FCA 271, 455 N.R. 50, at paragraph 12, the *Health of Animals Act* operates to protect Canada from the introduction of foreign animal diseases by regulating the importation of any animal or other thing into Canada.

[10] To this end, section 14 of the *Health of Animals Act* allows the Minister of Agriculture and Agri-Food to make regulations prohibiting the importation of any animal or thing into Canada, and paragraph 64(1)(a) allows the Governor in Council to make regulations that, among other things, prohibit or regulate the importation of animals and things into Canada.

Subsection 15(1) prohibits, in relevant part, a person from possessing an animal the person knows was imported into Canada in contravention of the Act or its associated regulations.

Subsection 65(2) of the Act makes contravention of section 15 an offence punishable on summary conviction. Subsection 15(2) provides that in any prosecution under subsection 15(1), an accused who is found to have been in possession of an animal or thing that was imported in contravention of the Act or its associated regulations shall be considered, in the absence of evidence to the contrary, to have known that the animal or thing was so imported.

B. *Health of Animals Regulations, C.R.C, c. 296*

[11] Section 12 of the *Health of Animals Regulations* sets out the conditions that apply to the importation of “regulated animals”. The phrase “regulated animals” is defined to include horses.

[12] Of relevance to this case is paragraph 12(1)(b), which requires an importer to comply with subsections 12(2) through (6) and all applicable provisions of a document prepared by the Canadian Food Inspection Agency entitled “Import Reference Document”.

[13] On the facts of this case, the applicable provision of the regulations is subsection 12(4) which allows, in the circumstances of this case, the importation of an animal if there are

provisions in the Import Reference Document that relate to the importation of that species and those provisions are complied with.

[14] Article 3 of Part III of the Import Reference Document is relevant. In material part, the document allows the importation of a horse into Canada from the United States if the horse is accompanied by a certificate of an official veterinarian of the United States or a certificate of a veterinarian endorsed by an official veterinarian of the United States that clearly identifies the animal and states that certain enumerated criteria have been met. Nothing turns in this case on the substance of these criteria.

C. *Agriculture and Agri-Food Administrative Monetary Penalties Act*

[15] Section 3 of this Act sets out its purpose: to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts, which includes the *Health of Animals Act*.

[16] Subsection 4(1), among other things, allows the Minister to designate provisions of the *Health of Animals Act* and *Regulations*. A provision may be designated only if it constitutes offence under an agri-food Act. Contravention of any designated provision may be treated as a violation of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. A violation may give rise to a warning or a penalty (subsection 7(1)).

[17] The Minister is also permitted to make regulations respecting the criteria by which a penalty may be increased or reduced (paragraph 4(1)(e)). In making such a regulation the Minister is required to specify the extent to which intention or negligence is relevant (paragraph 4(3)(a)).

[18] Section 5 stipulates that the Minister must elect to proceed in respect of an act or omission as either a violation or an offence. Once made, the election may not be changed.

[19] Notices of violation are issued pursuant to section 7. Where a penalty is imposed, the affected person may request a review of the facts of the violation by either the Minister (paragraph 9(2)(b)) or the Review Tribunal (paragraph 9(2)(c)). After ministerial review, where a violation is maintained, the person affected may then request review of the Minister's decision by the Review Tribunal (subsection 13(2)).

[20] Subsection 14(1) of this Act details the authority of the Review Tribunal. With respect to a decision of the Minister made under section 13, the Review Tribunal shall, by order, confirm, vary or set aside any decision of the Minister (paragraph 14(1)(a)). Where recourse is taken directly to the Review Tribunal, it may determine whether the person committed a violation; if it is satisfied a violation occurred, it can correct the amount of the penalty imposed if the penalty was not established in accordance with the regulations (subsection 14(2)).

[21] The *Agriculture and Agri-Food Administrative Monetary Penalties Act* also contains several sections under the heading "Rules of Law about Violations". Section 17 confirms that a

violation is not an offence. Subsection 18(1) provides that a person named in a notice of violation does not have a defence based on due diligence or reasonable and honest belief. That said, subsection 18(2) provides that every common law rule or principle that renders any circumstance a justification or excuse in relation to a charge for an offence applies to a violation (to the extent the rule or principle is not inconsistent with the Act). Examples of applicable common law rules or principles would include intoxication, necessity, self-defence and *res judicata*.

[22] Finally, section 19 confirms that, on ministerial review or before the Review Tribunal, the Minister bears the onus of establishing, on a balance of probabilities, that the person named in the notice of violation committed the violation identified.

D. *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*

[23] Section 2 of these regulations states that contravention of a provision of the *Health of Animals Act* that is set out in column 1 of an item of Schedule I is a violation that may be proceeded with in accordance with the *Agriculture and Agri-Food Monetary Penalties Act*. Pursuant to item 10 of Schedule I to these regulations, contravention of section 15 of the *Health of Animals Act* is a violation which is classed as “very serious”.

[24] For completeness, I note that under subsection 5(3) of these regulations, the amount of the penalty imposed in respect of a “very serious” violation committed by a person in the course of a business, as alleged here, is \$10,000 (subject to adjustment in accordance with prescribed factors).

E. *Canada Agricultural Products Act, R.S.C. 1985, c. 20 (4th Supp.)*

[25] The Review Tribunal is established pursuant to the *Canada Agricultural Products Act*. Subsection 12(1) of that Act gives the Review Tribunal, among other things, sole, exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction by that Act and the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

III. The Decision of the Review Tribunal

[26] Having set out the legislative scheme in which the Review Tribunal is to operate, I turn to its decision.

[27] Early in its decision, the Review Tribunal stated that it did not consider it necessary to examine the evidence of either party or to consider the arguments based on such evidence because of the Review Tribunal's "view of the legitimacy of the proceedings *ab initio*" (reasons, at paragraph 4).

[28] The Review Tribunal then set out the elements of the violation that were to be established: that Ms. Stanford possessed an animal (in this case, a horse), that the horse was imported into Canada in contravention of the *Health of Animals Act* or *Regulations*, and that Ms. Stanford knew the animal was imported in contravention of the *Health of Animals Act* or *Regulations* (reasons, at paragraph 8).

[29] The Review Tribunal went on to accept that the requirements of the Import Reference Document must be met (reasons, at paragraphs 12 and 15). It further accepted that a horse entering Canada from the United States must be accompanied by a “certificate of an official veterinarian” of the United States in which certain particulars are provided. The Review Tribunal then stated “[t]o the extent that Ms. Stanford imported a horse without a completed certificate from a U.S. veterinarian, she may be viewed as having imported the horse without a permit, and could be subject to a Notice of Violation in relation to subsection 12(4) of the [Health of Animals] Regulations” (reasons, at paragraph 15).

[30] The ratio of the Review Tribunal’s decision followed shortly thereafter. The ratio is found at paragraphs 17 through 20 and 22 of the Review Tribunal’s reasons, where it wrote:

[17] The violations discussed in relation to the Import Reference Document and the HA Regulations do not incorporate knowledge, or *mens rea*, as a specific element. In the Tribunal’s view, it is legally impossible for an offence where *mens rea* is an explicit component, to be treated, in the alternative, as a violation, subject to an administrative monetary penalty.

[18] The Tribunal notes that in both the HA Act and the HA Regulations, of a total number of approximately 500 offences, contemporaneously framed as violations in the alternative, there is only one other section in which knowledge is a legislatively explicit component. That section, being section 12 of the HA Act, provides as follows:

12. No person shall throw or place in any body of water the carcass or any part of an animal that at the time of its death was to the person’s knowledge affected or contaminated by, or was exposed to, any disease or toxic substance, or that was destroyed because it was, or was suspected of being, affected or contaminated by a disease or toxic substance.

[19] In the Tribunal’s view, section 12 of the HA Act is similar in nature to section 15. Due to knowledge being a legislatively explicit component of the offence, it cannot legally be treated, in the alternative, as a violation.

[20] The Tribunal’s reasoning in relation to section 15 is based on considerations of statutory interpretation, as well as general considerations of

fairness to Ms. Stanford. Reference is made to the legislative purpose expressed in section 3 of the AMP Act:

3. The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

The question of concern to the Tribunal is as follows: How can it be considered fair to Ms. Stanford when the violation she is alleged to have committed involves knowledge as an essential component, yet she is legislatively prohibited from raising lack of knowledge as a defence?

[...]

[22] If the violation were to be upheld in the current case, Ms. Stanford would be unfairly subject to legislative contradictions. Ms. Stanford's primary defence to a Notice of Violation issued in relation to subsection 15(1) of the HA Act is that she did not know that the animal was imported contrary to the HA Act or the HA Regulations. At the same time, section 18 of the AMP Act does not permit such a defence to be recognized. It is the Tribunal's view that this contraction would appear to arise through legislative oversight, whereby it appears to have been assumed by legislative drafters that all offences under the HA Act and the HA Regulations were capable of being transformed into violations. In the Tribunal's view, there are two sections of the HA Act where this is not the case, one of which is the section that Ms. Stanford is alleged to have violated.

IV. The Issues

[31] Ms. Stanford did not enter an appearance when served with the notice of application and did not file a respondent's record. While she appeared at the hearing of this application, with leave of the Court, and made oral submissions, those submissions addressed only the merits of the alleged violation.

[32] The appellant Attorney General sets out three issues which he submits are raised on this application. They are:

1. Did the Tribunal exceed its jurisdiction, and thereby err in law, in declaring notice of violation No. 1213MB0003 to be a nullity?
2. Did the Tribunal err in law in determining that an offence under the *Health of Animals Act*, that requires proof of knowledge, cannot be treated by the Minister as a violation under the [*Agriculture and Agri-Food Administrative Monetary Penalties*] Act?
3. Did the Tribunal err in fact and law in misapprehending the nature of the defence raised by the respondent?

[33] In my view, the determinative issue in this application is the second issue which I would reframe as follows: Did the Review Tribunal err by concluding that section 15 of the *Health of Animals Act* cannot be treated as a violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*?

[34] During oral argument, counsel for the Attorney General conceded that, if this Court found that the Review Tribunal erred in its interpretation of the legislative scheme, it would be unnecessary to consider the remaining issues. I agree.

[35] With respect to the Attorney General's first issue, if the Review Tribunal erred in its finding of legislative inconsistency, there is no basis for declaring the notice of violation to be a nullity. Therefore, it is not necessary to consider if such a remedy could ever be appropriate and also consistent with this Court's decision in *Vorobyov v. Canada (Minister of Agriculture and Agri-Food)*, 2014 FCA 102, 459 N.R. 134.

[36] With respect to the Attorney General's third issue, because I have concluded that this matter should be remitted to the Review Tribunal for redetermination by a differently constituted

panel, it is neither necessary nor desirable to consider the third issue raised by the Attorney General.

V. Standard of Review

[37] The Attorney General submits that the applicable standard of review to be applied to the Review Tribunal's interpretation of the legislation is correctness. He bases his argument upon the prior jurisprudence of this Court where, in cases such as *Castillo*, this Court has found that correctness applies to questions of statutory interpretation decided by the Review Tribunal.

[38] More recently, in *Vorobyov*, at paragraph 12, this Court applied the correctness standard to questions of law decided by the Review Tribunal, including the question of whether it had authority to annul a notice of violation issued for importing meat products in violation of section 40 of the *Health of Animals Regulations*.

[39] In my view, nothing turns on the standard of review in this case. This is because assuming, without deciding, that the proper standard of review is reasonableness, the range of outcomes for the second issue is restricted to one of two possibilities under consideration: either section 15 of the *Health of Animals Act* can be treated as a violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* or it cannot. Applying the applicable tools of statutory interpretation to this issue, there is only one acceptable and defensible interpretation of the legislative scheme and the Review Tribunal must adopt it (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 at paragraph 38).

VI. Did the Review Tribunal err by concluding that section 15 of the *Health of Animals Act* cannot be treated as a violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*?

[40] I begin consideration of this issue by canvassing the applicable principles of statutory interpretation.

[41] The preferred approach to statutory interpretation has been expressed in the following terms by the Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 at paragraph 21:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See also: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paragraph 29.

[42] The Supreme Court restated this principle in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at paragraph 10:

It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole. [underlining added]

[43] This formulation of the proper approach to statutory interpretation was repeated in *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3 at paragraph 21, and *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 S.C.R. 306 at paragraph 27.

[44] Inherent in the contextual approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision to be interpreted “no matter how plain the disposition may seem upon initial reading” (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 at paragraph 48). From the text and this wider context, including the apparent purpose, the interpreting court aims to ascertain legislative intent, “[t]he most significant element of this analysis” (*R. v. Monney*, [1999] 1 S.C.R. 652, 1999 CanLII 678 at paragraph 26).

[45] As quoted above, the central conclusions of the Review Tribunal were that:

- i) The violations relating to the Import Reference Document and the *Health of Animals Regulations* do not incorporate knowledge as a specific element of the violation. It is legally impossible for an offence for which *mens rea* is an explicit component to be treated as a violation.
- ii) If the violation was upheld, Ms. Stanford would be subject to legislative contradictions in respect of the notice of violation issued under subsection 15(1) of the *Health of Animals Act*. She could not argue that she did not know that the animal was imported contrary to the *Health of Animals Act* or *Regulations*. This was because section 18 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* did not permit such a defence.

[46] In my respectful view, these conclusions are based upon an incorrect understanding of the text, context and purpose of the applicable legislative scheme. They also fail to give effect to the presumption of legislative coherence. As the majority of the Supreme Court observed in *Lévis (City) v. Fraternité des Policiers de Lévis Inc.*, 2007 SCC 14, [2007] 1 S.C.R. 591 at paragraph 47, legislative coherence is presumed and any interpretation which would result in conflict should be eschewed unless it is unavoidable. Unavoidable conflict exists where application of one statute explicitly or implicitly precludes application of the other.

[47] I now turn to the required textual analysis.

[48] In my respectful view, the Review Tribunal erred when it wrote, at paragraph 17, that it was legally impossible for a violation of the *Health of Animals Act*, for which *mens rea* is an express element, to be alternatively treated as a violation of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. There is no textual basis in either Act for such a conclusion.

[49] Here, the notice of violation alleged contravention of section 15 of the *Health of Animals Act*. Section 15 specifically features knowledge as an element: section 15 requires a person to possess an animal that the person knows was imported into Canada contrary to that Act.

[50] The thrust of the case against Ms. Stanford was that to be imported legally, the horse must have been imported in compliance with subsection 12(4) of the *Health of Animals Regulations*, which in turn required compliance with all of the provisions of the Import

Reference Document. This in turn required an official U.S. veterinarian to sign or endorse a health certificate certifying a number of things. It was alleged that Ms. Stanford knew the health certificate of one horse was not so certified or endorsed. Knowledge, or *mens rea*, was therefore an essential element of the violation.

[51] It was also an error for the Review Tribunal to state that section 18 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* did not permit the defence of lack of knowledge to be raised in the context of an alleged contravention of section 15 of the *Health of Animals Act*. This overlooks that in order to find that Ms. Stanford committed the violation, the plain text of section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* required the Minister to establish, on a balance of probabilities, that she committed the violation. As explained above, a key element to be established by the Minister under section 15 of the *Health of Animals Act* was that Ms. Stanford knew that one horse was imported in contravention of that Act. The specific requirement of section 19 would prevail over the more general provision found in subsection 18(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

[52] It follows, in my view, that a proper reading of the text of the relevant provisions does not support the existence of any legislative inconsistency.

[53] I now turn to consideration of the context.

[54] In my view, the most important contextual factor is the plain wording of subsection 4(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. In subsection 4(1), no limit is placed upon the ability of the Minister to designate “any specified provision” of, among other legislation, *the Health of Animals Act* and *Regulations* as being a provision that, if contravened, is a violation.

[55] Further, Parliament expressly contemplated that violations can involve an element of intent. Thus, pursuant to paragraphs 4(1)(d) and subsection 4(3) of the *Agriculture and Agri-Food Administrative of Monetary Penalties Act*, the Minister can regulate the extent to which intent aggravates or mitigates a violation so as to increase or decrease the applicable penalty.

[56] These contextual factors negate the existence of any legislative inconsistency.

[57] I now turn to consideration of legislative purpose.

[58] As noted above, the purpose of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* is to establish an alternative to prosecution of offences and to supplement the existing enforcement measures by introducing an efficient administrative monetary penalty regime. It follows that Parliament intended the monetary penalty scheme to operate in parallel to the regulatory offence regime. This is reflected in provisions such as section 5 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which allows the Minister to elect whether to sanction any act or omission by way of a charge or by imposition of a penalty.

[59] The administrative monetary penalty mechanism allows for the imposition of harsh sanctions in circumstances where a case need only be established on a balance of probabilities and due diligence and other defences are not available. By enacting such a parallel mechanism, Parliament created a powerful incentive to comply with Agriculture and Agri-Food laws. This in turn serves to protect Canada from the introduction of foreign animal diseases.

[60] This important purpose is furthered by interpreting the legislative scheme such that a violation of section 15 of the *Health of Animals Act* can be treated as a violation under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

VII. Conclusion

[61] Having conducted the required textual, contextual and purposive analysis, I am satisfied the Review Tribunal's interpretation of the legislation was both incorrect and unreasonable. Any measure of ambiguity in the text of the legislation is resolved by consideration of its context and purpose.

[62] For these reasons, I would allow the application for judicial review, set aside the decision of the Review Tribunal and remit the matter to the Review Tribunal for redetermination by a differently constituted panel in a manner consistent with these reasons.

“Eleanor R. Dawson”

J.A.

“I agree.

K. Sharlow J.A.”

“I agree.

D. G. Near J.A.”

APPENDIX

Sections 14, 15, paragraph 64(1)(a) and subsection 65(2) of the *Health of Animals Act*

read as follows:

14. The Minister may make regulations prohibiting the importation of any animal or other thing into Canada, any part of Canada or any Canadian port, either generally or from any place named in the regulations, for such period as the Minister considers necessary for the purpose of preventing a disease or toxic substance from being introduced into or spread within Canada.

15. (1) No person shall possess or dispose of an animal or thing that the person knows was imported in contravention of this Act or the regulations.

(2) In any prosecution for an offence under subsection (1), an accused who is found to have been in possession of an animal or thing that was imported in contravention of this Act or the regulations shall be considered, in the absence of evidence to the contrary, to have known that the thing was so imported.

[...]

64. (1) The Governor in Council may make regulations for the purpose of protecting human and animal health through the control or elimination of diseases and toxic substances and generally for carrying out the

14. Le ministre peut, par règlement, interdire l'importation d'animaux ou de choses soit sur tout ou partie du territoire canadien, soit à certains points d'entrée seulement; l'interdiction, qui peut être générale ou viser uniquement des provenances précises, est en vigueur le temps qu'il juge nécessaire pour prévenir l'introduction ou la propagation au Canada d'une maladie ou d'une substance toxique.

15. (1) Il est interdit de prendre toute mesure de disposition — notamment de destruction — à l'égard d'un animal ou d'une chose qu'on sait importés en contravention avec la présente loi ou les règlements ou de les avoir en sa possession.

(2) Dans les poursuites pour infraction au paragraphe (1), l'accusé qui était en possession d'un tel animal ou d'une telle chose est réputé, sauf preuve contraire, savoir qu'ils ont été illégalement importés.

[. . .]

64. (1) Le gouverneur en conseil peut, par règlement, prendre des mesures visant à protéger la santé des personnes et des animaux par la lutte contre les maladies et les substances toxiques ou leur élimination, ainsi que

purposes and provisions of this Act, including regulations

(a) prohibiting or regulating the importation, exportation and possession of animals and things in order to prevent the introduction of any vector, disease or toxic substance into Canada or into another country from Canada;

[...]

65. (2) Every person who contravenes section 15 is guilty of an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars.

toute autre mesure d'application de la présente loi et, notamment :

a) régir ou interdire l'importation, l'exportation ou la possession d'animaux ou de choses, afin d'empêcher l'introduction de vecteurs, de maladies ou de substances toxiques soit au Canada, soit dans tout autre pays en provenance du Canada;

[...]

65. (2) Quiconque contrevient à l'article 15 commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de cinquante mille dollars.

Sections 12 and 40 of the *Health of Animals Regulations* read as follows:

12. (1) Subject to section 51, no person shall import a regulated animal except

(a) in accordance with a permit issued by the Minister under section 160; or

(b) in accordance with subsections (2) to (6) and all applicable provisions of the import reference document.

(2) A regulated animal may be imported without a permit from an area that is an equivalent risk area for an animal of that species if it is accompanied by a certificate of an official veterinarian from that area that

(a) clearly identifies the animal and its area of origin; and

(b) verifies that a veterinarian inspected the animal within five days

12. (1) Sous réserve de l'article 51, il est interdit d'importer un animal réglementé, sauf en conformité avec :

a) soit un permis délivré par le ministre en vertu de l'article 160;

b) soit les paragraphes (2) à (6) et les dispositions applicables énoncées dans le document de référence.

(2) Un animal réglementé peut être importé sans permis d'une région à risque équivalent pour son espèce s'il est accompagné d'un certificat, délivré par un vétérinaire officiel de cette région, qui :

a) d'une part, identifie clairement l'animal et sa région d'origine;

b) d'autre part, atteste qu'un vétérinaire l'a inspecté dans les cinq

before it was exported to Canada and found it to be clinically healthy and fit to travel without undue suffering.

jours précédant son exportation au Canada et l'a trouvé cliniquement sain et apte à voyager sans souffrance indue.

(3) A regulated animal may be imported without a permit from an area that is a low risk area for an animal of that species if the person importing the animal meets any applicable post-entry conditions set out in the import reference document and the animal is accompanied by a certificate of an official veterinarian from that area that

(3) Un animal réglementé peut être importé sans permis d'une région à faible risque pour son espèce si l'importateur satisfait à toutes les conditions d'importation applicables après l'entrée de l'animal au Canada énoncées dans le document de référence, et si l'animal est accompagné d'un certificat, délivré par un vétérinaire officiel de cette région, qui :

(a) clearly identifies the animal and its area of origin; and

a) d'une part, identifie clairement l'animal et sa région d'origine;

(b) shows that the animal conforms with all applicable conditions, other than post-entry conditions, that are set out in the import reference document.

b) d'autre part, atteste qu'il satisfait à toutes les conditions d'importation, autres que celles applicables après son entrée au Canada, énoncées dans le document de référence.

(4) A regulated animal may be imported without a permit from an area that is an undesignated area for an animal of that species if there are provisions in the import reference document that relate to the importation of that species and those provisions are complied with.

(4) Un animal réglementé peut être importé sans permis d'une région non désignée pour son espèce si le document de référence comporte des dispositions sur l'importation de cette espèce et si ces dispositions sont observées.

(5) A regulated animal that is imported for slaughter or for confinement in a restricted premises, such as a zoo or laboratory facility, may be imported without a permit if all applicable provisions of the import reference document are complied with and the following conditions are met:

(5) L'animal réglementé destiné à être abattu ou à être confiné dans un établissement tel un zoo ou un laboratoire peut être importé sans permis si l'importateur observe toutes les dispositions applicables énoncées dans le document de référence et si les conditions suivantes sont réunies :

(a) the animal is to be transported directly from its port of entry to its

a) l'animal est transporté directement du point d'entrée à sa destination en

destination in accordance with a licence that has been issued by the Minister under section 160;

conformité avec une licence délivrée par le ministre en vertu de l'article 160;

(b) the animal is being transported by means of a conveyance that has had all exits by which the animal could leave the conveyance sealed by an official of the government of the country from which it is imported; and

b) il est transporté dans un véhicule dont toutes les issues d'où il peut s'échapper ont été scellées par un fonctionnaire du pays exportateur;

(c) the animal will not come into contact with the national herd in Canada.

c) il n'aura aucun contact avec le cheptel national.

(6) A regulated animal, other than a porcine, may be imported without a permit if it is transported directly between Rainy River, Ontario and Sprague, Manitoba via the state of Minnesota by means of a conveyance that has had all exits by which the animal could leave the conveyance sealed by an official of the government of Canada or of the United States.

(6) Un animal réglementé, autre qu'un porc, peut être importé sans permis s'il est transporté directement de Rainy River (Ontario) à Sprague (Manitoba) via l'État du Minnesota, dans un véhicule dont toutes les issues d'où il pourrait s'échapper ont été scellées par un fonctionnaire du gouvernement du Canada ou des États-Unis.

[...]

[. . .]

40. No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

40. Il est interdit d'importer un sous-produit animal, du fumier ou une chose contenant un sous-produit animal ou du fumier, sauf en conformité avec la présente partie.

Section 3, paragraphs 4(1)(d) and (e), paragraph 4(3)(a), section 5, paragraphs 7(1)(a) to (c), paragraphs 9(2)(b) and (c), subsections 13(1) and (2), subsections 14(1) and (2), section 17, subsections 18(1) and (2) and section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* read as follows:

3. The purpose of this Act is to

3. La présente loi a pour objet

establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

4. (1) The Minister may make regulations

[...]

(d) respecting the circumstances under which, the criteria by which and the manner in which a penalty may be increased or reduced, including the reduction of a penalty pursuant to a compliance agreement under subsection 10(1);

(e) respecting the determination of a lesser amount that may be paid in complete satisfaction of a penalty if paid within the prescribed time and manner;

[...]

(3) Without restricting the generality of paragraph (1)(d), in making regulations respecting the criteria for increasing or reducing the amount of the penalty for a violation, the Minister shall include the following in any such criteria:

(a) the degree of intention or negligence on the part of the person who committed the violation;

[...]

5. Where any act or omission can be proceeded with as a violation or as an offence, the Minister may commence

d'établir, comme solution de rechange au régime pénal et complément aux autres mesures d'application des lois agroalimentaires déjà en vigueur, un régime juste et efficace de sanctions administratives pécuniaires.

4. (1) Le ministre peut, par règlement :

[. . .]

d) prévoir les critères de majoration ou de minoration — notamment pour les transactions — de ce montant, ainsi que les modalités de cette opération;

e) régir la détermination d'un montant inférieur à la sanction infligée dont le paiement, dans le délai et selon les modalités réglementaires, vaut règlement;

[. . .]

(3) Figurent parmi les critères prévus par le ministre au titre de l'alinéa (1)d) notamment :

a) la nature de l'intention ou de la négligence du contrevenant;

[. . .]

5. Tout acte ou omission qualifiable à la fois de violation et d'infraction peut être réprimé soit comme violation par

proceedings in respect of that act or omission as a violation or recommend that it be proceeded with as an offence, but proceeding with it as a violation precludes proceeding with it as an offence, and proceeding with it as an offence precludes proceeding with it as a violation.

[...]

7. (1) Every person who

(a) contravenes any provision of an agri-food Act or of a regulation made under an agri-food Act,

(b) contravenes any order made by the Minister under the Plant Protection Act, or

(c) refuses or neglects to perform any duty imposed by or under the Plant Protection Act or the Health of Animals Act

the contravention of which, or the refusal or neglect of which, is designated to be a violation by a regulation made under paragraph 4(1)(a) commits a violation and is liable to a warning or to a penalty in accordance with this Act.

[...]

9. (2) Instead of paying the penalty set out in a notice of violation or, where applicable, the lesser amount that may be paid in lieu of the penalty, the person named in the notice may, in the prescribed time and manner,

le ministre, soit, sur sa recommandation, comme infraction, les poursuites pour violation et celles pour infraction s'excluant toutefois mutuellement.

[...]

7. (1) Toute contravention désignée au titre de l'alinéa 4(1)a) constitue une violation pour laquelle le contrevenant s'expose à l'avertissement ou à la sanction prévus par la présente loi.

[...]

9. (2) À défaut d'effectuer le paiement, le contrevenant peut, dans le délai et selon les modalités réglementaires :

[...]

(b) request a review by the Minister of the facts of the violation; or

(c) request a review by the Tribunal of the facts of the violation.

[...]

13. (1) After concluding a review requested under paragraph 9(2)(b), the Minister shall determine whether or not the person requesting the review committed a violation and, where the Minister decides that the person committed a violation but considers that the amount of the penalty for the violation was not established in accordance with the regulations, the Minister shall correct the amount of the penalty for the violation, and the Minister shall cause a notice of any decision under this subsection to be served on the person who requested the review.

(2) Where the Minister decides under subsection (1) that a person has committed a violation, the person may, in the prescribed time and manner,

(a) pay the amount of the penalty set out in the notice referred to in subsection (1), in which case

(i) the Minister shall accept the amount as and in complete satisfaction of the penalty, and

(ii) the proceedings commenced in respect of the violation under section 7 are ended; or

[...]

b) contester auprès du ministre les faits reprochés;

c) demander à la Commission de l'entendre sur les faits reprochés.

[...]

13. (1) Saisi d'une contestation au titre de l'alinéa 9(2)b), le ministre détermine la responsabilité du contrevenant et lui fait notifier sa décision. S'il juge que le montant de la sanction n'a pas été établi en application des règlements, il y substitue le montant qu'il estime conforme.

(2) Le contrevenant peut, dans le délai et selon les modalités réglementaires, soit payer le montant mentionné — paiement que le ministre accepte en règlement et qui met fin à la poursuite —, soit demander à la Commission de l'entendre sur la décision du ministre.

(b) request a review of the Minister's decision by the Tribunal.

14. (1) After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be,

14. (1) Saisie d'une affaire au titre de la présente loi, la Commission, par ordonnance et selon le cas, soit confirme, modifie ou annule la décision du ministre, soit détermine la responsabilité du contrevenant; en outre, si elle estime que le montant de la sanction n'a pas été établi en application des règlements, elle y substitue le montant qu'elle juge conforme. Elle fait notifier l'ordonnance à l'intéressé et au ministre.

(a) confirm, vary or set aside any decision of the Minister under section 12 or 13, or

(b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty,

and the Tribunal shall cause a notice of any order made under this subsection to be served on the person who requested the review, and on the Minister.

(2) Where the Tribunal decides under subsection (1) that a person has committed a violation, the person is liable for the amount of the penalty as set out in the order of the Tribunal and, on the payment of that amount in the time and manner specified in the

(2) Le paiement du montant conformément à l'ordonnance, que le ministre accepte en règlement, met fin à la poursuite.

order,

(a) the Minister shall accept the amount as and in complete satisfaction of the penalty; and

(b) the proceedings commenced in respect of the violation under section 7 are ended.

[...]

17. For greater certainty, a violation is not an offence and, accordingly, section 126 of the *Criminal Code* does not apply.

18. (1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

19. In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of

[...]

17. Les violations n'ont pas valeur d'infractions; en conséquence nul ne peut être poursuivi à ce titre sur le fondement de l'article 126 du *Code criminel*.

18. (1) Le contrevenant ne peut invoquer en défense le fait qu'il a pris les mesures nécessaires pour empêcher la violation ou qu'il croyait raisonnablement et en toute honnêteté à l'existence de faits qui, avérés, l'exonéreraient.

(2) Les règles et principes de la common law qui font d'une circonstance une justification ou une excuse dans le cadre d'une poursuite pour infraction à une loi agroalimentaire s'appliquent à l'égard d'une violation sauf dans la mesure où ils sont incompatibles avec la présente loi.

19. En cas de contestation devant le ministre ou de révision par la Commission, portant sur les faits, il appartient au ministre d'établir, selon la prépondérance des probabilités, la

violation committed the violation
identified in the notice.

responsabilité du contrevenant.

Section 2 and subsection 5(3) of the Agriculture and Agri-Food Administrative Monetary

Penalties Regulations read as follows:

2. The contravention of a provision of the Health of Animals Act or the Plant Protection Act or of a regulation made under these Acts, or the contravention of an order — or class of orders — made by the Minister under the Plant Protection Act, or the refusal or neglect to perform any specified duty — or class of duties — imposed by or under the Health of Animals Act or the Plant Protection Act that is set out in column 1 of an item of Schedule 1, is a violation that may be proceeded with in accordance with the Act.

2. L'infraction à une disposition de la Loi sur la santé des animaux, de la Loi sur la protection des végétaux ou de leurs règlements, à tout arrêté ou toute catégorie d'arrêtés pris par le ministre au titre de la Loi sur la protection des végétaux, ou à toute obligation ou catégorie d'obligations — par refus ou omission de l'accomplir — découlant de la Loi sur la santé des animaux ou de la Loi sur la protection des végétaux, qui figure à la colonne 1 de l'annexe 1, est une violation punissable au titre de la Loi.

[...]

[. . .]

5. (3) The amount of the penalty in respect of a violation that is committed by a person in the course of business or in order to obtain a financial benefit is \$6,000 for a serious violation and \$10,000 for a very serious violation, with adjustments, if any, determined for each total gravity value, as established in accordance with section 6, that is set out in column 1 of Schedule 2 in accordance with the calculation set out in column 2.

5. (3) Le montant de la sanction applicable à une violation commise par une personne dans le cadre d'une entreprise ou à des fins lucratives est de 6 000 \$, dans le cas d'une violation grave, et de 10 000 \$, dans le cas d'une violation très grave. Ce montant peut être rajusté, selon le calcul prévu à la colonne 2 de l'annexe 2 et en fonction de la cote de gravité globale figurant à la colonne 1, laquelle est établie conformément à l'article 6.

Subsection 12(1) of the Canada Agricultural Products Act reads as follows:

12. (1) The Board has sole and exclusive jurisdiction to hear and determine all questions of fact or law

12. (1) Le Conseil a compétence exclusive pour les litiges visés à l'article 9 et la Commission a

in relation to any matter over which the Board is given jurisdiction by section 9, and the Tribunal has sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which the Tribunal is given jurisdiction by this Act and the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

compétence exclusive pour les affaires visées par la présente loi et la Loi sur les sanctions administratives pécuniaires en matière d'agriculture et d'agroalimentaire.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STANFORD

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CONCURRED IN BY: SHARLOW J.A.
NEAR J.A.

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