Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: Iliut Razvan Puia v. Canada (Minister of Agriculture and Agri-Food) 2012 CART 20

Date: 20121026
Docket: CART/CRAC-1605

Between:

Iliut Razvan Puia, Applicant

- and -

Minister of Agriculture and Agri-Food, Respondent

Before: **Chairperson Donald Buckingham**

In the matter of an application made by the applicant, pursuant to paragraph 13(2)(*b*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of a Minister's decision dated December 1, 2011, holding that the applicant violated section 40 of the *Health of Animals Regulations*.

DECISION

[1] Following a review of the decision, and the reasons for that decision, purportedly made by the Minister of Agriculture and Agri-Food (Minister) on December 1, 2011, and following a review of all written submissions of the parties in this matter, the Canada Agricultural Review Tribunal (Tribunal), by order, sets aside the Minister's decision, finds the Notice of Violation issued to the applicant is null and void, and, as a result, holds that no monetary penalty is payable by the applicant to the respondent.

By written submissions only.

REASONS

Alleged incident and issues

[2] On December 1, 2011, a decision was allegedly issued by the Minister after the conclusion of a review pursuant to subsection 13(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act) S.C. 1995, c.40, of the facts pertaining to the issuance of Notice of Violation YYZ4971-0257 dated January 12, 2011, to the applicant, Iliut Razvan Puia (Puia).

[3] The Notice of Violation states that the events which gave rise to its issuance to Puia by the Canada Border Services Agency (Agency) occurred on January 12, 2011, at Pearson International Airport in Toronto, Ontario, when Puia is alleged to have imported meat without meeting the prescribed requirements contrary to section 40 of the *Health of Animals Regulations* (see Notice of Violation issued January 12, 2011).

[4] Section 40 of the *Health of Animals Regulations* makes importing meat into Canada unlawful unless an importer meets the requirements of Part IV "Importation of Animal By-Products, Animal Pathogens and Other Things" of the *Health of Animals Regulations*.

[5] The purported decision of the Minister is set out in a letter on Canada Border Services Agency letterhead dated December 1, 2011. The signature block of the letter is signed by a J. Laurin (Laurin) and who indicates he or she is "A/Senior Program Advisor, Appeals Division, Recourse Directorate, *For the Minister of Public Safety and Emergency Preparedness".*

[6] That letter dated December 1, 2011 to Puia, confirms that the violation, as set out in Notice of Violation YYZ4971-0257 dated January 12, 2011, "was committed and the Notice of Violation with Penalty issued pursuant to Section 7(1) of the Act is confirmed and remains in effect. The amount of the penalty in the amount of $800 is now owing to the Receiver General for Canada".

[7] This same letter then goes on in a following section entitled "Reasons":

> *The evidence shows that, on January 12, 2011, you reported to the Canada Border Services Agency at Pearson International Airport and you answered no to the question on the declaration card that asked if you were bringing into Canada any meat, [sic] meat products. During the subsequent examination, several packages of dried meat originated [sic] from a foreign country were found and you were not in possession of permits or certificates required to import these products. As such, there was a contravention of the* Health of Animals Regulations.

In your appeal you contented [sic] the Bucharest-OTP airport informed you that your luggage exceeded the weight limit and therefore, you had to reorganized [sic] the luggage prior of leaving the airport. You further alleged that your mother had placed dry vacuum sealed packages of salami inside your luggage without your knowledge.

In response I should clarify that regardless if you did not notice that several packages of dried meat were inside your luggage, the fact remains that you were specially [sic] asked by the Border Services Officer if you were aware of the contents of your baggage and you responded in the positive form.

Moreover, you were required to declare the meat products and possess the required permit and/or certificate for its importation. As you failed to meet this requirement there was a contravention. Consequently, your claim has not been accepted as a reason to cancel or mitigate this enforcement action.

As this contravention is considered to be a serious offence the $800 penalty is appropriate as it is in accordance with the Agriculture and Agri-food Administrative Monetary Penalties Regulations [sic]. Accordingly, this enforcement action has been maintained as originally assessed.

Payment should be made in the form of …

[8] Puia, by way of a request for review to the Tribunal, has challenged the validity of the Minister's decision. Accordingly, Puia has not, to date, paid the penalty assessed to him by Notice of Violation YYZ4971-0257. This matter has been conducted by paper submissions alone, and there is no indication on the record that the Agency, the Minister or Puia was represented at first instance before the Minister, or before the Tribunal now, by legal counsel.

[9] The issue raised in this case is whether the Minister's decision should be confirmed, varied or set aside by the Tribunal, given the record now before it, as well as the pertinent legislation and jurisprudence under which the Tribunal must carry out its mandate.

Procedural History and Record of Documents Filed in the Case

[10] Notice of Violation YYZ4971-0257 dated the 12th day of January, 2011, was issued by the Agency alleging that Puia, on that day, at Pearson International Airport in Toronto, Ontario, "committed a violation, namely: Import an animal by-product to wit: meat without meeting the prescribed requirements Contrary to section 40 of the *Health of Animals Regulations*", which is a violation under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

[11] The Agency served the above Notice of Violation on Puia personally on January 12, 2011. Under section 4 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, Puia's alleged infraction is a serious violation for which the penalty assessed was $800.00.

[12] Having received the Notice of Violation, Puia chose to exercise his right to request a review of the facts of the violation before the Minister by requesting such a review in his letter dated January 15, 2011 (Applicant Request for Review to Minister). The record shows that the Recourse Directorate of the Agency received the letter on January 19, 2011 (see Tab 2 of Ministerial Report). Puia filed a second letter with additional submissions to the Minister on March 28, 2011, with the record showing that the Recourse Directorate of the Agency received the letter on March 31, 2011 (see Tab 2 of Ministerial Report). Puia's letter of January 15, 2011, bears a heading which reads: "Attn: Minister of Public Safety – Ref: request for review of notice of violation no. YYZ4971-0257/11-01-12" while the letter of March 28, 2011, bears a heading which reads: "Attn: Canada Border Services Agency – Recourse Directorate – Request for a Ministerial Decision YYZ4971-0257 - Ref. NO CS-62648".

[13] On December 1, 2011, a decision with reasons (Decision) was allegedly issued by the Minister after the conclusion of a review pursuant to subsection 13(1) of the Act, of the facts pertaining to the issuance of Notice of Violation YYZ4971-0257 dated January 12, 2011, to Puia. The record shows that the Decision was successfully delivered to Puia on December 7, 2011.

[14] On December 21, 2011, Puia filed a request for review with the Tribunal (Request for Review to the Tribunal), requesting that the Tribunal review the Minister's decision, a request permitted by paragraph 13(2)(*b*) of the Act. Through subsequent communications with Tribunal staff, Puia indicated that he wished to proceed by means of written submissions in English.

[15] By letter dated January 9, 2012, the Tribunal invited the Agency to file with it a ministerial report (Ministerial Report) relating to the violation, no later than January 24, 2012. On January 24, 2012, the Agency sent a copy of the Ministerial Report to Puia and to the Tribunal, with the Tribunal receiving its copy that same day.

[16] By letter dated January 25, 2012, the Tribunal invited Puia and the Agency to make any additional submissions in response to the Ministerial Report, on or before February 24, 2012. No further submissions from either party were received by the Tribunal.

[17] The written record before the Tribunal in this case consists of the following documents:

<u>From the Minister and the Agency</u>:

(i) the Notice of Violation dated January 12, 2011;
(ii) the Minister's Decision (including the Reasons for Decision) dated December 1, 2011; and
(iii) the Ministerial Report dated January 24, 2012.

From Puia:

(i) his Request for Review to the Minister dated January 15, 2011;
(ii) his Additional Submissions to the Agency dated March 28, 2011; and
(iii) his Request for Review to the Tribunal dated December 21, 2011.

Analysis and Applicable Law

[18] The Act establishes a possibly unique, if not somewhat perplexing, procedure (particularly for self-represented applicants) for challenging a Notice of Violation issued pursuant to it. Under the Act, a person served with a Notice of Violation, should he or she wish to contest its validity, may choose one of two preliminary routes—a request for review to the Minister of Agriculture and Agri-Food, or the Minister of Health, as the case may be (subsection 8(1) and paragraph 9(2)(b) of the Act) or a request for review to this Tribunal (subsection 8(1) and paragraph 9(2)(c) of the Act.) In both cases, the review which takes place is an administrative review of the executive act that has led to the issuance of a notice of violation. This review is in the nature of a review of first instance where the reviewer—either the Minister or the Tribunal—receives evidence from the parties, considers applicable law, applies the facts of the case to the applicable law and then the decision-maker determines whether or not the person requesting the review committed the violation. This exercise, in either case, leads to the issuance of an administrative adjudicative decision.

[19] Most frequently under Canadian administrative procedure, the next juridical step in the process for a party that is dissatisfied with the result from the first instance decision would be to seek judicial review of it before a court of law. This is the case under the Act for decisions in the first instance rendered by the Tribunal with judicial review carried out by the Federal Court of Appeal. However, this is not the case for decisions in the first instance rendered by the Minister. Here, the Act stipulates that a review of ministerial decisions will be carried out by the Tribunal (subsection 12(2) and paragraph 13(2)(b) of the Act). This case, of course, is one such request for review of a decision of the Minister.

[20] In reviewing a Minister's decision, the Tribunal may confirm it, vary it or set it aside (paragraph 14(1)(*a*) of the (Act)) and as such, performs a function not as a decision-maker of first instance but rather as a body reviewing a decision of first instance, making the Tribunal in this case, function more like an court exercising a judicial review function. The Tribunal is subject to, and guided by, Canadian administrative law and procedure in carrying out its function to complete a review of a Minister's decision. Of course, parties who are in turn unsatisfied with the Tribunal's decisions on reviews of Ministers' decisions, have yet again, the opportunity to seek judicial review of those decisions before the Federal Court of Appeal. Recent cases where parties have exercised their right for judicial review of Tribunal decisions include *Attorney General of Canada v. Rosemont Livestock,* 2011 FCA 25; *Attorney General of*

Canada v. Steve Ouellet, 2010 FCA 268; *Attorney General of Canada v. Denfield Livestock Sales Limited*, 2010 FCA 36; and *Michel Doyon v. Attorney General of Canada,* 2009 FCA 152.

[21] A body conducting a review of a first instance decision, such as is the case here with the Tribunal's review of a Minister's decision, must apply the proper standard of review applicable to that decision. In *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 (*Dunsmuir*) at paragraph 34, the Supreme Court of Canada reduced the historical three standards of reviews to two — correctness and reasonableness:

> *[34] The current approach to judicial review involves three standards of review, which range from correctness, where no deference is shown, to patent unreasonableness, which is most deferential to the decision maker, the standard of reasonableness* simpliciter *lying, theoretically, in the middle. In our view, it is necessary to reconsider both the number and definitions of the various standards of review, and the analytical process employed to determine which standard applies in a given situation. We conclude that there ought to be two standards of review - correctness and reasonableness.*

[22] The Supreme Court continues in *Dunsmuir*, at paragraphs 46-47, to set out the reasonableness standard and its application, and, in paragraph 50, the correctness standard and its application:

> *[46] What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?*
>
> *[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.*

> ...
>
> *[50] As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.*

[23] Learned authors have commented, more specifically, as to when one or the other of the two standards of review will apply as follows:

> "Thus correctness will normally be the standard of substantive judicial review on: constitutional questions, 'true questions of jurisdiction or *vires*', questions concerning the division of jurisdiction between competing administrative regimes, and 'a question ... of general law 'that is both of central importance to the legal system as a whole and outside the adjudicator's special expertise''. Conversely, unreasonableness will normally be the standard of review of a tribunal's finding of fact, making or applying policy, and exercising discretion and the application of the law to the facts when a legal question cannot readily be extricated from the facts". (Brown and Evans, *Judicial Review of Administrative Action in Canada*, Toronto: Canvasback Publishing, 2011 at pages 14-9 to 14-10)

[24] It is a fundamental principle of public law that all governmental action must be supported by a grant of legal authority. As well, any administrative action that contravenes a grant of legal authority conferred by statute will be invalid. Although not explicitly listed in the above list cited by Brown and Evans, the question of the validity of the exercise of authority by the decision-maker in question will be a question of law and therefore be subject to the correctness standard of review as set out in *Dunsmuir*. Such a question is without doubt akin to true questions of jurisdiction or *vires*, questions concerning the division of jurisdiction between competing administrative regimes, and questions of general law that are both of central importance to the legal system as a whole and outside the adjudicator's special expertise.

[25] An important element then in conducting a review of a decision of first instance and the decision-making process is to ensure that the person making the decision is the one who has been so designated by statute (see *Secord v. Saint John (City) Board of Police Commissioners* (2006), 43 Admin. L.R. (4th) 218 (NBQB)). In addition, even where statutorily-authorized persons have formally made decisions, a reviewing body will have to ensure that they have, in fact,

applied their minds to the representations of the parties and to the matters that the statute directs them to decide (see *Khan v. University of Toronto* (1995), 130 D.L.R. (4th) 570 (Ont. Div. Ct.)).

[26] In the present case, it is not at all clear to the Tribunal that the person who made the decision is the person so designated by statute to make it. As such this question of the validity of the exercise of authority by the decision-maker in question will be a question of law and therefore be subject to the correctness standard of review as set out in *Dunsmuir.* A review of the Act and of the *Interpretation Act* R.S.C. 1985 c. I-21, is necessary to explore if the correctness standard has been met in this case.

[27] Section 2 of the Act defines "Minister" as follows:

> *"Minister" means the Minister of Agriculture and Agri-Food, except that, in relation to a violation involving a contravention of the* Pest Control Products Act *, it means the Minister of Health;*

[28] Nowhere in the Act is the "Minister of Public Safety and Emergency Preparedness" mentioned. At first view, it is clear that the author of the Minister's decision of December 1, 2011, associates himself or herself with this latter mentioned Minister. At no point has the Agency or Laurin provided any indication or authentication of their authority, delegated, sub-delegated or otherwise, which would give him or her, the right to hear and decide this case on behalf of the "Minister of Agriculture and Agri-Food" or the "Minister of Health".

[29] The *Interpretation Act*'s section 24 is also instructive:

> **24.** *(1) Words authorizing the appointment of a public officer to hold office during pleasure include, in the discretion of the authority in whom the power of appointment is vested, the power to*
>
> *(a) terminate the appointment or remove or suspend the public officer;*
>
> *(b) re-appoint or reinstate the public officer; and*
>
> *(c) appoint another person in the stead of, or to act in the stead of, the public officer.*
>
> *(2) Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include*

> *(a) a minister acting for that minister or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;*
>
> *(b) the successors of that minister in the office;*
>
> *(c) his or their deputy; and*
>
> *(d) notwithstanding paragraph* (c)*, a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.*
>
> *(3) Nothing in paragraph (2)*(c) *or* (d) *shall be construed as authorizing the exercise of any authority conferred on a minister to make a regulation as defined in the* Statutory Instruments Act*.*
>
> *(4) Words directing or empowering any public officer, other than a minister of the Crown, to do any act or thing, or otherwise applying to the public officer by his name of office, include his successors in the office and his or their deputy.*
>
> *(5) Where a power is conferred or a duty imposed on the holder of an office, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.*

[30] There is no indication that Minister of Agriculture and Agri-Food personally made the decision in the letter dated December 1, 2011, issued to Puia. However, paragraph 24(2)(a) of the *Interpretation Act* would still permit that decision to be validly made if it was made by another "*minister acting for that minister*". There is no indication that Minister of Public Safety and Emergency Preparedness personally made the decision either. As well, paragraph 24(2)(d) of the *Interpretation Act* would appear to also permit that decision to be validly made if it was made by another "*a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing*".

[31] It is important to recall that the Act gives an applicant a right to seek a review of an administrative decision, in this case the issuing of a Notice of Violation from an enforcement agency, to the Minister of Agriculture and Agri-Food, or the Minister of Health, as the case may be. Sections 12 and 13 of the Act are explicit:

> **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.*

(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.

***13.** (1) After concluding a 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.*

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

(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.

[32] No doubt, where a Minister of the Crown is explicitly empowered to do something, others in the department or ministry over which the minister presides may exercise that power. The delegation of authority by subsection 24(2) is not, however, unlimited. Subsection 24(2) limits the sub-delegation of an administrative, legislative or quasi-judicial decision-making action on behalf of the Minister to: (a) persons within the Minister's Department, and persons within the ministry of state over which the minister presides, or (b) another minister acting for that minister. It would be a strained reading of the subsection that would permit both at the same time, that is as might be argued to have occurred in this case, a delegation from the Minister of Agriculture and Agri-Food to the Minister of Public Safety and Emergency Preparedness, and then a sub-delegation by the Minister of Public Safety and Emergency Preparedness to persons within his ministry. The Latin phrase *delegates non potest delegare* is applicable.

[33] Even employing the expanded authority granted to officials under the *Interpretation Act*, there are at least three reasons why that expanded authority does not reach to the Agency official who reviewed the evidence for, and then wrote and issued, the Ministerial decision in the present case. First, the exercise of the Minister's powers under the *Interpretation Act*, as set out in paragraph 24(2)(d), is limited to those in his "department or ministry" over which the Minister of Agriculture and Agri-Food presides. Canada Border Services Agency officials are not within this purview. Second, the Agency officials have offered the Tribunal no evidentiary or legal basis that they have been delegated or empowered to exercise the Minister of Agriculture and Agri-Food's authority to review Notice of Violation. In fact, to the contrary, the decision in this case has all the indicia to the outside world and to Puia, the applicant, that it is a decision of the Minister of Public Safety and Emergency Preparedness. Third and finally, from a procedural fairness perspective, it makes little sense for the exact same body—the Canada Border Services Agency—to review a decision under the guise of it being conducted by, or for, the Minister of Agriculture and Agri-Food, when in fact, the review is being conducted by an official in the same Agency, if not the same division, as the one who issued the Notice of Violation in the first place, on January 12, 2011. Even without the issue of invalid sub-delegation of Ministerial authority, the Tribunal questions if an Agency that both issues the Notice of Violation and then reviews the facts of the case when so requested by the applicant, has sufficient safeguards in place to satisfy the requirements for procedural fairness in such a review process.

[34] The Tribunal, therefore, finds that the person who completed the review of the facts of the Notice of Violation issued to Puia, and who then issued a decision purported on behalf of the Minister of Agriculture and Agri-Food, acted without statutory authority. As a result, the purported Minister's decision of December 1, 2011, is invalid and must be set aside.

[35] Legislative and/or regulatory amendments would be required to legitimize the action taken in the present case. Such amendments might include: (a) an explicit power of the Minister under section 4 of the Act to make regulations permitting him to delegate his power to officials of the Agency, not only to issue Notices of Violation under the Act, but also to conduct ministerial reviews on his behalf; (b) an explicit power of the Minister under section 6 of the Act, to designate officials of the Agency, who can not only issue Notices of Violation under the Act, but who can also conduct ministerial reviews on his behalf; and (c) the creation and bringing into force of such regulations and designations.

[36] The finding set out in paragraph [34] above leaves the Tribunal with the challenge of determining the consequences of such a finding on the validity of the underlying Notice of Violation that was originally issued to Puia on January 12, 2011.

[37] The general rule is that as a creature of statute, a tribunal cannot make orders that affect individuals' rights or obligations, without authority from its enabling statute. Orders outside the scope of the enabling statute would be void for exceeding jurisdiction. However, if the statute is silent on remedies, as a practical necessity, the Tribunal must have the remedial power to do the things its statute requires it to do. Accordingly, the range of remedies is

narrow, but can be broadened if it is determined certain remedial power is needed to achieve a result provided for by statute.

[38] The *Rules of the Review Tribunal (Agriculture and Agri-Food)*, SOR/99-451 and *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, SOR/2000-187 are silent as to remedial powers.

[39] The Act specifically sets out the Tribunal's powers in section 14.

> ***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.*
>
> *(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 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.*

[40] The *Canada Agricultural Products Act*, R.S.C. 1985, c. 20 (4th Supp) also provides some broadly worded powers to the Tribunal.

> ***8.*** *(1) The Board and the Tribunal are courts of record and each shall have an official seal that shall be judicially noticed.*

(2) In addition to the powers conferred by subsection (1), the Board and the Tribunal each have, with respect to the appearance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of their orders and other matters necessary or proper for the due exercise of their jurisdiction, all such powers, rights and privileges as are vested in a superior court of record and, without limiting the generality of the foregoing, the Board and the Tribunal may each

(a) issue a summons requiring a person

(i) to appear at the time and place stated in the summons to testify to all matters within the person's knowledge relative to any subject-matter before the Board or the Tribunal, as the case may be, and

(ii) to bring and produce any document, book or paper in the person's possession or under the person's control relative to that subject-matter;

(b) administer oaths and examine any person on oath; and

(c) during a hearing, receive such evidence as they consider relevant and trustworthy.

[41] What is meant by "court of record" is unclear. It is a term that has more than one sense depending on the context. For example, in a family law context, a court stated the following with respect to the Unified Family Court in *Manley v. Manley and Armor Moving and Storage Ltd.*, 1988 CanLII 3596 (ON CJ):

> *This phrase, "court of record", is not an empty title. It carries within it a legacy of jurisprudence that affirms the existence of "inherent" powers in the court for the control of its own process. Being a "court of record" means that the court is immediately blessed with an array of procedural powers, one of which is the power to set aside its own judgments.*

[42] The powers of a "court of record" are often discussed, as was the case in *Pacific Press Ltd. v. Campbell*, 1997 CanLII 3543 (BC SC), in the context of the ability of a body to exercise powers of contempt and to make witnesses compellable, a power which is given to the Tribunal in subsection 8(2) of the *Canada Agricultural Products Act*, as noted above.

[43] In setting out the powers of the Tribunal, section 14 of the Act does not go into detail as to what additional powers are available when setting aside a decision of the Minister. It is possible that remedies would include powers relating generally to monetary penalties. Other available remedies would have to be evaluated on a case-by-case basis.

[44] In the present case, an appropriate remedy for an applicant like Puia, who has exercised his rights to have the validity of an executive act taken against him reviewed, and for which a review has been undertaken and completed by a person other than one authorized to do so, has exposed Puia already to a great deal of concern, trouble and even expense. In this case then, it would appear to be most appropriate for the remedy from this Tribunal to include not only a finding of invalidity of the ministerial decision and that it must as a consequence be set aside, but also that as a result of this finding, the Tribunal order that the Notice of Violation YYZ4971-0257 issued to Puia pursuant to the Act and *Agriculture and Agri-Food Administrative Monetary Penalties Regulations,* on January 12, 2011, is null and void. The Tribunal therefore so orders and as a result, no monetary penalty is payable by the applicant to the respondent.

Dated at Ottawa, this 26th day of October, 2012.

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Dr. Donald Buckingham, Chairperson