

Federal Court



Cour fédérale

Date: 20140414

Docket: T-2043-12

Citation: 2014 FC 316

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 14, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

L. BILODEAU & FILS LTÉE

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant, L. Bilodeau & Fils Ltée [Bilodeau], is seeking judicial review of the decision of the Canadian Food Inspection Agency [the Agency or the CFIA], dated October 11, 2012, to register 16 certificates of default against it. The certificates arise from notices of violation under the *Health of Animals Act*, SC 1990, c 21, and the *Health of Animals*

Regulations, CRC, c 296 [the Regulations], and were issued under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, SC 1995, c 40 [the Act].

[2] The applicant acknowledges that it received the notices, but alleges that it did not understand them because they incorrectly stated that the applicant was served on a date that was then in the future. The applicant further submits that the notices were invalid as they bore the title “avis de violation” and not “procès-verbal”, the name required by the Regulations.

[3] In turn, the respondent submits that this Court does not have the jurisdiction to review complaints regarding certificates of default registered with the Federal Court. It also submits that the notices complied with the Regulations and that the applicant was in no way misled by the dates on the notices. I share the respondent’s point of view in this respect. The application is therefore dismissed with costs to the respondent.

II. Background

[4] The applicant is a corporation that specializes in the transportation of live animals. It manages a fleet of 73 trucks and has 104 employees, including 32 drivers.

[5] It received the impugned notices in 2008, 2009 and 2010. The notices stated the following: [TRANSLATION] “I, the undersigned, Regional Director, have reasonable grounds to believe that, at or at around ___ o’clock, on the ___ day of ___, in the year ___, at ___, in the province or territory of ___,the abovementioned person committed the violation of:”. This was

followed by a description of the violation, such as [TRANSLATION] “transporting or causing to be transported animals (live chickens) without adequate ventilation.” The notice then stated that this violation was [TRANSLATION] “contrary to section ____” of one of four pieces of legislation: the *Plant Protection Act*, SC 1990, c 22, the *Plant Protection Regulations*, SOR/95-212, the *Health of Animals Act* or the *Health of Animals Regulations*. The notice warned the recipient that the violation [TRANSLATION] “is contrary to section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Administrative Monetary Penalties and Notices Regulations*.”

[6] The notices then offered a choice between [TRANSLATION] “Notice of Violation – WARNING” and [TRANSLATION] “Notice of Violation – PENALTY”, with, in this case, the second of these boxes and the option [TRANSLATION] “serious violation” being checked. Information on the available options followed on the back of the notice. The recipient was informed that it could pay 50% of the amount within 15 days, pay the full amount, request a review of the facts by the Minister within 30 days, request to enter into a compliance agreement with the Minister within 30 days if the penalty was at least \$2,000, or request a review by the Tribunal within 30 days. This was followed by information on the procedure to be followed for each of these options.

[7] The notices were accompanied by certificates of service. For example, the first notice received, Notice of Violation No. 0708QC0266 dated March 13, 2008, was accompanied by a certificate dated March 28, 2008, confirming that a certified copy of the notice had been given to the applicant.

[8] The certificate of service accompanying the notice dated December 29, 2008, bore neither a signature nor a date, but it seems that a corrected copy was later issued.

[9] All the notices were followed by a first letter noting that the invoice had not been paid and that the balance was due. The letters stated as follows: [TRANSLATION] “If you have any questions about the enclosed invoice, please contact me between 8 a.m. and 7 p.m. (Atlantic Standard Time) at one of the toll-free numbers provided above.” The applicant did not try to call these toll-free numbers.

[10] All of the letters were followed by letters noting that the applicant owed a debt to Her Majesty in Right of Canada since April 7, 2008, and that because the reasonable measures to collect the debt had failed, the debt would be referred to the Canada Revenue Agency and might be registered with the Federal Court.

[11] The applicant did nothing upon receipt of any of these letters.

[12] The respondent testified that the dates of service on the documents served on the applicant were indeed the transmission dates. The date dated ten days later was only noted on copies kept on file because this was the date on which service by mail was deemed to have taken place.

[13] The applicant does not dispute that it received similar notices of violation in the past and that it paid the related penalties.

[14] On August 1, 2012, the CFIA informed the applicant that 18 notices of violation remained unpaid, amounting to a total of \$46,700 in fines, despite several collection attempts. The Agency stated its intention to go before the Federal Court if these sums had still not been paid on August 17, 2012, given that the penalties were a debt to Her Majesty in Right of Canada.

[15] Counsel for the applicant replied that in 15 of the cases listed, the certificate of service predated the date of service by fax of the notice of violation to which the certificate referred. The applicant never appeared or replied. Counsel was therefore tasked with offering \$7,800 in full and final settlement of all 18 files.

[16] On September 21, 2012, and October 5, 2012, the responsible minister made 16 certificates of default for the unpaid debts resulting from the notices of violation. On October 11, 2012, the CFIA registered 16 certificates confirming that there was an unpaid debt under the Act with the Registry of the Federal Court. The applicant is challenging its decision to do so.

III. Procedural and statutory framework

[17] Part XII of the Regulations, above, governs the transportation of animals in Canada. It is prohibited to transport sick animals (section 138); load or unload animals in a way likely to cause suffering (section 139); unduly pack animals together (section 140); transport animals without ventilation, weather protection or proper bedding material (section 143); and transport animals without an approved tag (section 177).

[18] The Act, above, provides as follows:

*Agriculture and Agri-Food
Administrative Monetary
Penalties Act, SC 1995, c 40*

...

Definitions

2. In this Act,

“Tribunal” means the Review Tribunal continued by subsection 4.1(1) of the *Canada Agricultural Products Act*.

Commission of violation

7. (1) Every person who

(a) contravenes any provision of an agri-food Act or of a regulation made under an agri-food Act,

(b) contravenes any order made by the Minister under the *Plant Protection Act*, or

(c) refuses or neglects to perform any duty imposed by or under the *Plant Protection Act* or the *Health of Animals Act*

the contravention of which, or the refusal or neglect of which, is designated to be a violation by a regulation made under

*Loi sur les sanctions
administratives pécuniaires en
matière d’agriculture et
d’agroalimentaire, LC 1995,
ch 40*

[...]

Définitions

2. Les définitions qui suivent s’appliquent à la présente loi.

“Commission” La Commission de révision prorogée par le paragraphe 4.1(1) de la *Loi sur les produits agricoles au Canada*.

Violation

7. (1) Toute contravention désignée au titre de l’alinéa 4(1)a) constitue une violation pour laquelle le contrevenant s’expose à l’avertissement ou à la sanction prévus par la présente loi.

paragraph 4(1)(a) commits a violation and is liable to a warning or to a penalty in accordance with this Act.

Issuance of notice of violation

(2) Where a person designated under paragraph 6(a) has reasonable grounds to believe that a person has committed a violation, the designated person may issue, and shall cause to be served on the person, a notice of violation that names the person, identifies the violation and

(a) contains a warning that the person has committed a violation; or

(b) sets out

(i) the penalty, established in accordance with the regulations, for the violation that the person is liable to pay,

(ii) particulars concerning the time for paying and the manner of paying the penalty, and

(iii) subject to the regulations, a lesser amount that may be paid in complete satisfaction of the penalty if paid within the time and manner specified in the notice.

Summary of rights

(3) A notice of violation must

Verbalisation

(2) L'agent verbalisateur qui a des motifs raisonnables de croire qu'une violation a été commise peut dresser un procès-verbal qu'il fait notifier au contrevenant. Le procès-verbal comporte, outre le nom du contrevenant et les faits reprochés, soit un avertissement, soit le montant, établi en application du règlement, de la sanction à payer — auquel cas il précise le délai et les modalités de paiement — et, sous réserve des règlements, le montant inférieur de la sanction infligée prévu au procès-verbal dont le paiement, dans le délai et selon les modalités, vaut règlement.

Sommaire des droits

(3) Figurent aussi au procès-

clearly summarize, in plain language, the rights and obligations under this Act of the person on whom it is served, including the right to have the facts of the violation reviewed by the Minister or the Tribunal, and the procedure for requesting such a review.

verbal en langage clair un sommaire des droits et obligations du contrevenant prévus par la présente loi, notamment le droit de contester les faits reprochés auprès du ministre ou de la Commission et la procédure pour le faire.

Notices with warning—
request for review

Option

8. (1) Where a notice of violation contains a warning, the person named in the notice may, in the prescribed time and manner, request a review of the facts of the violation by the Minister or the Tribunal.

8. (1) Si le procès-verbal comporte un avertissement, le contrevenant peut, dans le délai et selon les modalités réglementaires, contester les faits reprochés auprès du ministre ou de la Commission.

Deeming

Présomption

(2) Where a person who is served with a notice of violation that contains a warning does not request a review under subsection (1) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice of violation.

(2) Le défaut du contrevenant d'exercer l'option dans le délai et selon les modalités prévus vaut déclaration de responsabilité à l'égard de la violation.

Notices with penalty —
payment

Paiement

9. (1) Where a notice of violation sets out a penalty and the person named in the notice pays, in the prescribed time and manner, the amount of the penalty or, subject to the regulations, the lesser amount

9. (1) Si le procès-verbal inflige une sanction et que le contrevenant paie, dans le délai et selon les modalités réglementaires, le montant de celle-ci — ou, sous réserve des règlements, le montant

set out in the notice that may be paid in lieu of the penalty,

(a) the person is deemed to have committed the violation in respect of which the amount is paid;

(b) the Minister shall accept that amount as and in complete satisfaction of the penalty; and

(c) the proceedings commenced in respect of the violation under section 7 are ended.

Alternatives to payment

(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,

(a) if the penalty is \$2,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the agri-food Act or regulation to which the violation relates;

(b) request a review by the Minister of the facts of the violation; or

(c) request a review by the Tribunal of the facts of the violation.

inférieur prévu au procès-verbal - , le paiement, que le ministre accepte en règlement, vaut déclaration de responsabilité à l'égard de la violation et met fin à la poursuite.

Option

(2) À défaut d'effectuer le paiement, le contrevenant peut, dans le délai et selon les modalités réglementaires:

a) si la sanction est de 2 000 \$ ou plus, demander au ministre de conclure une transaction en vue de la bonne application de la loi agroalimentaire ou du règlement en cause;

b) contester auprès du ministre les faits reprochés;

c) demander à la Commission de l'entendre sur les faits reprochés.

Deeming

(3) Where a person who is served with a notice of violation that sets out a penalty does not pay the penalty in the prescribed time and manner or, where applicable, the lesser amount that may be paid in lieu of the penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice.

Review under section 8

12. (1) After concluding a review requested under section 8, the Minister shall determine whether or not the person committed the violation, and the Minister shall cause a notice of any decision under this subsection to be served on the person who requested the review.

Right to review

(2) Where the Minister decides under subsection (1) that a person has committed a violation, the person may, in the prescribed time and manner, request a review of the Minister's decision by the Tribunal.

Review under paragraph 9(2)(b)

13. (1) After concluding a

Présomption

(3) Le défaut du contrevenant d'exercer l'option visée au paragraphe (2) dans le délai et selon les modalités prévus vaut déclaration de responsabilité à l'égard de la violation.

Décision du ministre: avertissement

12. (1) Saisi d'une contestation au titre de l'article 8, le ministre détermine la responsabilité du contrevenant et lui fait notifier sa décision.

Demande de révision

(2) Le contrevenant peut alors, dans le délai et selon les modalités réglementaires, demander à la Commission de l'entendre sur la décision du ministre.

Décision du ministre: sanction

13. (1) Saisi d'une contestation

review requested under paragraph 9(2)(b), the Minister shall determine whether or not the person requesting the review committed a violation and, where the Minister decides that the person committed a violation but considers that the amount of the penalty for the violation was not established in accordance with the regulations, the Minister shall correct the amount of the penalty for the violation, and the Minister shall cause a notice of any decision under this subsection to be served on the person who requested the review.

au titre de l'alinéa 9(2)b), le ministre détermine la responsabilité du contrevenant et lui fait notifier sa décision. S'il juge que le montant de la sanction n'a pas été établi en application des règlements, il y substitue le montant qu'il estime conforme.

Payment or right to review

Option

(2) Where the Minister decides under subsection (1) that a person has committed a violation, the person may, in the prescribed time and manner,

(2) Le contrevenant peut, dans le délai et selon les modalités réglementaires, soit payer le montant mentionné – paiement que le ministre accepte en règlement et qui met fin à la poursuite – , soit demander à la Commission de l'entendre sur la décision du ministre.

(a) pay the amount of the penalty set out in the notice referred to in subsection (1), in which case

(i) the Minister shall accept the amount as and in complete satisfaction of the penalty, and

(ii) the proceedings commenced in respect of the violation under section 7 are ended; or

(b) request a review of the Minister's decision by the Tribunal.

Review by Tribunal

14. (1) After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be,

(a) confirm, vary or set aside any decision of the Minister under section 12 or 13, or

(b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty,

and the Tribunal shall cause a notice of any order made under this subsection to be served on the person who requested the review, and on the Minister.

Payment

(2) Where the Tribunal decides under subsection (1) that a person has committed a violation, the person is liable for the amount of the penalty as set out in the order of the Tribunal and, on the payment

Pouvoir de la Commission

14. (1) Saisie d'une affaire au titre de la présente loi, la Commission, par ordonnance et selon le cas, soit confirme, modifie ou annule la décision du ministre, soit détermine la responsabilité du contrevenant; en outre, si elle estime que le montant de la sanction n'a pas été établi en application des règlements, elle y substitue le montant qu'elle juge conforme. Elle fait notifier l'ordonnance à l'intéressé et au ministre.

Païement

(2) Le paiement du montant conformément à l'ordonnance, que le ministre accepte en règlement, met fin à la poursuite.

of that amount in the time and manner specified in the order,

(a) the Minister shall accept the amount as and in complete satisfaction of the penalty; and

(b) the proceedings commenced in respect of the violation under section 7 are ended.

...

[...]

Debts to Her Majesty

Créance de Sa Majesté

15. (1) The following amounts constitute debts due to Her Majesty in right of Canada that may be recovered as such in the Federal Court:

15. (1) Constitue une créance de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant la Cour fédérale:

(a) the amount of a penalty, from the time the notice of violation setting out the penalty is served;

a) le montant de la sanction, à compter de la date de notification du procès-verbal;

(b) every amount undertaken to be paid pursuant to a compliance agreement entered into with the Minister under subsection 10(1), from the time the compliance agreement is entered into;

b) tout montant prévu dans une transaction conclue au titre du paragraphe 10(1), à compter de la date de sa conclusion;

(c) the amount set out in a notice of default referred to in subsection 10(4), from the time the notice is served;

c) le montant mentionné dans l'avis de défaut notifié au titre du paragraphe 10(4), à compter de la date de sa notification;

(d) the amount of a penalty as set out in a decision of the Minister under subsection

d) le montant mentionné dans la décision notifiée au titre du paragraphe 13(1), à compter de

13(1), from the time the notice under that subsection is served;

la date de sa notification;

(e) the amount of a penalty as set out in an order of the Tribunal under subsection 14(1), from the expiration of the time specified in the order for the payment of that amount; and

e) le montant mentionné dans l'ordonnance visée au paragraphe 14(1), à compter de l'expiration du délai fixé par la Commission pour le payer;

(f) the amount of any reasonable expenses incurred pursuant to section 22, from the date they are incurred.

f) le montant des frais raisonnables visés à l'article 22, à compter de la date où ils ont été faits.

Time limit

Prescription

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.

(2) Le recouvrement de la créance se prescrit par cinq ans à compter de la date à laquelle elle est devenue exigible en application du paragraphe (1).

Debt final

Conditions de révision

(3) A debt referred to in subsection (1) is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 9 to 14 of this Act and subsection 12(2) of the *Canada Agricultural Products Act*.

(3) La créance est définitive et n'est susceptible de contestation ou de révision que dans la mesure et selon les modalités prévues aux articles 9 à 14 de la présente loi et au paragraphe 12(2) de la *Loi sur les produits agricoles au Canada*.

Certificate of default

Certificat de non-paiement

16. (1) Any debt referred to in subsection 15(1) in respect of which there is a default of

16. (1) Le ministre peut établir un certificat de non-paiement pour la partie impayée des

payment, or the part of any such debt that has not been paid, may be certified by the Minister.

créances visées au paragraphe 15(1).

Judgments

Enregistrement en Cour fédérale

(2) On production to the Federal Court, a certificate made under subsection (1) shall be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in the certificate and all reasonable costs and charges attendant in the registration of the certificate.

(2) L'enregistrement à la Cour fédérale confère au certificat la valeur d'un jugement de cette juridiction pour la somme visée et les frais afférents.

Violations not offences

Précision

17. For greater certainty, a violation is not an offence and, accordingly, section 126 of the *Criminal Code* does not apply.

17. Les violations n'ont pas valeur d'infractions; en conséquence nul ne peut être poursuivi à ce titre sur le fondement de l'article 126 du *Code criminel*.

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

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.

(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.

Common law principles

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

...

Service of documents

24. Every document required or authorized to be served under this Act shall be served in accordance with the regulations, either personally or in such other manner as may be authorized in the regulations.

Principes de la common law

(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 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.

[...]

Notification

24. Toute notification autorisée ou exigée par la présente loi s'effectue conformément au règlement, par remise à personne ou de toute autre manière qui y est autorisée.

[19] The *Federal Courts Act*, RSC, 1985, c F-7, provides as follows:

Federal Courts Act, RSC,
1985, c F-7

Loi sur les Cours fédérales,
LRC (1985), ch F-7

...

[...]

Judicial review

Contrôle judiciaire

28. (1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

28. (1) La Cour d'appel fédérale a compétence pour connaître des demandes de contrôle judiciaire visant les offices fédéraux suivants:

(a) the Board of Arbitration established by the *Canada Agricultural Products Act*;

a) le conseil d'arbitrage constitué par la *Loi sur les produits agricoles au Canada*;

(b) the Review Tribunal established by the *Canada Agricultural Products Act*;

b) la commission de révision constituée par cette loi;

...

[...]

[20] On December 19, 2012, Prothonotary Morneau heard a motion by the respondent to strike the motion regarding this Court's lack of jurisdiction to hear the case on its merits. The Prothonotary found that it was not clear that upon filing the application, the applicant still had time to request a review by the Minister or the Tribunal or to file an application elsewhere. Since neither of the parties referred to any direct precedents under the Act in question, including the decision in *Canada (Minister of National Revenue) v Piccott*, 2002 FCT 1116, reversed 2004 FCA 291 and 2004 FCA 290 [*Piccott*], which, according to the Prothonotary, dealt with a point that was extraneous to the facts of this case, the motion was dismissed.

IV. Analysis

[21] At the hearing, the applicant made two submissions, the first being that the format of the notice of violation was invalid, and the second, that the certificates of service for the notices of violation were invalid because they post-dated the actual date on which they arrived. However, before dealing with the applicant's arguments, I must consider the argument that the Court does not have the jurisdiction to rule on this matter.

A. *Jurisdiction of the Court*

[22] The present application must be dismissed for lack of jurisdiction of this Court under subsection 18.1(3) of the *Federal Courts Act*. There is no decision here that could be subject to judicial review. The registration of the certificates of default is not a judgment of the Federal Court.

[23] Heneghan J. explained the following in *Piccott*, above, with respect to proceedings under the *Income Tax Act*, RSC, 1985, c 1 (5th Supp):

18 In each case, the legislation provides that a certificate produced by the Minister to the Federal Court can be registered in that Court and following registration, it has the same effect as a judgment. However, the certificate when registered is not a judgment and does not become a judgment of the Federal Court. In this regard, I refer to *Marcel Grand Cirque Inc. v. Quebec* (1995), 107 F.T.R. 18, *Olympia Interiors Limited v. Canada* (1998), 98 D.T.C. 6306 (F.C.T.D.) and *Glenn Alexander Ross v. Her Majesty the Queen in Right of Canada* (2002 D.T.C. 6884), affirmed by the Federal Court of Appeal at [2002] F.C.J. No. 1396, 2002 FCA 359. In *Marcel Grand Cirque Inc. v. Quebec*, *supra*, the Court said at paragraph 6:

This Court does not have jurisdiction to determine this issue. The Excise Tax Act, like the Income Tax Act, R.S.C. 1985 (5th Supp.), c. 2, contains in effect a complete code for the collection of taxes

[Emphasis added.]

[24] *Piccott*, above, was reversed on appeal, but not on this issue (see *Canada v Piccott*, 2004 FCA 291, paras 8 and 31):

8 While acknowledging that the certificates had the same effect as a judgment, the motions judge held that the certificates were not, in fact, judgments of the Court. She was supported in this conclusion by the decisions in *Marcel Grand Cirque Inc. v. Canada (Minister of National Revenue - M.N.R.)* (1995), 107 F.T.R. 18, *Olympia Interiors Limited v. Canada* (1998), 98 D.T.C 6306 (F.C.T.D) and *Glenn Alexander Ross v. Canada*, 2002 D.T.C. 6884, aff'd at (2002), 301 N.R. 23 (F.C.A.).

. . .

31 But just as Parliament is free to have Federal Court judgments enforced in the provincial systems, it is also free to provide for other means of enforcing its claims. This is what Parliament did when it enacted section 223 of the *Income Tax Act*. In addition to deeming certificates to be enforceable as judgments of the Court upon registration, the section goes on to provide a specific method of enforcement of those certificates. If subsection 223 did nothing more than deem registered certificates to be enforceable as judgments of the Court, then the motions judge's conclusion would be beyond challenge. The Minister would be bound to take those steps which are required to enforce a judgment under the *Federal Court Act*, including the issuance of a writ of execution. But, subsection 223 does not stop there. It goes on to provide a specific means of enforcing these certificates. The scope and detail of those dispositions can be seen from the extracts below: . . .

[25] The same principle applies in this case. Parliament provided for a complete code in the Act. An applicant must exhaust the remedies available before the Minister and the Tribunal. The

applicant may then file an application for judicial review of their decisions—before the Federal Court of Appeal, not the Federal Court.

[26] The Act and the Regulations provide the means to challenge the notices of violations. The notices and the letters informed the applicant that it could call to discuss them. If there had been a problem with their service, I am satisfied that it was possible for the applicant to make its representations to the Minister or to the Tribunal. A decision could then have been made. In the absence of a decision, this Court cannot review the process that led to the notices of violation, and if there was a decision, it would be the Federal Court of Appeal's role to review it under section 28 of the *Federal Courts Act*.

B. *Format of the notices of violation*

[27] Even though I am dismissing the motion for lack of jurisdiction, I nonetheless considered the applicant's arguments. Bilodeau submitted that what it received was not a "procès-verbal" as required by the Act. I note that section 17 of the Act clearly states that the Act does not create offences; a notice of violation is a civil proceeding, and there is therefore a degree of flexibility.

[28] Neither the Act nor the Regulations prescribe an official format for notices of violation. I repeat here section 7 of the Act, which describes the essential elements of such notices:

*Agriculture and Agri-Food
Administrative Monetary*

*Loi sur les sanctions
administratives pécuniaires en
matière d'agriculture et
d'agroalimentaire, LC 1995,*

Penalties Act, SC 1995, c 40 ch 40

PROCEEDINGS

OUVERTURE DE LA POURSUITE

Issuance of notice of violation

Verbalisation

7. (2) [...] a notice of violation that names the person, identifies the violation and

7. (2) [...] Le procès-verbal comporte, outre le nom du contrevenant et les faits reprochés, soit un

(a) contains a warning that the person has committed a violation; or

avertissement, soit le montant, établi en application du règlement, de la sanction à payer — auquel cas il précise le délai et les modalités de paiement — et, sous réserve

(b) sets out

des règlements, le montant inférieur de la sanction infligée prévu au procès-verbal dont le paiement, dans le délai et selon les modalités, vaut règlement.

(i) the penalty, established in accordance with the regulations, for the violation that the person is liable to pay,

(ii) particulars concerning the time for paying and the manner of paying the penalty, and

(iii) subject to the regulations, a lesser amount that may be paid in complete satisfaction of the penalty if paid within the time and manner specified in the notice.

Summary of rights

Sommaire des droits

(3) A notice of violation must clearly summarize, in plain language, the rights and obligations under this Act of the person on whom it is

(3) Figurent aussi au procès-verbal en langage clair un sommaire des droits et obligations du contrevenant prévus par la présente loi,

<p>served, including the right to have the facts of the violation reviewed by the Minister or the Tribunal, and the procedure for requesting such a review.</p>	<p>notamment le droit de contester les faits reprochés auprès du ministre ou de la Commission et la procédure pour le faire.</p>
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[29] The documents entered into evidence contain all the elements described in section 7 of the Act: they name the person, identify the violation, contain the penalty and particulars concerning the time for paying and the manner of paying the penalty, and clearly summarize, in plain language, the rights and obligations under the Act of the person on whom the notice of violation is served, including the right to have the facts of the violation reviewed by the Minister or the Tribunal, and the procedure for requesting such a review.

[30] The *Larousse* dictionary gives the following definition of the term “procès-verbal” online (<http://www.larousse.com/en/dictionaries/french-english/proc%a8s-verbal/63350>, under the word “procès-verbal”):

1. DROIT [acte – d’un magistrat] (official) report, record [d’un agent de police] (police report).
2. [pour une contravention] parking ticket.
3. [résumé] minutes, proceedings.

[31] The meaning of the second definition, “parking ticket”, is a perfect equivalent of a notice of violation. According to the principles of bilingual statutory interpretation, it is clear that “avis de violation” (“notice of violation”) is the shared meaning, the more specific meaning, found in both versions of the Act. The Act is not confusing on the nature of the document called “avis de violation” or “procès-verbal”. See *R v Daoust*, 2004 SCC 6, at para 26:

26 The Court has on several occasions discussed how a bilingual statute should be interpreted in cases where there is a discrepancy between the two versions of the same text. For example, in *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269, 2002 SCC 62, at para. 56, LeBel J. wrote:

A principle of bilingual statutory interpretation holds that where one version is ambiguous and the other is clear and unequivocal, the common meaning of the two versions would a priori be preferred; see: *Côté, supra*, at p. 327; and *Tupper v. The Queen*, [1967] S.C.R. 589. Furthermore, where one of the two versions is broader than the other, the common meaning would favour the more restricted or limited meaning: see *Côté, supra*, at p. 327; *R. v. Dubois*, [1935] S.C.R. 378; *Maurice Pollack Ltée v. Comité paritaire du commerce de détail à Québec*, [1946] S.C.R. 343; *Pfizer Co. v. Deputy Minister of National Revenue for Customs and Excise*, [1977] 1 S.C.R. 456, at pp. 464–65; and *Gravel v. City of St-Léonard*, [1978] 1 S.C.R. 660, at p. 669.

[32] In the facts of this case, there is no ambiguity. The applicant acknowledges that it was aware of the notices. It did not present any evidence to suggest that it had not understood them. The respondent stated that Bilodeau had paid the penalties related to previous notices sent in 2005. I conclude that there was no actual confusion in this case.

[33] In any event, if there had been any confusion, it was not necessary to apply for judicial review to challenge the notices. A procedure was available, and the applicant could have used it.

B. *Date on which notices of violation served*

[34] The applicant states that it did not receive valid service of the notices of violation because they were accompanied by a certificate of service stating a later date than the date of the certificate, the signing public servant having already served a certified copy of each of them.

Since it is impossible to confirm an event that has not yet happened, Bilodeau alleges that it therefore believed in good faith that the notices were mere advance notices and that it would receive further notices at a later date.

[35] The applicant admits that it received the notices of violation and the subsequent letters. It admits that it did not pay the administrative monetary penalties. It admits that it did not resort to section 9 of the Act to request a review before the Minister or the review tribunal. It now argues that the irregularities in how the notices of violation were served prevented it from exercising these remedies.

[36] The respondent submits that the applicant, by seeking the intervention of the Court to remedy its failure to challenge the notices of violation on time, cannot succeed. It failed to participate in the administrative process provided by the Act. It does not make any arguments to challenge the exercise of the Minister's discretion to make certificates of default following the notices of violation. The registration of the certificates is not a judgment of the Court, and the sought remedy is inadmissible.

[37] The affidavit of Mr. Doucette confirms that the notices were sent on the actual date:

[TRANSLATION] "I completed a second certificate of service reflecting the addition of ten (10) days from the date of the Canada Post acknowledgement of receipt in order to establish the date of service . . . This second certificate of service was completed for administrative purposes only and was not sent to L. Bilodeau & Fils Ltée." The version dated 10 days later was therefore

not sent but kept on file. In any event, the applicant was not misled, and the issue of the dates was an insignificant point that could not invalidate the service.

[38] In come cases, it seems that the applicant received the certificates that referred to a later date. However, with respect to this type of error, the Federal Court of Appeal, in *Clare v Canada (Attorney General)*, 2013 FCA 265, stated that minor service irregularities did not cancel notices of violation under the Act.

[39] In the case at bar, an irregularity in the service of the documents did not prevent the applicant from exercising the remedies available.

V. Conclusion

[40] For these reasons, the application is dismissed.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed.

“Peter Annis”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2043-12

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PLACE OF HEARING: MONTRÉAL, QUEBEC

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REASONS FOR JUDGMENT AND JUDGMENT BY^[ReasonF]:

DATED: APRIL 14, 2014

APPEARANCES:

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