Federal Court of Appeal | Cour d'appel fédérale

Date: 20210225

Docket: A-204-19

Citation: 2021 FCA 38

CORAM: **BOIVIN J.A.**
LOCKE J.A.
LEBLANC J.A.

BETWEEN:

SHMUEL HERSHKOVITZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the registry on February 25, 2021.
Judgment delivered from the Bench at Ottawa, Ontario, on February 25, 2021.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 25, 2021).

BOIVIN J.A.

[1] This is an application for judicial review of the decision of the Canada Agricultural Review Tribunal (Tribunal) rendered on May 7, 2019 (2019 CART 6). The Tribunal ordered that the applicant's request for review of the violation issued to him for importing "breaded meat", under the *Health of Animals Act*, S.C. 1990, c. 21, was inadmissible for lack of jurisdiction.

Given that the applicant had paid the associated penalty, he was therefore deemed to have committed the said violation pursuant to section 9 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act,* S.C. 1995, c. 40 (Act).

[2] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1).

[3] We are all of the view that this Court's intervention is not warranted.

[4] The applicant submits two arguments.

[5] First, the applicant argues that the Tribunal's decision to declare the applicant's request for review inadmissible, on the basis that the penalty had been paid, is unreasonable because the Tribunal failed to consider whether the applicant was misled in paying the penalty. It is recalled that, pursuant to section 9 of the Act, if the person named in the Notice of Violation makes the required payment, the person is deemed to have committed the violation and the payment ends the proceeding. Indeed, the statutory language of the Act is clear and unambiguous and violations of the Act are absolute liability offences. As stated by Justice Létourneau in *Doyon v. Canada (Attorney General)*, 2009 FCA 152, 395 N.R. 176, at paragraph 27, this statutory scheme incorporates "the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an *actus reus* which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him - or herself." Thus, it is

unequivocal that the section of the Notice of Violation signed by the applicant states that he admits the violation. Indeed, the applicant's signature was underneath the following statement:

> I do not wish to dispute this Notice of Violation with penalty and choose to pay the penalty within 15 days of the date of service of this notice. I understand that by agreeing to pay this penalty, I am acknowledging that I have committed the violation noted.

[6] It is undisputed that the applicant paid the penalty.

[7] We are also satisfied that the Tribunal turned its mind to the applicant's argument that he was misled and not informed of the consequences of paying the penalty. It was therefore open to the Tribunal, on the basis of the facts, to find that it had no jurisdiction because the penalty had been paid and, as such, the applicant was deemed to have committed the violation.

[8] Second, the applicant also argues that the Tribunal had jurisdiction to hear an issue of natural justice and procedural fairness under the doctrine of jurisdiction by necessary implication to ensure that the applicant was not deprived of his right to contest the violation. However, this argument is misconceived as the doctrine of jurisdiction by necessary implication finds no application in this case. Indeed, the purpose of this doctrine, as described by Justice Bastarache in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 [*ATCO*], is to ensure that:

> …the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature… (at para. 51).

[9] The doctrine may be applied in circumstances where the Court is satisfied that the jurisdiction sought is essential to the administrative body fulfilling its statutory mandate and is not one to which the legislature has clearly addressed its mind (*ATCO*, at paras. 51, 73). Here, the legislative language is clear that paying the penalty puts an end to the proceeding and precludes the possibility of review in the circumstances of this case. In deciding as it did, the Tribunal did just that: accomplished its statutory mandate given by Parliament.

[10] Therefore, we are all of the view that the Tribunal's decision is reasonable.

[11] For these reasons, the application for judicial review will be dismissed with costs.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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