Federal Court  Cour fédérale

Date: 20091030

Docket: T-1290-07

Citation: 2009 FC 1113

Ottawa, Ontario, October 30, 2009

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ROBERT VOSTERS

Applicant

and

ATTORNEY GENERAL OF CANADA
ON BEHALF OF AGRICULTURE
& AGRI-FOOD CANADA and
THE CANADIAN AGRICULTURE INCOME
STABILIZATION (CAIS) ADMINISTRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] On this application Robert Vosters challenges a decision by the Minister of Agriculture & Agri-Food Canada (Minister) to implement a commodity valuation method which excluded breeding livestock under a 2006 agricultural income stabilization program known as the CAIS Inventory Transition Initiative (CITI). Mr. Vosters asserts that this decision contravenes the *Farm Income Protection Act*, S.C. 1991, c. 22 (FIPA), the Federal-Provincial-Territorial Framework Agreement on Agricultural and Agri-Food Policy, various provisions of the *Income Tax Act*, R.S.C.

1985, c. 1 (5th Supp.) (ITA) and s. 15 of the *Canadian Charter of Rights and Freedoms,* 1982, R.S.C. 1985, App. II, No. 44, Schedule B (Charter). Mr. Vosters also challenges an administrative decision made by the CAIS Administration to refuse his appeal to the CITI Appeals Committee.

a. Background

[2] The purpose of the FIPA is to provide for the Minister to enter into agreements with the Provinces for the establishment, *inter alia*, of agricultural stabilization programs. In 2003 the Minister entered into such an agreement with the Province of Manitoba called the Canadian Agricultural Income Stabilization (CAIS) Program. That program was intended to assist agricultural producers to stabilize income in the face of unexpected revenue declines.

[3] In 2006 after independent review and industry consultation, a change was made to the method of valuing participants' inventory under the CAIS Program guidelines. This new approach (called the hybrid inventory valuation method) calculated the increase or decrease in the value of inventory between the year-opening price and the year-end price instead of the prior method which only took account of the year-end price. The change, however, was only applicable to producers of market commodities. It did not include breeding livestock which was characterized as a non-market commodity not owned or intended for sale.

[4] In 2006 the Minister, acting under ss. 12(5) of the FIPA, created a new special measures program to provide grants to the agricultural sector (the CAIS Inventory Transition Initiative or "CITI"). The CITI Program was exclusively funded by the Federal government and supplemented

the benefits payable under the CAIS Program. It also relied upon the hybrid inventory valuation method in its treatment of inventory. The CITI Program was described in a June 29, 2006 administrative bulletin as follows:

> CITI is a one time initiative that will provide $900 million in federal funding to CAIS participants. Producers do not need to apply for a CITI payment as CAIS information already submitted for 2003, 2004 and 2005 will be used to recalculate benefits using a new method of inventory valuation. If producers are entitled to more money after the recalculation, they will receive additional payments. Recalculations will be done beginning with the 2003 program, followed by 2004 and finally 2005.

[5] As an owner of breeding livestock, Mr. Vosters was largely unable to benefit from the CITI hybrid inventory valuation method and his net CITI benefit was limited at $99.75. Mr. Vosters brought an appeal from the decision limiting his net CITI benefit based on the following submission:

> I will be appealing the exclusion of breeding livestock from this calculation. This exclusion is discriminatory to livestock producers and fails to meet the statutory requirements spelled out in the *Farm Income Protection Act* and the Agriculture Policy Framework.
>
> This exclusion fails to meet generally accepted accounting principles and does not apply the principals [sic] of accrual accounting uniformly across all commodities. The intent of a P1 / P2 valuation, and the supplementary forms in general, is to apply an accrual adjustment to the program year margin. This has been done in all previous programs, as well as in CAIS. This exclusion may constitute a violation of the green status afforded CAIS under existing WTO agreements.
>
> Finally, livestock has always been treated as a marketable commodity and is not a capital asset, as suggested by some within this department. The Canada Revenue Agency has ample documentation to illustrate that sales of any breeding livestock is consider [sic] income in the year of sale, as too with expenses. Prior

> to CAIS, previous programs such as NISA, AIDA and CFIP all treated cattle as a marketable commodity, and in the exact same manners as other commodities.
>
> I look forward to this appeal and to having this decision overturned. This is / was a blatant attempt to exclude livestock producers from the benefits of CITI; especially during the most stressful time experienced by this section (i.e. BSE).

Mr. Vosters' appeal was denied under a decision dated June 13, 2007 for the following reasons:

> Thank you for your letter dated April 13, 2007 requesting an appeal of your 2003 CITI payment. You have requested that breeding livestock be included in the CITI calculation.
>
> The CITI hybrid inventory valuation method is applied to market commodities, however it is not applied to productive assets such as breeding livestock. Market commodities are defined as those which are intended for sale and are valued using the change in value from the beginning to the end of the fiscal year (the beginning quantity multiplied by the beginning price and the ending quantity multiplied by the ending price). Non-market inventories are defined as those commodities which are intended for use in the production of other commodities and are commonly retained and utilized over several production periods and are valued using the P2 method (using the change in quantity from the beginning to the end of the year and valuing the change at the year end price). Breeding livestock is not intended for market and therefore no actual market loss can be realized. Therefore, the change in inventory is valued using the P2 method.
>
> The purpose of the appeals process is to ensure that the Administration correctly applied the CAIS program rules and regulations. The appeal process does not provide a forum to make new policies or to change policies currently in existence. Upon reviewing the documentation you provided and the circumstances surrounding your case, the Administration has determined that the program policy, as outlined above, was followed in the processing of the CITI calculation related to your file. As a result, you appeal has been closed.

[6] On this application for judicial review Mr. Vosters challenges the decision by which his net CITI benefit was determined including the decision to deny his appeal.

II. Issue

[7] Was the decision to deny Mr. Vosters' claim to CITI benefits unlawful, *ultra vires* the FIPA or in breach of s. 15 of the Charter?

III. Analysis

[8] The CITI policy excluding the producers of breeding livestock was based on a distinction that breeding livestock are ordinarily not kept as a commodity for resale. Mr. Vosters points out with some justification that in difficult times these animals may be sold with an actual realized loss. This occurred in his operation in 2003 when he sold 25 head of breeding livestock.

[9] Mr. Vosters argues that the Respondents' justification for excluding breeding livestock was never before recognized in the earlier programs providing agricultural support and that this change in approach is inequitable. He also points to the IBM report where some stakeholders took issue with this eligibility distinction.

[10] The essential problem with Mr. Vosters' argument is that the adoption of the eligibility distinction in question was a very deliberate policy choice. Mr. Vosters does not agree with the wisdom of this limitation on the support available to breeding livestock producers, but absent a Charter breach or an incompatibility with the underlying legislation, it is not for the Court to

interfere with choices made by the Minister on such matters of policy. This point has been repeatedly made in the authorities and is well expressed by Justice Danièle Tremblay-Lamer in *Campbell v. Canada (Attorney General)* (2006), 2006 FC 510, 147 A.C.W.S. (3d) 1072 at para. 44:

> The applicants' arguments are once again sourced in the perceived deviation by DFO staff from the recommendations adopted by the Minister. In this regard, the applicants rely on the case of *Carpenter Fishing Corp. v. Canada*, [1997] 1 F.C. 874 (T.D.) rev'd [1998] 2 F.C. 548 (C.A.). Unfortunately, that decision was overturned on appeal on the very grounds on which the applicants seek to rely. Justice Décary, for the Federal Court of Appeal, decided that when examining an exercise of the Minister's discretion in relation to the establishment and implementation of fishing quota policy, courts must recognize the intent of Parliament and only intervene when the Minister's actions are beyond the purposes of the *Fisheries Act*. Quotas may carry with them some element of arbitrariness and unfairness, but the imposition of such a quota does not amount to reviewable action. It is not the function of the courts to question whether a quota policy is good or bad: *Carpenter*, FCA, above, at paras. 28, 37, 39 and 41. Moreover, I borrow the words of Justice Nadon in *Assoc. des Senneurs du Golf Inc. v. Canada (Minister of Fisheries and Oceans)*, [1999] F.C.J. No. 1449, that within the scheme of the *Fisheries Act*, there is nothing wrong with the "Minister favouring one group of fishers at the expense of another" (at para. 25).

Also see *Maple Lodge Farms Ltd. v. Canada* (1982), [1982] 2 S.C.R. 2 at 6-8, 137 D.L.R. (3d) 558 (S.C.C.).

[11] Very simply, this is the type of issue that is not justiciable because there is no objective standard by which a Court can properly assess the wisdom of pure policy choices routinely made by governments. I have no doubt the CITI Program did not address the financial problems experienced

by many primary livestock producers, but that is ultimately a political issue that the Court has neither the means nor the authority to resolve.

[12] I also do not accept the argument that because previous agricultural support programs did not limit access to primary livestock producers a precedent had been set that was required to be repeated for later support programs. Subject to the limits imposed by the underlying legislation, it is always open to the government to change its policies including the eligibility requirements for obtaining financial support under a new or even an existing support program. The fact that Mr. Vosters had a certain historical entitlement to benefits under the CAIS Program did not create an immutable right to benefits under that or any other supplementary program such as CITI.

[13] Mr. Vosters argues that the spirit and purpose of the FIPA is to ensure complete equality of treatment for all agricultural producers and thereby prevents the Minister from introducing a selective eligibility limitation of the sort that was applied in his case. This argument is based on a misreading of the FIPA. The FIPA extends considerable discretion to the Minister in the adoption of criteria determining program eligibility. Mr. Vosters is correct that s. 4 requires the Minister to take into consideration the principles that a program not "unduly influence" production and marketing decisions and that income support should be "equitable and reasonably consistent with all other agreements". This type of qualified language provides some degree of discretion to the Minister, but of more significance are the provisions of s. 5 which allow the Minister, in conjunction with the Provinces to fix by agreement "the criteria for determining the eligibility of producers for participation" and "the circumstances in which and the conditions under which a payment will be

made to a producer or group of producers, the method of determining the amount of a payment, and the manner in which the payment will be made". Mr. Vosters' argument effectively ignores these provisions. In short, it is up to the Minister to decide whether eligibility criteria are equitable and the Court has no jurisdiction to rewrite those conditions.

[14] Mr. Vosters is not correct when he claims that all agricultural commodities are covered by the FIPA or that all such commodities must be treated equally for the purposes of the conferral of program benefits. By their very nature these support programs make or allow for eligibility distinctions that are left, in some measure, to the discretion of the Minister. Mr. Vosters and others may consider these distinctions to be unfair, but that does not mean they are unlawful.

[15] Mr. Vosters' complaint that the Respondents failed to adequately consult with all interested parties is not borne out by the evidence, but even if it was true, it would provide no support to his claim: see *Carpenter Fishing Corp. v. Canada* (1996), [1997] 1 F.C. 874, 67 A.C.W.S. (3d) 585 (F.C.T.D.), reversed (1997),[1998] 2 F.C. 548 at para. 32, 155 D.L.R. (4th) 572 (F.C.A).

A. *Income Tax Act*

[16] I do not accept Mr. Vosters' argument that there must be compatibility between the definition of common terms or accounting treatments found in the ITA and in the FIPA. It is true that one statute may adopt or rely by reference upon concepts or terms found in another, but there is nothing in the FIPA to suggest that its provisions ought to be treated in common with the language used in the ITA. It is enough to say that a word like "inventory" or certain specified accounting

treatments may well take on different meanings from one statutory instrument to another particularly where one statute confers a financial benefit and the other imposes a tax. The fact that the FIPA provides that the calculation of a benefit may be based on information declared by a producer under the ITA is not enough to support Mr. Vosters' argument on this point.

B. *Section 15 of the Charter*

[17] There is no merit to Mr. Vosters' argument that the differential treatment afforded to primary livestock producers under the CITI Program violates his rights under s. 15 of the Charter. Certainly that program allows for differentiation between classes of agricultural producers, but most government programs make these kinds of distinctions: see *Law Society of British Columbia v. Andrews* (1989), [1989] 1 S.C.R. 143 at paras. 31, 34, 56 D.L.R. (4th) 1 (S.C.C.). What is lacking here is evidence that the denial of program relief to him as a primary livestock producer violates his essential human dignity. The loss of the modest financial benefit that Mr. Vosters seeks is undoubtedly of significance to him, but it does not come remotely close to satisfying the requirements of s. 15 of the Charter: see *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para. 165, [2007] 2 S.C.R. 391.

C. *The CITI Appeal Decision*

[18] Mr. Vosters' CITI appeal was dismissed administratively because it challenged the legal right of the Minister to restrict eligibility for benefits under the CITI Program. Quite obviously his appeal did not fall within the scope of appellate review under that program which was limited to whether the rules and regulations were correctly applied. There was, accordingly, no error in the

decision not to refer Mr. Vosters' challenge to a full appellate review because, given the limited nature of his challenge, the denial of his claim at that level was inevitable.

[19] If the Respondents are seeking costs against Mr. Vosters, I will accept a written submission in that regard within 10 days. Mr. Vosters will have a further 7 days to respond in writing. Neither submission should exceed 5 pages in length.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed with the issue of costs to be reserved.

" R. L. Barnes "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1290-07
STYLE OF CAUSE:	Vosters v. AGC et al.
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