

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220607

Docket: A-214-21

Citation: 2022 FCA 105

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MARINA CHU

Respondent

Heard at Montréal, Quebec, on June 7, 2022.
Judgment delivered from the Bench at Montréal, Quebec, on June 7, 2022.

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 Montréal, Quebec, on June 7, 2022).

BOIVIN J.A.

[1] The applicant, the Attorney General of Canada, seeks judicial review of the July 23, 2021 decision of the Canada Agricultural Review Tribunal (the Tribunal), setting aside the decision made by the delegate of the Minister of Public Safety and Emergency Preparedness (the Minister) (2021 CART 19).

[2] The Minister found that the respondent, Ms. Chu, had contravened subsection 16(1) of the *Health of Animals Act*, S.C. 1990, c. 21 (the Animals Act) because she brought pork sausages, an animal by-product, into Canada. Consequently, the Minister issued a notice of violation pursuant to section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 (the Act). In accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, S.O.R./2000-187 (the Regulations), a violation of this section is a “very serious violation” for which the amount of the penalty is \$1,300 (Sections 2, 4 and paragraph 5(1)(c) and Schedule 1, Part 1, Division 1, Item 11).

[3] Ms. Chu requested a review of the Minister’s decision. In its decision, the Tribunal set aside the Minister’s decision on the grounds that the issuing Officer failed to exercise the discretion granted to him by the Act and did not explain why he did not decide under another provision. The Attorney General of Canada sought judicial review of the Tribunal’s decision. Ms. Chu has not filed a notice of appearance and has not made any arguments before this Court.

[4] The only issue before us is whether it was reasonable for the Tribunal to set aside the Minister’s decision (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] ACS no 65).

[5] We are all of the view that the Tribunal’s decision is unreasonable and that the application for judicial review should be granted.

[6] It is to be recalled that the Act creates an absolute liability system, leaving the person who commits a violation with few means of exculpation (*Doyon v. Canada (Attorney General)*, 2009 FCA 152, 395 NR 176, at para. 27). Also, a violation of the Act is not an offence. It was therefore inappropriate for the Tribunal to draw an analogy with policing discretion.

[7] The Act and Regulations clearly state that a violation of subsection 16(1) of the Animals Act is a “very serious violation” with a corresponding penalty of \$1,300. The Tribunal agreed with the Minister’s determination that the respondent imported pork sausages and did not present the sausages before or at the time of importation to an inspector, officer or customs officer, thereby violating subsection 16(1) of the Animals Act. Given that determination, the role of the Tribunal was limited to determining whether the penalty was established according to the Regulations. Instead, the Tribunal set aside the penalty, properly established by the Regulations, which was unreasonable.

[8] Further, it was unreasonable for the Tribunal to review the Minister’s discretion to issue the notice of violation and the applicable penalty. Parliament has clearly limited the Tribunal’s powers to determining whether a violation has been proven and if so, and if applicable, whether the amount of the penalty has been imposed in accordance with the Regulations (the Act, ss. 14(1); *Canada (Attorney General) v. Vorobyov*, 2014 FCA 102, 459 NR 134 at para. 42). By reviewing the Minister’s discretion, the Tribunal unreasonably interpreted its statutory powers and exercised authority contrary to the text of the Act.

[9] The application for judicial review will therefore be allowed and the decision of the Tribunal set aside. As there is only one reasonable outcome in this case, remitting the matter to the Tribunal would serve no useful purpose and would not constitute an efficient use of public resources (*Vavilov*, at paras. 124, 142). The Attorney General of Canada did not request costs and none will be awarded.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-214-21

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. MARINA CHU

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 7, 2022

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

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

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SOLICITORS OF RECORD:

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