Federal Court of Appeal Cour d'appel fédérale

Date: 20230629

Docket: A-241-22

Citation: 2023 FCA 152

CORAM: **WOODS J.A.**
LASKIN J.A.
RIVOALEN J.A.

BETWEEN:

PRAIRIE PRIDE NATURAL FOODS LTD.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Saskatoon, Saskatchewan, on March 27, 2023.

Judgment delivered at Ottawa, Ontario, on June 29, 2023.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: LASKIN J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

WOODS J.A.

I. Introduction

[1] Prairie Pride Natural Foods Ltd. has filed an application for judicial review of a decision of the Canada Agricultural Review Tribunal (Tribunal) cited as 2022 CART 21 (Decision).

[2] Prairie Pride operates a poultry processing business based in Saskatchewan. On April 10, 2022, the corporation was served with a notice of violation pursuant to s. 9(2)(*c*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 (Act). The notice alleges that the applicant transported chickens in a truck with defective tarps and inadequate ventilation. The violation was described as "very serious" and a penalty in the amount of $15,000 was imposed.

[3] On May 9, 2022, Prairie Pride requested a review of the violation by the Tribunal. On July 8, 2022, the Tribunal determined that the request was inadmissible because it had not been made in the time and manner prescribed.

[4] On August 8, 2022, Prairie Pride filed this application for judicial review, which seeks to have the Decision quashed or set aside.

[5] Prairie Pride's submissions focus on the merits of the Decision and whether the hearing provided procedural fairness. With respect to the merits, Prairie Pride submits that the Tribunal was wrong to conclude that the request for review was not properly made. With respect to procedural fairness, Prairie Pride submits that its rights to procedural fairness were breached because the Tribunal did not provide it with an opportunity to be heard.

[6] For the reasons that follow, I would allow the application based on the merits of the Decision. It is not necessary to discuss whether there has been a breach of procedural fairness.

II. Did the Tribunal reasonably find that the request for review was not properly made?

A. *Background*

[7] Prairie Pride sent the request for review to the Tribunal by email on May 9, 2022. This was followed up by sending a copy by registered mail on May 18, 2022. The copy was received on May 24, 2022.

[8] The Tribunal determined that the request for review was not made in the time prescribed because the copy was sent late. It was required to be sent by May 12, 2022 and it was actually sent on May 18, 2022.

B. *Statutory framework*

[9] A person who is served with a notice of violation under the Act is entitled to request a review in the time and manner prescribed. The relevant provision is paragraph 9(2)(*c*) of the 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,	**9(2)** À défaut d’effectuer le paiement, le contrevenant peut, dans le délai et selon les modalités réglementaires:
…	…
(*c*) request a review by the Tribunal of the facts of the violation.	***c*)** demander à la Commission de l’entendre sur les faits reprochés.

[10] The prescribed time and manner to request a review is set out in regulations promulgated by the Minister of Agriculture and Agri-Food pursuant to subsection 4(1) of the Act. The pertinent regulations are contained in subsections 11(2), 14(1) and 14(3) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, S.O.R./2000-187, as amended (Regulations). These are reproduced below.

11(2) Where a person named in a notice of violation that contains a penalty requests, pursuant to subsection 9(2) of the Act, a review of the facts of the violation by the Minister or the Tribunal or, if the penalty is $2,000 or more, to enter into a compliance agreement with the Minister, the request shall be made in writing within 30 days after the day on which the notice is served.	**11(2)** Lorsque, en vertu du paragraphe 9(2) de la Loi, la personne nommée dans un procès-verbal qui comporte une sanction conteste les faits reprochés auprès du ministre ou demande à la Commission de l'entendre sur ces faits ou, si la sanction est de plus de 2 000 $, demande au ministre de transiger, elle le fait par écrit dans les 30 jours suivant la date de notification du procès-verbal.
…	…
14(1) A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier or fax or other electronic means to a person and place authorized by the Minister.	**14(1)** Une personne peut présenter une demande prévue aux articles 11, 12 ou 13 en la livrant en mains propres ou en l'envoyant par courrier recommandé ou par messagerie, ou par télécopieur ou autre moyen électronique, à une personne et à un lieu autorisés par le ministre.
…	…
14(3) If a request is sent by fax or other electronic means, a copy of the request shall be sent either by courier or registered mail within 48 hours after the time limit for making the request.	**14(3)** La transmission de la demande par télécopieur ou autre moyen électronique doit être suivie de l'envoi d'une copie de cette demande par messagerie ou par courrier recommandé au plus tard quarante-huit heures après la date limite pour sa présentation.

[11] The *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)*, S.O.R./2015-103 provide that the Tribunal is required make a decision on the admissibility of a request for review within 60 days and send the decision to the parties in writing. Rule 32(1) is set out below.

32(1) The Tribunal must make a decision on the admissibility of a request for review within 60 days after the day on which the acknowledgement of receipt of the request is sent to the parties, and send that decision to the parties in writing without delay.	**32(1)** La Commission statue sur l'admissibilité de la demande dans les soixante jours suivant l'envoi de l'accusé de réception aux parties, puis transmet sa décision aux parties par écrit sans délai.

C. *Analysis*

[12] In considering the Decision, the Court must apply the deferential standard of review of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 17 (*Vavilov*)). This requires that the Court "consider the outcome … in light of [the] underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para. 15).

[13] The issue, then, is whether the Tribunal reasonably found that the request for review was inadmissible because the follow-up copy of the request was out of time. The Tribunal was correct that a copy of the request was sent late. However, a question remains: Is sending the copy necessary to have a valid request for review?

[14] The Tribunal determined that the request for review was invalid because the prescribed deadlines are strict (Decision at paras. 4, 15, 16). This conclusion was based on two decisions of

this Court: *Clare v. Canada (Attorney General)*, 2013 FCA 265, 451 N.R. 349 at para. 24 (*Clare*); and *Hershkovitz v. Canada (Attorney General)*, 2021 FCA 38, 328 A.C.W.S. (3d) 431 (*Hershkovitz*).

[15] I have a concern with relying on these decisions because neither *Hershkovitz* nor *Clare* deals with the requirement to send a follow-up copy of a request for review.

[16] The *Hershkovitz* decision concerns an entirely different statutory requirement, which has no similarity to the requirement at issue.

[17] *Clare* deals with the deadline for sending the original request for review. This Court concluded in *Clare* that a request for review is invalid if it is not made within the time prescribed.

[18] The relevant statutory language for sending the original request is materially different from the language for sending a follow-up copy. These differences were not discussed by the Tribunal. Further, the Tribunal did not discuss the statutory language in subsection 14(3) at all. The question is whether the Decision of the Tribunal is reasonable in spite of this.

[19] *Vavilov* provides useful guidance on the reasonableness standard of review in circumstances such as this, at paragraph 122:

> [122] It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context,

> it is not likely to undermine the decision as a whole. It is well established that decision makers are not required "to explicitly address all possible shades of meaning" of a given provision*: Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker. (Emphasis added)

[20] The emphasized passage from *Vavilov* above instructs that, if the Tribunal failed to consider a key element of the text, context or purpose of a statutory provision, and it is clear that the Tribunal may have arrived at a different conclusion if it had done so, the failure to do so is unreasonable.

[21] This instruction is apt in this case. Here, the Tribunal did not consider the text, context or purpose of subsection 14(3). In my view, if the Tribunal had done so, it is clear that it may have come to a different conclusion on the admissibility of the request. Below I discuss the text and context of subsection 14(3), and then the purpose of the provision.

[22] Paragraph 9(2)(*c*) of the Act provides that a person is entitled to request a review by the Tribunal "in the prescribed time and manner". The time and manner are set out in the Regulations. Subsections 11(2) and 14(1) of the Regulations explicitly provide a prescribed time and manner to make a request for review.

[23] The time requirement is set out in subsection 11(2) of the Regulations. It provides that "the request shall be made … within 30 days after the day on which the notice is served" (Emphasis added).

[24] The manner of making the request is set out in subsections 11(2) and 14(1) of the Regulations. Subsection 11(2) provides that the request must be "made in writing". Subsection 14(1) provides that a "person may make a request … by delivering it by hand or by sending it by registered mail, courier or fax or other electronic means …". (Emphasis added.)

[25] Unlike these Regulations, subsection 14(3) does not explicitly link the requirement to send a copy with the manner to make a valid request for review. Subsection 14(3) provides that if a request is made by electronic means, a copy of the request is required to be sent by courier or registered mail. Although the text states that sending the copy is mandatory, it does not state that the copy is a requirement to make the request.

[26] One thing that might be said in favour of the Tribunal's interpretation is that subsections 14(3) and 14(1) are both located in section 14. On the other hand, the language in subsection 14(3) itself distinguishes between the manner of making the request (electronic means) and the requirement to send a copy. Accordingly, the language in subsection 14(3) seems to imply that the copy is not a requirement of making the request.

[27] A further difficulty with the Tribunal's interpretation of subsection 14(3) is that it results in an inconsistency as to the deadline for making the request. As noted above, subsection 11(2)

provides a deadline for making the request of 30 days after the date of service of the notice of violation. The deadline for the copy is "48 hours after the time limit for making the request." Clearly, the deadline for sending the copy in subsection 14(3) extends beyond the deadline for making the request in subsection 11(2). Accordingly, the Tribunal's determination that sending a follow-up copy is a requirement to make the request produces an internal inconsistency in the deadline for making a request for review.

[28] With respect to the purpose of subsection 14(3), I have reviewed the Regulatory Impact Analysis Statements (RIAS) concerning the relevant provision, in its current and earlier versions. The original version of subsection 14(3) had no fixed deadline and the RIAS did not discuss the purpose of the provision. Subsection 14(3) was amended in 2016 to provide for a fixed deadline. The relevant RIAS related to a number of amendments, including subsection 14(3), that were made to improve clarity and consistency of the Regulations. Subsection 14(3) was amended again in 2020 with the effect of slightly extending the deadline. The RIAS for this amendment stated that it was for clarity and consistency.

[29] Since the RIAS for the original version does not state the purpose of subsection 14(3), the RIAS' as a whole may not provide much assistance in determining the purpose of the provision.

[30] I conclude that these considerations concerning the text, context and purpose of subsection 14(3) may impact the Decision and that if they had been considered by the Tribunal, it may have reached a different result. Accordingly, in accordance with the teaching in *Vavilov*,

the Decision is unreasonable insofar as the Tribunal failed to take these considerations into account.

[31] This is sufficient to dispose of the judicial review application and it is not necessary to consider Prairie Pride's other submissions.

[32] I would allow the application for judicial review with costs, set aside the decision of the Tribunal, and refer the matter back to the Tribunal for reconsideration.

"Judith Woods"
J.A.

"I agree.
J.B. Laskin J.A."

"I agree.
Marianne Rivoalen J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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