Federal Court of Appeal  Cour d'appel fédérale

Date: 20170216

Docket: A-544-15

Citation: 2017 FCA 36

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
DE MONTIGNY J.A.
GLEASON J.A.

BETWEEN:

MARIO CÔTÉ INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Hearing held at Montreal, Quebec, on January 31, 2017.

Judgment delivered at Ottawa, Ontario, on February 16, 2017.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: GAUTHIER J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

I. Background

[1] This application for judicial review raises the constitutionality of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 (the Act). The purpose of the Act is to enforce agri-food Acts using administrative monetary penalties (AMPs), and subsection 18(1) of the Act excludes certain defences under this system.

[2] The Canada Agricultural Review Tribunal rejected the applicant's arguments that this provision violates section 7 and paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter) on December 4, 2015 (CART/CRAC-1783 and 1784). Specifically, the Tribunal found that section 11 of the Charter does not provide any protection to individuals who are subject to penalties established under the AMP system created by the Act because they are not persons "charged with an offence". The applicant does not call into question this aspect of the decision. However, the applicant argues that the Tribunal erred by finding that subsection 18(1) of the Act did not violate its right to not be deprived of the right to security in a manner not in accordance with the principles of fundamental justice.

[3] After reviewing the file and hearing the parties' submissions, I am of the opinion that this appeal should be dismissed.

II. The facts

[4] The parties submitted an agreed statement of facts before the Tribunal, and I will refer only to the most relevant aspects of that statement for the purposes of these reasons.

[5] The applicant is part of a conglomerate in the pork industry, and it thus controls the entire pork production chain, from mash to slaughter, including the production and transportation of pigs; the evidence in the record shows that Mr. Côté, the only shareholder of the applicant company, controls a large portion of Quebec's pork production.

[6] The applicant requested that the Tribunal review 12 notices of violation issued by the Canadian Food Inspection Agency (Agency). All of the notices of violation were issued following violations of paragraph 138(2)(a) of the *Health of Animals Regulations*, C.R.C., c. 296, which states that no person shall "transport . . . on . . . any motor vehicle . . . an animal that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey".

[7] Further to a management conference between the parties, dockets CART/CRAC 1783 and 1784 were identified as test cases for addressing constitutional questions. The applicant admitted to the constituent elements of the offences with which it was charged and does not contest that the AMP amounts were established in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187 (the Regulations). The applicant, however, alleged the unconstitutionality of subsection 18(1) of the Act, which it submits violates section 7 of the Charter by prohibiting the due diligence and reasonable mistake of fact defences, and the unconstitutionality of section 19, which it claims violates paragraph 11(d) of the Charter because the Minister is only required to prove the existence of a violation on a balance of probabilities.

[8] In support of its claims, the applicant filed with this Court three affidavits from owners of small transportation companies who all state that they are having difficulty meeting the requirements of the Act. The affidavits contain the same wording and state essentially the following: [TRANSLATION] "because of fines that are high and inevitable and despite all of the precautions taken, I am having great difficulty making ends meet" and [TRANSLATION] "there is a

real and likely possibility of me becoming penniless because of fines that have nothing to do with any negligence on my part".

[9] The Attorney General filed in evidence the affidavit of Nicolantonio Melchiorre, an investigation specialist with the Agency, to supplement the affidavits submitted by the applicant. It states that since the Act began to be applied in Quebec in 2003, the three affiants have had to pay only relatively small amounts following the imposition of AMPs. One of them, Michel Ménard, paid only $2,000.00 for a notice of violation issued to his company (two other notices of violation were withdrawn and a third contained only a warning). The company of the second affiant, Benoît Bouffard, was issued two notices of violation a few weeks apart in the amount of $6,000.00, which were still being disputed before the Tribunal at the time of the hearing. The third affiant, Pierre Fauteux (a partner with Transport Pierre Fauteux S.E.N.C.), received three notices of violation, one of which was only a warning; he paid the second one, which was for $2,000.00, and he disputed the third one, which was for $7,800.00.

[10] The applicant submitted a fourth affidavit (that of Gilles Dion) to the Tribunal but chose to not submit it to this Court; that affidavit was nevertheless included in the respondent's record. It appears that Mr. Dion never personally received a notice of violation although a company he worked for that is associated with Steve Dion (presumably a family member) received several of them between 2006 and 2012. Most of those notices were not contested, and large amounts from those notices are still outstanding. In addition, the claim that Gilles Dion went bankrupt because of the notices of violation is contrary to the evidence because he went bankrupt before the issuance of the first AMP to the company that is associated with Steve Dion.

III. Impugned decision

[11] The Tribunal began by noting that the applicant had not pursued its challenge of subsection 10(2) of the Regulations and section 21 of the Act in its written submissions, even though those provisions were mentioned in its notice of constitutional questions; the Tribunal therefore found that the applicant had not met the initial burden of proof regarding those provisions and therefore only addressed subsection 18(1) and section 19 of the Act.

[12] First, the Tribunal considered whether it had the authority to determine constitutional questions. Relying on the Supreme Court's case law, which indicates that an administrative tribunal that is recognized as having the capacity to decide questions of law is presumed to be able to apply the Charter, and relying on subsection 12(1) of the Act and the case law of this Court, which recognize the Tribunal's jurisdiction to decide questions of law, the Tribunal had no difficulty finding that it does indeed have the authority to deal with constitutional questions. The Tribunal noted, however, that it cannot make a declaration of invalidity of a statute or provision, and that it must instead simply disregard a statute or provision that is inconsistent with the Charter for the purpose of the matter before it.

[13] With respect to section 19 of the Act, the Tribunal found that the AMP system is not contrary to the presumption of innocence or the right to a fair trial protected by subsection 11(d) despite the fact that it is based on the civil burden of proof (the balance of probabilities). Again relying on the well-established case law of the Supreme Court (*R. v. Wigglesworth*, [1987] 2 S.C.R. 541, 45 D.L.R. (4th) 235; *Goodwin v. British Columbia (Superintendent of*

Motor Vehicles), 2015 SCC 46, [2015] 3 S.C.R. 250; *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3; *Martineau v. M.N.R.*, 2004 SCC 81, [2004] 3 S.C.R. 737; *R. v. Shubley*, [1990] 1 S.C.R. 3, 65 D.L.R. (4th) 193), the Tribunal reiterated that section 11 protections are available to only persons who have been "charged with an offence", therefore persons who have been the subject of a criminal prosecution, as opposed to individuals who have been the subject of an AMP.

[14] In this case, the Tribunal was of the opinion that the procedure set out in the Act and the Regulations is not criminal in nature because neither the purpose of the Act and the Regulations nor the objective of AMPs nor the process leading to AMPs has a criminal connotation. The same is true for AMPs themselves, which do not have true penal consequences since only the fines as defined in the Act may be imposed, the fine amounts are relatively modest, the magnitude of the fines is determined by legislative provisions and not by principles of sentencing, and no stigma is associated with AMPs. The Tribunal therefore concluded that section 11 of the Charter did not apply and could not be invoked to contest the constitutionality of the AMP system. As previously stated, the applicant does not contest the merits of this aspect of the decision before this Court.

[15] Regarding section 18 of the Act, the Tribunal did not accept the applicant's submissions that a quasi-absolute liability regime violated security of the person in a manner not in accordance with the principles of fundamental justice. It nonetheless agreed to give consideration to the issue, even though a corporation as such cannot avail itself of the protection provided by section 7 of the Charter because it cannot be deprived of the right to life, liberty or security of the

person. Relying on *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, 84 D.L.R. (4th) 161, the Tribunal found that the applicant could claim protection under section 7 if the Act and the Regulations were equally applicable to individuals and corporations.

[16] The Tribunal first addressed the types of s. 7 violations relating to security of the person, and found that only personal choices going to the core of what it means to enjoy individual dignity and independence were protected by the provision. Therefore, the ability to generate business revenue by one's chosen means is not a protected right. The Tribunal then addressed the affidavits submitted by the parties and found that the evidence did not reveal serious psychological stress due to state interference with the individuals' ability to make essential life choices. The following paragraph clearly reflects the content of the decision in this regard:

> [60] The stresses described by the affiants do not reach the level that Canadian court have recognized as serious enough to trigger section 7 protections for individuals. Here the state action of levying a fine, even multiple fines, does not intrude in the same intimate and profound way in the individual's life, such as do attempts to take a child away from its parents, a criminal prohibition on assisting suicide for a desperately ill patient, and the regulation of abortion.

[17] Because the Tribunal was of the view that the applicant did not successfully establish a violation of the right to security, it did not consider it appropriate to rule on the conformity of subsection 18(1) of the Act with the principles of fundamental justice. As a result, it did not consider the due diligence defences raised by the applicant and found that the applicant was required to pay the Agency $7,800.00 for each of the two violations set out in the notices of violation that are the subject of that decision.

IV. Issue

[18] The only issue in this application for judicial review is whether the Tribunal erred by finding that subsection 18(1) of the Act does not violate section 7 of the Charter. To answer this question, it must first be determined whether the provision violates the right to security of the person and, in the affirmative, whether the violation is in accordance with the principles of fundamental justice. Because the Attorney General has not objected to the applicant raising the constitutionality of the impugned provision, I will express no opinion on the subject and will simply, like the Tribunal, assume that the applicant has standing to do so.

V. Legislative background

[19] The Act creates an AMP system for the application of many agri-food laws, including the *Health of Animals Act*, S.C. 1990, c. 21. The purpose of the Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair, expeditious and efficient AMP system for the enforcement of the agri-food Acts (see s. 3 of the Act).

[20] The Minister of Agriculture and Agri-Food may make regulations designating as a minor, serious or very serious violation certain contraventions that are offences under an agri-food Act (see s. 4 of the Act). That is what the Minister did by enacting the Regulations. The Act specifies, however, that proceeding with an act or omission as a violation precludes proceeding with it as an offence, and proceeding with an act or omission as an offence precludes proceeding with it as a violation (s. 5), and it even specifies in section 17 that a violation will not be

considered an offence for the purposes of section 126 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[21] The Act and the Regulations constitute a full and complete code for the regulation of AMPs, from the issuance of a notice of violation to the review of a notice of violation. A person who committed a violation may request a review of a notice of violation by the Minister and request a review of the Minister's decision by the Tribunal (s. 12 and s. 14 of the Act). Section 19 states that in every case where a violation is 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 violation committed the violation identified in the notice.

[22] Section 18 of the Act states that certain defences are not available. Because section 18 is central to this case, it is appropriate to reproduce it in its entirety:

Certain defences not available	**Exclusion de certains moyens de défense**
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.	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.
Common law principles	**Principes de la common law**
(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	(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

under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.	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.

[23] Under subsection 7(2) of the Act, a person authorized to issue notices of violation who has reasonable grounds to believe that a person has committed a violation may issue a notice of violation that names the person, identifies the violation and contains a warning that the person has committed a violation or sets out the AMP, established in accordance with the Regulations, for the violation that the person is liable to pay. Subsection 4(2) of the Act states that the maximum AMP for a violation is $2,000.00 in the case of a violation that is committed by an individual otherwise than in the course of a business and that is not committed to obtain a financial benefit. In any other case, the maximum AMP is $5,000.00 for a minor violation, $15,000.00 for a serious violation and $25,000.00 for a very serious violation. Section 6 of the Regulations states that the total gravity value in respect of each serious or very serious violation shall be established by considering the history of the person who committed the violation in respect of prior violations or convictions, the degree of intention or negligence on the part of the person who committed the violation, and the harm done or that could be done by the violation.

[24] Lastly, section 9 states that where the person pays the AMP amount, the person is deemed to have committed the violation identified in the notice, and where the person does not request a review by the Minister or the Tribunal of the facts of the violation, the person is deemed to have committed the violation identified in the notice. A person named in a notice of violation may free him- or herself from a notice of violation by paying half of the amount

claimed within 15 days of the date of the notice of violation; however, that reduction does not apply to those who request a review of the notice of violation (see s. 10 of the Act and s. 7 of the Regulations).

VI. Analysis

[25] It has been well established since *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 58, [2008] 1 S.C.R. 190 that the standard of correctness applies to the judicial review of constitutional questions (see also *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 30, [2011] 3 S.C.R. 654; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 18, [2011] 3 S.C.R. 471). Given the repercussions that such a decision could have on consistency in the fundamental legal order of the country, no deference is to be given by a reviewing court to the impugned decision; it must instead conduct its own analysis and substitute its own finding if it disagrees with the decision-maker's finding.

[26] Section 7 of the Charter reads as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[27] To establish that section 18 of the Act violates this constitutional protection, the applicant must demonstrate, on a balance of probabilities, that the measure violates its rights (and more particularly the right to security of the person), and that the violation is not in accordance with

the principles of fundamental justice. Because a corporation cannot be deprived of security of the person, it is the affiants' situation that needs to be looked at for determining whether the burden was met in this case.

[28] Counsel for the applicant concede, correctly, that section 7 does not protect purely economic rights. They argue, however, that the interests involved go far beyond purely monetary considerations and that the [TRANSLATION] "exorbitant and repetitive" fines that small transporters are subject to can have dramatic consequences on them and their families. The affiants even go so far as to say that because they have no other professional experience and because high fines have been imposed on them [TRANSLATION] "despite all of the precautions taken", they and their families could find themselves [TRANSLATION] "penniless" and [TRANSLATION] "in a state of unbearable need". According to the applicant, this is what violates their fundamental well-being and their inherent dignity, and thus their security of the person.

[29] While the Court is sensitive to the impact that the imposition of an AMP of a few thousand dollars could have on low-income workers, it was not demonstrated that the AMP system actually jeopardized the economic viability of the affiants or their households, or left them in a state of psychological distress such that one could fear for their health. The evidence shows, on the contrary, a reasonable application of the Act and the Regulations.

[30] One notice of violation was issued for each contravention although it would theoretically have been possible to issue one notice of violation to any person (individual and corporation) who loaded or caused to be loaded or transported or caused to be transported an animal unfit for

transport. Warnings were given before the AMPs were imposed, and some notices of violation were overturned in the review process set out in the Act. The AMP amounts were established by considering the history of each person who committed a violation in respect of prior violations or convictions, the degree of intention or negligence on the part of the person who committed the violation and the harm done by the violation, in accordance with the Regulations. Ultimately, the total of the amounts that each affiant had to pay was not a significant amount when spread out over a 12-year period. Moreover, the affiants did not prove that they could not find employment in other types of transportation if they felt that the AMP system is too draconian and does not allow them to ensure their material well-being and that of their families. Lastly, the affiants did not claim that they had been stigmatized by the imposition of the AMPs.

[31] Even assuming that a certain causal relationship between the AMP system (specifically subsection 18(1) of the Act) and the deprivation of economic and/or psychological security alleged by the affiants could be established, it would fall well short of the type of interests that the courts have recognized as being protected by section 7 of the Charter. The Supreme Court has established that violations of security of the person "include only serious psychological incursions resulting from state interference with an individual interest of fundamental importance" (*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 82, [2000] 2 S.C.R. 307 [*Blencoe*]. See also *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at p. 56, 44 D.L.R. (4th) 385).

[32] The *Blencoe* decision is instructive on the nature of state actions that could violate the security of an individual for the purposes of section 7 of the Charter. The respondent in that case,

while he was a minister in the Government of British Columbia, was accused of sexual harassment, and complaints were filed against him before the British Columbia Human Rights Commission. The allegations led to him being removed from the party's caucus and Cabinet, forced him to move to avoid media attention, caused him to suffer from depression, and had serious consequences for him and his family. It is true that in that case, as argued by counsel for the applicant, the prejudice that Mr. Blencoe claimed to have suffered did not arise from the filing of the sexual harassment complaints, but from the Commission's delay in processing the complaints. The fact remains that the Supreme Court's observations regarding the right to security go well beyond this issue. Even assuming that there was a sufficient link between the state-caused delay and the prejudice suffered by Mr. Blencoe, the Court found that the stress and anxiety he suffered because of the allegations against him could not be equated with the type of stigmatization covered by the right to security of the person. In this regard, the following excerpt from Justice Bastarache's reasons, written for the majority, is most eloquent:

> [86] Few interests are as compelling as, and basic to individual autonomy than, a woman's choice to terminate her pregnancy, an individual's decision to terminate his or her life, the right to raise one's children, and the ability of sexual assault victims to seek therapy without fear of their private records being disclosed. Such interests are indeed basic to individual dignity. But the alleged right to be free from stigma associated with a human rights complaint does not fall within this narrow sphere. The state has not interfered with the respondent's right to make decisions that affect his fundamental being. The prejudice to the respondent in this case . . . is essentially confined to his personal hardship. He is not "employable" as a politician, he and his family have moved residences twice, his financial resources are depleted, and he has suffered physically and psychologically. However, the state has not interfered with the respondent and his family's ability to make essential life choices. To accept that the prejudice suffered by the respondent in this case amounts to state interference with his security of the person would be to stretch the meaning of this right.

See also in this regard *Rodriguez v. British Columbia*, [1993] 3 S.C.R. 519, 107 D.L.R. (4th) 342; *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46, 177 D.L.R. (4th) 124; *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 S.C.R. 6.

[33] It goes without saying that the situation of the affiants on which the applicant relies to attack the constitutional validity of subsection 18(1) of the Act cannot even be compared to that of Mr. Blencoe. The impact that the contraventions may have had on the life of the affiants, while not negligible, is not the same as the stigmatization, psychological stress and financial difficulties that Mr. Blencoe experienced. If Mr. Blencoe's situation was not sufficient to result in a finding that there was interference with his ability to make essential life choices, the same has to be true for the affiants. Finding otherwise would excessively trivialize the fundamental right to security of the person enshrined in the Charter.

[34] In conclusion, I note that the applicant was not able to cite any precedent in support of its claim that the government regulation of an economic activity sector can cause sufficient stress to trigger the application of section 7 of the Charter. Furthermore, the country's courts of appeal have rejected this argument on several occasions. The Court of Appeal of Alberta, for example, found that a municipal bylaw limiting the number of taxi licences did not harm the psychological integrity of persons wanting to work in the taxi business, despite the additional costs that could arise from the obligation, for those who did not have such licence, of associating themselves with licence holders (*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2002 ABCA 131, [2002] 8 W.W.R. 51).

[35] The applicant argued that in that case, the Court of Appeal of Alberta did not rule out the possibility that the right to security can protect the right to pursue a livelihood through a trade or calling in the event that a person could establish that state-imposed interference with that right undermined his or her dignity and emotional well-being. The Supreme Court did not, however, see fit to endorse that *obiter* (see *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485), and aside from the decision by the British Columbia Court of Appeal in *Wilson v. Medical Services Commission of British Columbia* (1988), 53 D.L.R. (4th) 171, [1989] 2 W.W.R. 1, no other decision was cited to us to indicate that section 7 rights can extend to the right to exercise one's chosen profession. In any case, the affiants did not prove that the AMPs they had to pay undermine their self-esteem, their dignity or even their ability to meet their needs and those of their families.

[36] Similarly, the Court of Appeal for Ontario found that an absolute liability offence involving a maximum fine of $50,000.00 that could be imposed on an owner or operator of a commercial truck where one of the vehicle's wheels becomes detached while the vehicle is on the road does not violate the right to security of the person (*R. v. Transport Robert (1973) Ltée*. (2003), 68 O.R. (3d) 51, 234 D.L.R. (4th) 546 [*Transport Robert*]). The two companies concerned by the statements of offence maintained that the high maximum fine and the stigma attached to a conviction jeopardized their right to security of the person. The Court of Appeal rejected this argument on the ground that the offence did not create a true crime and instead focussed on the unintended but harmful consequences of the commercial trucking industry; in that context, conviction for such an offence at most implies negligence and does not lead to the type of stigma covered by the right to security of the person. The Court of Appeal added the

following: “The right to security of the person does not protect the individual operating in the highly regulated context of commercial trucking for profit from the ordinary stress and anxieties that a reasonable person would suffer as a result of government regulation of that industry” (*Transport Robert* at para. 29).

[37] For all of these reasons, I am of the opinion that subsection 18(1) of the Act does not violate the right to security of the person protected by section 7 of the Charter. Even though it is not strictly necessary for me to go any further to dispose of the issue, I would add, in the alternative, that the exclusion of a due diligence defence in the context of an administrative proceeding does not infringe the principles of fundamental justice.

[38] The applicant devoted only one half-page of its memorandum to this issue, and did not cite any precedent in support of its proposition that the imposition of absolute liability violates the principles of fundamental justice. In fact, the case law establishes that absolute liability offences in penal law have the potential of breaching the principles of fundamental justice only where a sanction of imprisonment is provided for (*Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 at pp. 513 et seq., 24 D.L.R. (4th) 536; *R. v. Beatty*, 2008 SCC 5 at p. 65, [2008] 1 S.C.R. 49; *R. v. Pontes*, [1995] 3 S.C.R. 44 at pp. 59-60, 12 B.C.L.R. (3d) 201).

[39] The Act in question here does not provide for a sanction of imprisonment, and the AMP system that it puts in place is clearly administrative in nature. The purpose of the Act is to ensure compliance with agri-food Acts and to provide an alternative to the penal system, as specified in section 3. It therefore is not intended to punish persons who have committed a violation, and

neither the Act nor the Regulations make reference to “guilt”, “offenders”, “fines” or “appeals” (I note in this regard that the repetitive use of the term “fine” by the affiants, the applicant and the Tribunal is wrong). Moreover, the Tribunal considered this issue in its analysis of section 11 of the Charter and found that the applicant was not a person “charged with an offence” within the meaning of that provision because the Act and the Regulations are not intended to redress a wrong done to society but to ensure that the regulation of certain activities in the agriculture and agri-food industry is respected. The applicant did not contest this finding, and it is therefore precluded from reintroducing this argument indirectly in the context of section 7.

[40] In conclusion, I would add that this Court’s decision in *Doyon v. Canada (Attorney General)*, 2009 FCA 152, 312 D.L.R. (4th) 142 [*Doyon*], on which the applicant relied heavily, is of no help to it. First, the constitutionality of the Act or one of the provisions therein was not in dispute in that case; the only issue in that application for judicial review was the merits of the Tribunal’s decision in light of the evidence submitted. Second, the Court noted the draconian nature of the AMP system set out in the Act but nonetheless noted that the AMP system “has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor’s burden of proof” (*Doyon* at para. 27). However, the Court did not deduce from this that it was, strictly speaking, a penal system; at most it inferred that the decision-maker must be cautious and rigorous in analyzing the essential elements of the violation and the causal link (see *Doyon* at para. 28). In fact, this Court clearly rejected an argument based on section 11 by an individual who was issued a notice of violation in accordance with the Act on the ground that “[i]t is evident that the objective of the . . . Act is to establish a fair and

efficient system of administrative penalties as an alternative to the existing penal system" (*Clare v. Canada (Attorney General)*, 2013 FCA 265 at para. 28).

VII. Conclusion

[41] For the foregoing reasons, I would dismiss the application for judicial review. Because the parties have agreed on the amount of costs, the costs (inclusive of disbursements) should be established at $3,000.00.

"Yves de Montigny"
J.A.

"I agree.
Johanne Gauthier, J.A."

"I agree.
Mary J.L. Gleason, J.A."

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-544-15
APPLICATION FOR JUDICIAL REVIEW OF A DECISION BY CHAIRPERSON DONALD BUCKINGHAM OF THE CANADA AGRICULTURAL REVIEW TRIBUNAL DATED DECEMBER 4, 2015, CITATION 2015 CART 25	
STYLE OF CAUSE:	MARIO CÔTÉ INC. v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 31, 2017
REASONS FOR JUDGMENT BY:	DE MONTIGNY J.A.
CONCURRED IN BY:	GAUTHIER J.A. GLEASON J.A.
DATED:	FEBRUARY 16, 2017

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