Federal Court of Appeal | Cour d'appel fédérale

Date: 20160506

Docket: A-281-15

Citation: 2016 FCA 143

CORAM: **DAWSON J.A.**
STRATAS J.A.
NEAR J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

KABUL FARMS INC.

Respondent

Heard at Toronto, Ontario, on April 25, 2016.

Judgment delivered at Ottawa, Ontario, on May 6, 2016.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: DAWSON J.A.
NEAR J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

A. Introduction

[1] The Crown appeals from the judgment dated May 15, 2015 of the Federal Court (*per* Fothergill J.): 2015 FC 628. The Federal Court quashed penalties totalling $6,000 assessed by the Director of the Financial Transactions and Reports Analysis Centre of Canada for three

violations by the respondent of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

[2] The three violations were the respondent's failures to develop and apply written compliance policies and procedures, to perform a risk assessment, and to create a written training program for its employees and agents.

[3] The Federal Court quashed the penalties because of the inadequacy of the Director's reasons. That inadequacy prevented the Federal Court from assessing the reasonableness of the penalties.

[4] On appeal to this Court, the appellant submits that the Federal Court erred: the Director's reasons were adequate and so his assessment of penalties was reasonable. For the reasons that follow, I reject the appellant's submission. Therefore, I would dismiss the appeal.

B. Standard of review

[5] Before us is a statutory appeal from an administrative decision-maker. Therefore, in considering this appeal, we are to apply administrative law principles including the usual law governing the standard of review: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339.

[6] Thus, on appeal, we are to assess whether the Federal Court chose the proper standard of review and then applied it properly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47. In other words, review in this Court is *de novo*.

[7] The Federal Court applied the standard of reasonableness to the Director's assessment of penalties. I agree with the Federal Court. The Director's assessment of penalties is fact-based and discretionary, governed by legislation he often applies. Decisions of that sort are subject to reasonableness review: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 53-54.

[8] Exercising *de novo* review on the issue of reasonableness, I reach the same conclusion as the Federal Court: the Director's assessment of penalties was unreasonable. I would articulate the reasons slightly differently though, relying primarily upon this Court's decision in *Leahy v. Canada (Citizenship and Immigration)*, 2012 FCA 227, [2014] 1 F.C.R. 766, and offering some additional reasons.

C. The legislative scheme for determining the size of the penalty

[9] When assessing penalties for violations under the Act, the Director must take into account three mandatory criteria "in each case": penalties are to encourage "compliance with [the] Act rather than to punish," address the "harm done by the violation," and satisfy "any other criteria that may be prescribed by regulation": Act, section 73.11. Regulations have been enacted

and they prescribe one additional criterion, the violator's history of compliance with the Act and related legislation: see *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292, section 6.

[10] The Regulations also set out a three-step methodology for the Director to follow when assessing penalties for a violation. First, the Director must examine whether the violation is "minor," "serious," or "very serious": Regulations, section 4 and the Schedule to the Regulations. Then the Director must examine section 5 of the Regulations to see the range of penalty that can be applied for the violation in issue. The ranges are $1 to $1,000 for a minor violation, $1 to $100,000 for a serious violation and $1 to $500,000 in the case of a very serious violation. Finally, the Director is to select a figure within the proper range for each violation. That selection is to be based on the criteria set out in section 73.11 of the Act and the additional criterion prescribed by section 6 of the Regulations.

D. The relevance of the legislation to reasonableness review

[11] If the Director does not follow that three-step methodology for assessing penalties under the Regulations or does not apply the criteria under section 73.11 and section 6 of the Regulations, his decision can be neither acceptable nor defensible. In this case, the methodology and the criteria constitute a mandatory recipe that the Director must follow. Any deviation from this recipe renders his decision unreasonable: see, for example, *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193, [2011] 4 F.C.R. 203 where an administrative

decision-maker's failure to apply legislatively-mandated criteria led to a finding that its decision was unreasonable.

[12] In determining whether the Director followed the mandatory recipe supplied by the Act and the Regulations, we may look at whatever written reasons he gave. We may also examine the evidentiary record before him because that can supply a rationale for the decision he made: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at paras. 14-15.

E. What the Director did in this case

[13] After investigating the matter, inviting the respondent to provide submissions, and considering those submissions, the Director decided the matter. He found that the respondent committed three violations. He assessed a penalty for each one.

[14] The record before us, in particular a document entitled "Administrative Monetary Penalty Calculation [under the Act]," shows the methodology the Director used to assess the penalties. In substance, it is the methodology set out in paras. 9 and 10, above.

[15] Specifically, the Director did the following:

- He noted that each violation is classified as a serious violation under the Schedule to the Regulations.

- He observed that each serious violation attracts a penalty in the range of $1 to $100,000 under section 5 of the Regulations.

- For each violation, he conducted a three-step calculation to take into account the criteria under the legislation. He chose an amount within the range to reflect the criterion of harm—here, $50,000, $75,000 and $25,000 in the case of the three violations. Then he reduced each amount by 20% to take into account the criterion of the respondent's compliance history, and further adjusted that amount by 95% to reflect the criterion of encouraging the respondent to comply, not to punish the respondent. Here, appropriately, the Director considered the respondent's ability to pay.

As a result, the Director assessed the penalties for the three violations at $2,000, $3,000 and $1,000 for a total of $6,000.

F. The Federal Court

[16] The Federal Court took no issue with the Director's methodology. It also recognized that the Director followed that methodology in order to apply the legislative criteria to the facts before him. However, the Federal Court could see nothing in the record that could shed light on why the Director selected the figures he did.

[17] The Federal Court quashed the penalties. It found that "[t]here was no analysis of the objectives of the Act or how the statutory criteria for the imposition of administrative monetary penalties applied to the particular facts of the case" (at para. 51). It returned the violations back to the Director to redetermine whether penalties should be imposed upon the respondent and, if so, the amount of the penalties.

G. Analysis

[18] Relying primarily on the methodology followed by the Director—a methodology that is consistent with the Act and the Regulations—and stressing the discretionary, fact-based nature of the Director's assessment of penalties, the appellant submitted that the Director's decision was reasonable and so we should allow the appeal.

[19] The appellant's submission is fine as far as it goes. But it is incomplete. Before concluding that a decision is reasonable, at some point in its analysis a reviewing court must go further than the appellant suggests. A fact-based, discretionary decision made on the basis of proper methodology is not automatically reasonable. The reviewing court must also be satisfied that the administrative decision-maker has made an acceptable and defensible decision on the particular evidence before it. Specifically, in the case before us, in order to conclude that the penalties the Director assessed are reasonable, we must be satisfied, among other things, that the numbers the Director plugged into his calculation of the penalties are supportable on the evidence before him.

[20] Just how satisfied must we be that the penalties are supportable on the evidence? That depends on the margin of appreciation we should afford to the Director under reasonableness review.

[21] As the Federal Court recognized in this case and as it has recognized in two previous cases reviewing decisions of the Director, when we review the Director's assessment of penalties for reasonableness, he deserves a margin of appreciation: *Max Realty Solutions Ltd v Canada (Attorney General)*, 2014 FC 656, 458 F.T.R. 160; *Homelife/Experience Realty Inc. v Canada (Finance)*, 2014 FC 657, 458 F.T.R. 180.

[22] The Director deserves a margin of appreciation because of the nature of his task. When he selects the base amounts from the range and applies percentage reductions of the base amounts, he must evaluate the evidence before him against the legislative criteria. This is an imprecise, fact-based task that calls for subjective judgment informed by experience regulating this specialized field and knowledge about it.

[23] But the Director's task must be seen in its wider context. The Director is operating under an administrative monetary regime where violators face potentially significant monetary penalties.

[24] Decisions under administrative monetary penalty regimes are not "criminal" decisions and so courts do not scrutinize them strictly using section 11 of the Charter: see *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3. But that does not mean they always escape strict

scrutiny. As administrative decisions, they can be challenged by way of judicial review or (where available) statutory appeal, and administrative law principles apply. Sometimes those principles lead to strict scrutiny, other times less intensive scrutiny. Put in the language of some cases, reviewing courts can afford the administrative decision-maker hardly any margin or no margin of appreciation, a moderate margin, or a broad margin: *Canada (Attorney General) v. Boogaard*, 2015 FCA 150, 474 N.R. 121 at para. 36, citing *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 at paras. 17-18 and 23, *Khosa*, above at para. 59 and *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895 at para. 37-41. The margin of appreciation depends on various factors animated by two conflicting principles, the reviewing court's obligation to respect legislative intention and its obligation to defend and, where necessary, to vindicate the rule of law: *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006 at paras. 90-99.

[25] How this plays out depends on the facts of particular cases. For present purposes, one might usefully contrast two types of administrative proceedings. At one end are matters where an administrative decision-maker assesses the conduct of an individual or known group of individuals against concrete criteria, the potential effects upon the legal or practical interests of the individual(s) are large, and the matters lie somewhat within the ken of the courts. A good example is a professional disciplinary proceeding where an individual is charged with violations of a disciplinary code and the individual faces serious legal or practical consequences such as restrictions, prohibitions or penalties. At the other end are matters where an administrative decision-maker assesses something broader and more diffuse, using polycentric, subjective or

fuzzy criteria to decide the matter, criteria that are more typically within the ken of the executive and less so the courts. A good example is a decision regarding which of several qualified, closely-placed candidates should receive a job promotion having regard to what is best to advance the objectives of a governmental institution. All things considered, the margin afforded to the administrative decision-maker under reasonableness review will be more constrained in the former than the latter: see the discussion in *Boogaard*, above at paras. 38-52.

[26] In this case, the dominant consideration is that this administrative monetary penalty proceeding is akin to a disciplinary proceeding where the potential significance to the person accused of misconduct is high. However, the particular task of the Director we are reviewing, his selection of a penalty amount, is imprecise and fact-based, guided in this case only by general criteria rather than a rigid mathematical formula. It calls for an exercise of subjective judgment informed by experience and knowledge in a specialized field of regulation. In light of this, I conclude that we must be satisfied the sorts of figures the Director chose at each step in his methodology are underpinned or justified by some reasoning or evidence in the record.

[27] In this case, I am not so satisfied.

[28] The first step for the Director was to choose a base amount within the $1 to $100,000 range to reflect the harm, potential or actual, caused by the particular violation. He chose the figures of $50,000, $75,000 and $25,000 for the three violations. There is nothing in his summary of calculation or any of the letters he wrote to tell us why those figures reflect the actual or potential harm. We may presume that the Director considered the actual or potential

harm to be at the mid-range, upper-end and lower-end of the range, respectively. But we simply do not know what evidence or analysis of harm he relied upon. For all we know, the Director might have selected these numbers in order to raise revenue, an improper purpose under this legislation. Or he might have plucked the numbers from the air, equally improper.

[29] Let's now examine the 20% and the 95% reductions the Director applied to the base amounts. He chose those percentages to reflect the legislative criteria of compliance history and need to encourage compliance and not to punish. But we must go further and ask about the precise percentages—20% and 95%—he chose. Are those acceptable and defensible percentages based on the evidence before the Director? Was there evidence capable of underpinning or justifying those numbers?

[30] First, the 20% reduction. Like the Director's selection of the base amounts, the Director provided no justification for the 20% figure. The record before the Director and now before us on judicial review shows that the respondent reported the issues involved in this matter to this regulator, suggesting a good degree of commitment to compliance. This supports a lenient approach to the respondent. But the record also shows that while the respondent worked with the Director to remedy the problems identified, it did not do so, showing itself in need of behavioural modification. This supports a less lenient approach to the respondent. The evidence goes both ways. So why was 20% chosen, as opposed to 5% or 60%? We have no idea.

[31] Next, the 95% reduction. Here again, the Director supplied no justification for it. The record shows that in determining what was needed to encourage the respondent to comply and

not to punish, the Director took into account that the respondent operated a relatively small business, not a large, profitable financial institution. However, again, the respondent's inability to remedy the problems identified suggests a need to adjust the respondent's attitude to compliance. So like the 20% reduction, the evidence goes both ways. So why was 95% chosen? Why not 30% or 65%? We have no idea.

[32] For all we know, the 20% and 95% percentages might have been plucked out of the air or adopted for reasons extraneous to the legislation. Maybe the Director did not investigate the case enough to gather the evidence necessary to support a decision. We simply cannot tell. We are left in the dark. In this case, we are a reviewing court that cannot review.

[33] This Court found itself in a similar position in *Leahy*, above. There, a government institution refused to disclose information under the *Access to Information Act*, R.S.C. 1985, c. A-1. It asserted exemptions without any explanation. This Court could not discern the reasons from the record placed before the Court. In those circumstances, this Court could not assess whether the refusal to disclose was acceptable and defensible on the facts and the law. Accordingly, this Court quashed the head's decision and remitted it back for redetermination. See also, to similar effect, *Wall v. Office of the Independent Police Review Director*, 2014 ONCA 884, 378 D.L.R. (4th) 589 at paras. 57-59, where the Court of Appeal for Ontario could not conduct reasonableness review because there it could not ascertain the basis on which the administrative decision-maker decided the matter.

[34] The case before us is on all fours with *Leahy*. Here, the Director has provided no rationale for the base amounts or reductions he chose. The evidentiary record before the Director also sheds no light on the matter. To conduct reasonableness review here, we would have to simply assume or trust that the Director had good reasons for the numbers he chose. As this Court said in *Leahy* (at para. 137), that "is inconsistent with our role on judicial review." We are to review, not trust or assume.

[35] One commentator has put it this way:

> Without knowing the reasoning behind a decision, it is impossible for a judge to determine if it is founded upon arbitrary reasoning. Thus, in order for a judge to determine whether a decision maker acted lawfully, the decision maker must provide reasons adequate to allow a reviewing judge to determine why the decision maker made the decision they did and whether it followed explicit statutory requirements [or the basis for the decision must be apparent in the record]. If the judge cannot ascertain how the decision was made, then the court cannot fulfill this role and decisions made in violation of the rule of law may be sanctioned by the court.

(Paul A. Warchuk, "The Role of Administrative Reasons in Judicial Review: Adequacy and Reasonableness" (2016), 29 C.J.A.L.P. 87 at p. 113.)

[36] The appellant gamely attempted to support the Director's selection of the figures of $50,000, $75,000 and $25,000 as the base amounts by resorting to material not before us. In this Court, as he did in the Federal Court, the Crown stated that the Director relied upon an "unpublished formula" setting out criteria for determining what base amount to select from the prescribed range. Apparently under this unpublished formula, for each violation the Director applies a specific percentage to the maximum amount of the range to determine the base

amounts. So, to illustrate, a failure to develop and apply compliance policies and procedures will always result in the selection of a base amount that is 50% of the top of the range, a failure to perform a risk assessment will always result in the selection of a base amount that is 75% of the top of the range, and a failure to develop a written training program will always result in the selection of a base amount that is 25% of the top of the range.

[37] This unpublished formula—more of a secret guideline—is not in evidence before us. Accordingly we cannot consider it. The appellant says that the Director relied upon it, but there is no evidence in the record before us to suggest that that is so.

[38] The general rule is that this Court can only act on evidence in the record before it unless some exception applies. Two exceptions are legislative provisions that create factual presumptions and the doctrine of judicial notice as discussed in authorities such as *R. v. Spence*, 2005 SCC 71, [2005] 3 S.C.R. 458. Here, neither exception applies.

[39] In any event, even if the unpublished formula was before us and even if we had evidence or reasons suggesting that the Director relied upon it in selecting the base amounts, the percentage reductions applied by the Director remain unsupported and unexplained. And I have two further serious concerns.

[40] First, the unpublished formula appears to conflict with section 73.11, a section that the Director must always follow. Section 73.11 provides that the Director must take into account, among other things, the criterion of harm "in each case." The unpublished formula, as described

by counsel for the appellant, does something quite different. It sets a rigid formula for choosing the base amount from the $1 to $100,000 range to take into account the legislative criterion of harm. That formula is based only on the type of violation, not the particular mitigating or aggravating facts underlying it relating to harm.

[41] To illustrate this, take one of the violations in this case, the failure to develop and apply compliance policies. The formula apparently requires the Director to select a base amount right at the middle of the range regardless of any facts that might drive the actual or potential harm higher or lower. So if the Director uses the formula in this case, he cannot consider some facts that might mitigate the penalty, for example the relatively small individual amounts and total amounts sent abroad by the respondent. Using the words of section 73.11, the formula apparently prevents the Director from considering the facts of "each case." Or, put another way, by using the formula he is fettering his discretion.

[42] Without the unpublished formula formally before us, I do not wish to be definitive on this point. Perhaps the Director has somehow interpreted section 73.11 in a way that would support the sort of blanket assessment of harm that the formula encourages. Perhaps the Director has some experiential or expert analysis of the harm associated with different types of violations regardless of the particular facts of cases, something he might contend meshes with a reasonable interpretation of section 73.11. Intriguingly, at one point during argument counsel for the appellant referred to the unpublished formula as an "analysis". But neither the formula nor any supporting analysis to support the formula or the selection of the base amounts has been

disclosed to us. As I have explained, this disables us from assessing the acceptability and defensibility of the Director's penalty assessments.

[43] My second serious concern about the Director's apparent use of an unpublished formula is procedural fairness. In a case such as this—the potential imposition of a monetary penalty against a party for a regulatory violation—the party has a right to know the case to meet and to make informed submissions on it: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193. In this case, the Director is aware of the obligation to some extent: he afforded the respondent an opportunity to respond to many aspects of the case against him. But the apparent existence and non-disclosure here of an unpublished formula and perhaps more—material counsel for the appellant advises was relied upon by the Director to select the base amounts—worked unfairness to the respondent.

[44] As part of procedural fairness, a party potentially liable for an administrative monetary penalty, such as the respondent, needs to know about any formula, guideline or supporting analysis the Director will rely upon in his assessment of penalties. In response, that party is entitled to suggest that any formula, guideline or supporting analysis is wrong, inappropriate, unacceptable or indefensible on the facts, or inconsistent with legislative provisions supplying decision-making criteria, such as section 73.11 of the Act. A formula, guideline or supporting analysis might also show that the Director is adopting a particular interpretation of the legislation, and the affected party is entitled to make submissions on that too. Here, the unpublished formula and perhaps more was withheld from the respondent, leaving him in the dark.

[45] In the course of argument before us, the appellant urged us to supplement the Director's reasons in order to sustain the penalties he awarded. He submitted that on judicial review, we are obligated to assess an administrative decision not just on the reasons given but on the reasons that could have been given. Certainly there are Supreme Court authorities that, read literally, say we are supposed to do just that: *Newfoundland Nurses*, above at para. 12; *Dunsmuir*, above at para. 48.

[46] However, those authorities do not stand alone. In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 at para. 54, the Supreme Court held that a reviewing court does not have free rein to come up with reasons in order to save the decision. There are limits. See also *Lemus v. Canada (Citizenship and Immigration)*, 2014 FCA 114, 372 D.L.R. (4th) 567 at paras. 27-37.

[47] I decline the appellant's invitation to supplement the Director's reasons in order to save the penalties he assessed. There is nothing in the record I can use to try to support the Director's selection of the base amounts from the $1 to $100,000 range and the percentage reductions. Further, in a case like this, fashioning reasons that might have been given in order to save the decision would turn a blind eye to our role as a reviewing court. For all we know, we might be working to cooper up a decision where the Director arbitrarily plucked figures from the air, relied upon an unpublished guideline or analysis of questionable legality or worse, in circumstances of procedural unfairness to the respondent.

[48] Finally, the appellant urged us to reach a different result from the Federal Court, stressing the need to leave the Director free to carry out his important responsibilities under this legislation and other legislation.

[49] From a reading of this legislation, this Court can appreciate the importance of the Director's responsibilities. But nothing said above comes even close to hindering the Director in his work. In this case, jotting down a few words of explanation in the Director's summary of calculation about why he chose the figures for the base amounts and reductions—something that would perhaps have taken a few seconds—probably would have sufficed as far as enabling this Court to review the Director's assessment of penalties is concerned. It would have sufficiently informed the respondent so that he could decide knowledgeably whether to appeal. More broadly, it would have fulfilled the Director's responsibility as a public decision-maker and as part of our democratic governance structure to explain to the public how and why he is exercising the public powers entrusted to him.

[50] Further, with minimal effort, the Director could have disclosed any formulas, guidelines, or supporting analyses to the affected party, thereby fulfilling another of the Director's important responsibilities—to act in accordance with procedural fairness.

[51] Certainly some of the Director's tasks can be sensitive. To the extent that something must be kept confidential, the Director, like any other administrative decision-maker or public authority, can assert a privilege known to law such as public interest privilege, subject to review (see, *e.g.*, *Slansky v. Canada (Attorney General)*, 2013 FCA 199, 364 D.L.R. (4th) 112 and,

semble, *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31, [2004] 1 S.C.R. 809). On judicial review, if something must be kept confidential, the Director can apply for portions of the record to be sealed in accordance with the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, as was in fact done for part of the record in this case: see, *e.g.*, *Lukacs v. Canadian Transportation Agency*, 2016 FCA 103.

H. Remedy

[52] The normal remedy in a case like this is to order that the matter go back to the Director to reassess the penalties, this time with adequate reasons. The Federal Court gave that remedy. However, it went further. It added that the Director could reassess whether any penalties should be imposed at all.

[53] That possibility is indeed open to the Director in this case. In reassessing the penalties, the Director could theoretically apply the criteria prescribed by the legislation and assess these penalties at zero.

[54] In my view, however, it would have been better if the Federal Court simply remitted the matter to the Director to reassess the penalties and said nothing more. Although not meant as such, the Federal Court's additional words might be taken as a hint or suggestion that the penalties the Director originally assessed were too high. Under the Act, the Director—not this Court, nor the Federal Court—is Parliament's designated assessor of penalties for violations under the Act. Absent circumstances where *mandamus* or a mandatory direction from the Court

is legally warranted—and there are no such circumstances here—the Director is entitled to reassess the penalties himself, applying the criteria under the legislation to the evidence before him and supplying an adequate rationale.

[55] I wish to remind the Director that in conducting his reassessment he must keep front of mind his obligations of procedural fairness. Among other things, he must ensure that the respondent is made aware of the case to meet, including any formulas, guidelines and analyses he intends to rely upon, and he must give the respondent an opportunity to address that case.

I. Proposed disposition

[56] Therefore, I would dismiss the appeal.

[57] On the issue of costs, I note that the respondent did not file a notice of appearance under Rule 341(1) and never sought to do so. Thus, it was not allowed to file a memorandum of fact and law. At the hearing of the appeal, we exercised our direction to allow the respondent to make brief oral submissions. But given the respondent's limited participation in this appeal, I would not award it any costs.

"David Stratas"

J.A.

"I agree
Eleanor R. Dawson J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-281-15
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE FOTHERFILL DATED MAY 15, 2015, NO. T-1128-11	
STYLE OF CAUSE:	HER MAJESTY THE QUEEN v. KABUL FARMS INC.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 25, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	DAWSON J.A. NEAR J.A.
DATED:	MAY 6, 2016

APPEARANCES:

James Gorham	FOR THE APPELLANT
Habib Qayumi (as a layperson) Mohammed Yadgar (store owner)	FOR THE RESPONDENT

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