Federal Court Cour fédérale

Date: 20220713

Docket: T-1295-20

Citation: 2022 FC 1029

Ottawa, Ontario, July 13, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RONSCO INC.

Plaintiff/
Responding Party

and

HER MAJESTY THE QUEEN

Defendant/
Moving Party

ORDER AND REASONS

I. Overview

[1] The Plaintiff and responding party, Ronsco Inc. [Ronsco], is a Canadian company that manufactures and supplies railway wheels and wheel sets. As part of its business, Ronsco imports forged railway wheels with unfinished bore holes, referred to as rough bore wheels. Ronsco classified the rough bore wheels on importation, as required by the *Customs Act*, RSC

1985, c 1 (2nd Supp) [*Customs Act* or *Act*], under a duty free tariff item (tariff item No. 8607.19.21 [Tariff 21]). Ronsco asserts that its classification of the rough bore wheels as goods falling within the scope of Tariff 21 was consistent with an advance ruling that the Canada Border Services Agency [CBSA] had provided one of its competitors in 2005.

[2] In 2017, the CBSA undertook a Trade Compliance Verification audit for goods imported by Ronsco between January 1, 2015 and December 31, 2015.

[3] The CBSA verification concluded that: (1) the rough bore wheels had been improperly classified under Tariff 21; (2) the wheels were properly classified under tariff item No. 8607.19.29 [Tariff 29], a tariff item subject to a 9.5% duty; and (3) specific information had been available to Ronsco to provide it reason to believe Tariff 21 was not the correct tariff to be applied. Ronsco's failure to file a correction to the tariff classification was therefore held to be a contravention of the *Customs Act*.

[4] Ronsco was required to correct its import documentation and pay duties owed for the goods imported between 2015 and 2018. It was also assessed a penalty for having contravened the *Act*.

[5] Having unsuccessfully disputed the findings of the CBSA verification in accordance with the processes prescribed in the *Customs Act*, Ronsco commenced the underlying action. In its Fresh as Amended Statement of Claim, Ronsco seeks general damages, special damages and compensation for all penalties, duties and interest paid as a result of the CBSA verification

findings. Ronsco also seeks an Order quashing adjustment statements that were issued by the CBSA on the basis that Ronsco had reason to believe the original tariff declaration was incorrect.

[6] The Defendant, who is the moving party, brings this motion pursuant to paragraphs 221(a) and (f) of the *Federal Courts Rules*, SOR 98-106 [Rules] for an Order striking out portions of the Plaintiff's Fresh as Amended Statement of Claim – paragraphs 1(a), 1(b), 1(c), 1(d), portions of paragraph 36, paragraphs 46-60, 61-66, 67(a), 67(b) and 67(c)(i) and (ii) – without leave to amend. The Defendant submits the impugned portions of the Claim disclose no reasonable cause of action, raise matters outside the Court's jurisdiction and/or are an abuse of process.

[7] Ronsco submits the Defendant's arguments are unfounded and that it has adequately pleaded the required elements of a public law claim and a claim in negligence. Ronsco also asserts the Court has jurisdiction over the matters raised and claims the Defendant is estopped from raising issues of jurisdiction. In the alternative, Ronsco submits that if any portion of the Claim is struck, it should be granted leave to amend.

[8] I am satisfied that the motion should succeed in part for the reasons that follow.

II. The Legislative Scheme

[9] The *Customs Act* regulates and controls cross-border movements and the importation of goods by providing for, among other things: (1) the classification of imported goods such that duties may be applied; and (2) the imposition of penalties for contraventions of the *Act*. The *Act*

also establishes distinct processes for the review and appeal of determinations relating to the classification of imported goods and findings that the *Act* has been contravened.

[10] A summary of the legislative scheme follows and the relevant sections of the *Customs Act* have been reproduced at Schedule 1 of these reasons.

A. *Determinations of tariff classification and related duties under the Customs Act*

[11] Importers are required to account for imported goods and to pay any required duties on those goods (*Customs Act* section 32). A CBSA Officer may determine the origin, tariff classification and value of imported goods at the time of importation but is not required to do so. Where an Officer does not make that determination at the time of importation, the origin of the goods, the applicable tariff classification and the value of the goods is deemed to be that as declared by the importer (paragraph 32(1)(a) and subsections 58(1) and (2)).

[12] A declared tariff classification shall be corrected after importation where the importer has reason to believe the declared classification was incorrect. Upon an importer having reason to believe a prior declaration was incorrect, the importer shall, within 90 days, make the correction and pay any applicable duties (*Customs Act* subsection 32.2(2)). The importer's obligation to make corrections terminates four years after the importation of the goods (subsection 32.2(4)). The CBSA may also, within four years of the importation, re-determine the classification of imported goods (paragraph 59(1)(a)).

[13] A process for the review and appeal of a CBSA tariff classification determination is established at sections 59 to 68 of the *Act*. Where an importer disagrees with a CBSA tariff determination or re-determination, the importer may request a further re-determination by the President of the CBSA (section 60). A section 60 decision may be further appealed to the Canadian International Trade Tribunal [CITT] (*Customs Act* section 67). The decision of the CITT is not subject to judicial review but may be appealed by either the importer or the President of the CBSA to the Federal Court of Appeal on any question of law (section 68).

B. *Contraventions and penalties under the Customs Act*

[14] Every person who fails to comply with any provision of the *Act* that has been designated in the regulations is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct (subsection 109.1(1)).

[15] An importer who fails to correct a tariff classification declaration within 90 days after having reason to believe the declaration was incorrect contravenes section 32.2 of the *Customs Act*. Where a penalty is assessed, a Notice of Penalty Assessment [NPA] shall be served (subsection 109.3(1)). The penalty becomes payable on the day the NPA is served (section 109.4).

[16] The *Customs Act* provides that a person served with an NPA may request a decision from the Minister of Public Safety and Emergency Preparedness as to whether the individual failed to comply with the *Act* (paragraphs 129(1)(d), 131(1)(c)). A decision of the Minister under section 131 is not subject to judicial review, but the Minister's determination may be appealed by way of

an action in the Federal Court (subsection 131(3) and section 135). Where an action is commenced, the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], and the Rules applicable to ordinary actions apply. Whether there has been a contravention of the *Customs Act* is a question that is determined on a *de novo* basis at trial (*Starway v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 24 and *Robidoux v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 766 at paras 21-23).

III. Application of the *Act* in this instance

A. *The verification audit*

[17] In conducting the Trade Compliance Verification audit for goods imported by Ronsco, the CBSA looked at five sample importations of rough bore wheels from January 1 to December 31, 2015. On July 24, 2018, the CBSA issued its final Verification Report, finding:

A. The verified samples were properly classified under Tariff 29, which carries a 9.5% duty, and not Tariff 21 as declared by Ronsco;

B. Ronsco was required to correct its importations going back a maximum of four years and to pay any resulting duties pursuant to section 32.2 of the *Customs Act*;

C. Ronsco had earlier "reason to believe" its tariff classification of the rough bore wheels was incorrect because the tariff provisions at issue were "*prima facie*, evident and transparent"; and

D. By failing to correct its tariff classification within 90 days of having such a "reason to believe," Ronsco had contravened section 32.2 of the *Customs Act*. Consequently, an NPA issued and a penalty was assessed.

B. *Review of the tariff re-determination*

[18] On August 27, 2018, following completion of the verification audit, the CBSA issued re-determinations of the tariff classification for the five samples of imported goods examined in the verification process. The re-determinations imposed related duties under section 59 of the *Customs Act*.

[19] As provided for at section 60 of the *Act*, Ronsco appealed the re-determination of tariff classification to the CBSA President. The section 60 decision of the President was then appealed to the CITT.

[20] On March 17, 2020, the CITT confirmed and upheld the CBSA's determination that the rough bore wheels are properly classified under Tariff 29 and that Ronsco had improperly classified the goods under Tariff 21.

[21] Ronsco did not seek to appeal the CITT decision.

C. *Duties, taxes and interest charges imposed on Ronsco*

[22] In January 2019, in response to the conclusions reached in the verification audit, Ronsco filed corrections capturing all of its importations of rough bore wheels for 2015-2018. On May 23, 2019, the CBSA issued Detailed Adjustment Statements [Adjustment Statements] that reflected Ronsco's corrections and detailed duties and taxes owed together with interest charges for each of those years.

[23] Ronsco appealed the May 23, 2019 Adjustment Statements under section 60 of the *Customs Act*. The CBSA President upheld the duties and taxes and interest charges determinations in the form of further Detailed Adjustment Statements dated July 30, 2020 [July 2020 Adjustment Statements]. Ronsco appealed the President's decision to the CITT and commenced an application for judicial review of the decision in this Court. Both of these proceedings are being held in abeyance.

D. *Penalty imposed on Ronsco*

[24] On October 3, 2019, the CBSA issued an NPA requiring Ronsco pay an Administrative Monetary Penalty of $1,000 for having contravened the *Act*.

[25] Ronsco objected to the penalty on the basis that it had not contravened the *Act*. Ronsco claimed it had no prior "reason to believe" its tariff classifications were incorrect and requested a Ministerial decision pursuant to section 129 of the *Act*. That decision, issued on September 15, 2020, found that Ronsco had contravened the *Act* (a decision made pursuant to section 131 of the

Act) and upheld the $1,000 penalty imposed for the contravention (a decision made pursuant to section 133 of the *Act*).

[26] The Ministerial decision Ronsco sought and received pursuant to section 129 of the *Act* was limited to the contravention finding and the imposition of a penalty for the contravention. It did not and could not address the duties, taxes and interest charges imposed on Ronsco as a result of the separate tariff re-determination decision, a matter governed by sections 59 to 68 of the *Act*.

E. *Ronsco commences this action*

[27] In response to the Ministerial determination that there had been a contravention of the *Act*, Ronsco issued a Statement of Claim as provided for at section 135 of the *Act*. Ronsco challenged the finding that it had contravened the *Act* and sought to quash the July 2020 Adjustment Statements. On June 3, 2021, Ronsco filed a Fresh as Amended Statement of Claim to include pleadings of negligence and breach of public law duties and to add a claim for general damages. Ronsco seeks the following relief:

A. An order “quashing” the July 2020 Adjustment Statements;

B. Damages for duties and interest paid retroactively;

C. General damages;

D. Special damages for professional services incurred; and

E. Reimbursement of the $1,000 Administrative Monetary Penalty.

IV. Issues

[28] The Parties have framed the issues arising on this motion differently. Ronsco has identified the issues as involving a consideration of whether it is plain and obvious this Court lacks jurisdiction and whether the claims in public law and negligence have no chance of success. Ronsco also raises as an issue whether the Defendant is estopped from asserting Ronsco should have pursued "reason to believe" under section 60 of the *Customs Act* because the Defendant's prior representations contradict this position.

[29] The Defendant has framed the issues as being whether aspects of the Claim should be struck as disclosing no reasonable cause of action, as being outside the Court's jurisdiction or as an abuse of process.

[30] In considering the Defendant's motion to strike, I have identified the issues as requiring consideration of whether the Court should strike portions of the Fresh as Amended Statement of Claim as disclosing no reasonable cause of action, as being outside the Court's jurisdiction or as an abuse of process. The Court will examine the portions of the Fresh as Amended Statement of Claim which:

A. Seek an order "quashing as unreasonable" the July 2020 Adjustment Statements;

B. Seek an order for compensation for duties and interest paid retroactively to the CBSA;

C. Allege the Defendant owed Ronsco a duty of care and breached that duty of care;

D. Allege a breach by the Defendant of their public law duties; and

E. Seek general and special damages.

[31] The Court will also consider whether Ronsco should be granted leave to amend if portions of the Claim are struck.

V. Principles applicable to a motion to strike

[32] A defendant's burden is high on a motion to strike. The allegations contained in the pleadings must be taken to be true and the pleadings are to be read generously with allowance for inadequacies due to drafting deficiencies (*Lewis v Canada*, 2012 FC 1514 at paras 8-10, citing *Brazeau v Canada (Attorney General)*, 2012 FC 648 at para 14). Where, as here, a defendant seeks an Order striking a pleading under Rule 221(a), the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action (*Paradis Honey Ltd v Canada*, 2015 FCA 89 at paras 37 and 76 [*Paradis Honey*], citing *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at page 980).

[33] Where it is alleged a pleading should be struck for want of jurisdiction over the subject matter of the claim, a defendant properly relies on Rule 221(1)(a) to challenge the claim (*Verdicchio v Canada*, 2010 FC 117 at para 18).

[34] A claim should not be struck simply because it is novel or complex (*Paradis Honey* at paras 37 and 76). Similarly, while the Court has the discretion to stay a claim for damages on the basis that in its essential character it is a claim for judicial review with only a thin pretence of a private wrong, the fundamental issue must be whether a reasonable private cause of action for

damages has been pleaded. Where it has, the plaintiff should be allowed to proceed (*Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at paras 18, 19 and 75-78 [*Telezone*]).

[35] Rule 221(1)(f) provides the Court discretion to strike a claim, or portions thereof, as being an abuse of the Court's process. Proceedings that are contrary to or would undermine principles such as judicial economy, consistency, finality and the integrity of the administration of justice may be struck as an abuse of process (*Toronto (City) v CUPE Local 79*, 2003 SCC 63 at paras 36-37).

[36] To strike a statement of claim or a portion thereof, the Court must consider whether the pleading can be amended. Where the defect is curable by way of amendment, the Court should grant leave to amend (*Simon v Canada*, 2011 FCA 6 at paras 8 and 14).

VI. Analysis

[37] Ronsco brings this action under section 135 of the *Customs Act*. It is not in dispute that Ronsco's action may proceed to the extent that it seeks to challenge the Defendant's conclusion, reached under section 131 of the *Customs Act*, that the *Act* had been contravened. Nor is it disputed that claims properly based in private causes of action may be joined and pursued within the framework of the section 135 action (*Hociung v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 214 at paras 24-25, 27-28, 57-58).

[38] The Defendant seeks to strike portions of the Claim on the basis that Ronsco is in effect seeking to impugn the validity of the July 2020 Adjustment Statements that imposed retroactive

duties, taxes and interest charges on Ronsco's import of rough bore wheels from 2015 to 2018. The Defendant argues this is a matter over which the Court has no jurisdiction and therefore, no reasonable cause of action has been disclosed.

[39] The Defendant further argues that Ronsco's claims of breach of public law duty and negligence also fail to disclose a reasonable cause of action for general damages and professional fees.

[40] Ronsco argues that the CBSA has unfairly favoured certain importers by imposing retroactive duties and taxes upon Ronsco and not other similarly situated importers. Ronsco alleges this has been to its detriment, affected the competitive landscape within its industry (paragraph 51 of the Claim) and was contrary to assurances Ronsco was provided by CBSA officials and CBSA policy (paragraphs 21 – 24 and 53-54 of the Claim).

[41] Ronsco submits it has pleaded in detail all the necessary elements of both a public law claim based on *Paradis Honey* and a claim in negligence. Ronsco further submits that the manner in which it has quantified general damages and its claim for the recovery of special damages for professional fees has been sufficiently pleaded and is not a question to be decided on a motion to strike.

A. *The Claim for an Order quashing the July 2020 Adjustment Statements is outside the Court's jurisdiction and shall be struck*

[42] The Defendant argues that Ronsco, in seeking to quash the July 2020 Adjustment Statements, is in effect seeking an extraordinary administrative law remedy. Such a remedy is available to a litigant only on judicial review by way of application (*Federal Courts Act* subsection 18(3), *TeleZone* at para 19). The Defendant acknowledges that in certain circumstances the Court may order an action converted to an application where the essential character of an action is an application for judicial review. However, the Defendant claims this option is not available in this instance. The Defendant notes that Ronsco has separately initiated an application for judicial review of the July 2020 Adjustment Statements (Court Docket No. T-1037-20), a proceeding that is currently being held in abeyance.

[43] In addition, and as I have briefly described above, the *Customs Act* establishes a process of administrative adjudications and appeals that is applicable to the July 2020 Adjustment Statements (see paragraph 13 of these reasons). Parliament's prescribed process includes a series of privative clauses (*Customs Act* subsections 58(3), 59(6) and section 62). These clauses "deprive the Federal Court of the jurisdiction to set aside a detailed adjustment statement <u>for any reason</u>." (*Fritz Marketing Inc v Canada*, 2009 FCA 62 at para 33 [*Fritz Marketing*] [emphasis added])

[44] In *Jockey Canada Company Limited v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 396 [*Jockey Canada*], the Court considered circumstances that were very similar to those in this instance. In *Jockey Canada*, the Applicant sought to quash a Detailed

Adjustment Statement as it disagreed with the CBSA's finding that it had "reason to believe" its value for duty declarations were incorrect. After reviewing the process prescribed in the *Customs Act* and the relevant jurisprudence, including *Fritz Marketing*, the Court held:

> [29] The issue in this proceeding is the differing views the CBSA and the Applicant have on whether there is "reason to believe" the Applicant knew in 2005 the methods of valuation of duty it was using were incorrect. If so, it would need to revise its duty valuations in compliance with section 32.2 of the *Act*. This, in turn, engages section 59(1)(a) and the re-determination and appeal mechanisms set forth in sections 59 – 68. This issue falls in line with the characterization applied by the Federal Court of Appeal in *Fritz Marketing Inc*.
>
> [30] I am of the view this is a matter for the President of the CBSA and if unresolved for appeal to the CITT, the specialized tribunal designated by Parliament to resolve such issues. Judicial review from the CITT is only to the Federal Court of Appeal as provided in section 28(1)(e) of the *Federal Courts Acts*. Since there is a right of appeal of a decision of the CITT to the Federal Court of Appeal, section 18.5 of the *Federal Courts Act* is engaged.
>
> [31] I conclude the Federal Court does not have jurisdiction to hear this matter. In the alternative, I would follow Justice Mactavish in *Outer Space Sports* and decline to entertain the application for judicial review because the review process in the *Act* constitutes an adequate alternate remedy.

[45] Ronsco cannot quash the July 2020 Adjustment Statements by way of action. The jurisprudence has consistently held the applicable legislative scheme under the *Customs Act* deprives the Federal Court of jurisdiction to judicially review CBSA Detailed Adjustment Statements by way of application. In the circumstances, it is plain and obvious that this portion of the pleading must fail. Paragraph 1.a. of the Claim will therefore be struck.

B. *The Claim for compensation for the retroactive payment of duties and interests is outside the Court's jurisdiction and shall be struck*

[46] I am also satisfied that the relief Ronsco seeks in the form of compensation for duties, taxes and interest retroactively paid as a result of the July 2020 Adjustment Statements must be struck.

[47] The relief Ronsco seeks would have the practical effect of relieving Ronsco of the obligation to pay the retroactive duties, taxes and interest resulting from the July 2020 Adjustment Statements. Ronsco is, in effect, seeking to obtain the very public law remedy it would receive were the July 2020 Adjustment Statements quashed by way of application for judicial review. As noted above, that relief is generally not available by way of action and in this specific instance the Court has been deprived of the jurisdiction to grant that relief by way of application.

[48] I recognize that Ronsco has framed its claim for relief as compensatory and a form of damages (see paragraphs 1.d. and 67.c. of the Claim). However, where the essential character of the relief being sought by way of action is a claim for judicial review, the Supreme Court of Canada teaches in *Telezone* that the Federal Court retains a discretion to strike the claim:

> [78] To this discussion, I would add a minor caveat. There is always a residual discretion in the inherent jurisdiction of the provincial superior court (as well as in the Federal Court under s. 50(1) of its Act), to stay the damages claim because in its essential character, it is a claim for judicial review with only a thin pretence to a private wrong. Generally speaking the fundamental issue will always be whether the claimant has pleaded a reasonable private cause of action for damages. If so, he or she should generally be allowed to get on with it. [Emphasis Added].

This principle has been followed in *Leone v Canada*, 2021 FC 409 (at para 22), and *Stuart v Canada*, 2019 FC 801 (at para 59).

[49] Considering the pleading holistically, I am satisfied Ronsco's claim for damages or compensation arising from the July 2020 Adjustment Statements is, in its essential character, a claim for judicial review. In support of this view, I note that the Claim specifically links the "damages" to the July 2020 Adjustment Statements, refers to retroactive payments resulting from CBSA action, describes the imposition of the retroactive fees as "unreasonable" and pleads that Ronsco "should not have been required to pay the retroactive duties" set out in the July 2020 Adjustment Statements (paragraphs 1.d. and 36 and heading II of the Claim).

[50] To not strike Ronsco's claim for compensation for the retroactive payment of duties and interest would, in my opinion, be contrary to the clear intent expressed at sections 59 – 68 of the *Customs Act* and in particular, the privative clauses set out therein. Ronsco's recourse is exclusively before the CITT and it has initiated a proceeding before that body. Should it prevail in those proceedings, Ronsco will be relieved of the obligation to retroactively pay tariffs and taxes on its import of rough bore wheels.

[51] Ronsco argues that the CITT would have no jurisdiction to award damages. This may be so, but as I have already noted, the CITT does have jurisdiction to review the July 2020 Adjustment Statements directing the retroactive payment of duties and taxes. Again, should Ronsco prevail, Ronsco will be relieved of the very obligation for which it seeks damages.

[52] In my opinion, Ronsco's argument underscores the true nature of the "damages" claim in this instance; an effort to obtain a public law remedy in a cause of action alleging private wrongs.

[53] Ronsco further argues that it would be inefficient and impractical to require it to simultaneously seek relief before the CITT in respect of the payment of retroactive duties and interest and pursue the section 135 action in this Court to challenge the contravention finding and seek damages for the imposition of the $1,000 administrative penalty imposed.

[54] While the review and appeal processes prescribed in the *Customs Act* may result in inefficiencies, those inefficiencies arise from the provisions of the *Act*. The Court cannot choose to ignore those processes or assume jurisdiction that has been specifically denied to the Court for reasons of efficiency or practicality.

[55] Ronsco relies on *Telezone* and *Brake v Canada (Attorney General)*, 2019 FCA 274 [*Brake*], as providing examples of situations where the Supreme Court of Canada and the Federal Court of Appeal have recognized that requiring a litigant to pursue multiple proceedings raises access to justice concerns. I accept this to be the case, but the circumstances of *Telezone* and *Brake* are readily distinguishable. In *Telezone*, the underlying administrative decision was not in issue. In *Brake*, Rule 105 of the *Federal Courts Rules* was relied upon to allow distinct substantive proceeding to progress as if one. Neither is the case in this instance.

[56] It is plain and obvious that this portion of the pleading must fail. The words "the duties and interest paid retroactively to the CBSA" at paragraph 1.d., together with the final sentence at

paragraph 36 beginning with the words “It should not have been…”, as well as paragraphs 67.c.i. and ii. will be struck.

C. *Ronsco’s negligence claim will be struck*

[57] For Ronsco to succeed in negligence, it must establish: (1) the Defendant owed Ronsco a duty of care; (2) the Defendant breached that duty of care; and (3) damages resulted that were caused in fact and law by the breach (*Mustapha v Culligan of Canada Ltd*, 2008 SCC 27 at para 3).

[58] In assessing whether Ronsco was owed a duty of care, two questions are to be considered:

1) Do the facts disclose a relationship of proximity in which the Defendant’s failure to take reasonable care might foreseeably cause loss or harm to Ronsco?

2) Are there policy reasons why a duty of care should not be recognized? (*Hill v Hamilton Wentworth Police Services Board*, 2007 SCC 41 at para 20, citing *Anns v Merton London Borough Council*, [1978] A.C. 728 (H.L.)).

(a) *The facts diclose a relationship of proximity*

[59] Proximity engages a consideration of whether the nature and quality of the relationship as between the parties makes it fair to impose a duty of care (*Charles Davenport Developments Ltd*

v Ottawa City, 2021 ONCA 410 at para 29). All aspects of the relationship must be considered, including the terms of the statutory scheme from which the duty of care may arise.

[60] Except where a duty of care is negated by the applicable statute, a government defendant may, after consideration of all of the circumstances, be found to owe a duty of care to a plaintiff. The duty may arise because the statute itself creates a relationship of sufficient proximity. Alternatively, it may arise because proximity is alleged to have resulted from a series of specific interactions with the plaintiff (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paras 43-46 [*Imperial Tobacco*]).

[61] Ronsco argues that its relationship with the CBSA was sufficiently proximate for two reasons. First, Ronsco argues the CBSA knowingly allowed Ronsco and Ronsco's competitors to inadvertently import rough bore wheels under Tariff 21 for many years without penalty or investigation. Ronsco claims the CBSA's mandate allows it to appreciate the consequences of the imposition of retroactive duties on a single importer like Ronsco. It further submits that the interaction between Ronsco and CBSA officials in regard to Ronsco's "reason to believe" coupled with the CBSA's role in administering the *Customs Act* and its policies relating to reassessment gave rise to a sufficiently proximate relationship.

[62] The Defendant argues that the CBSA acts as a duties collector in relation to importers. It is required to enforce the *Customs Act* and regulate the cross-border movements of people and goods for the purposes of taxation, economic regulation and the general welfare of the nation. The Defendant submits courts have frequently opined that there is no proximity between the

Canada Revenue Agency and a taxpayer facing an audit or verification. Similarly, no proximity exists between the CBSA and an importer. To not find a duty of care in the taxpayer context, the Defendant argues, is reflective of the statutory scheme that requires taxpayers to resort to prescribed administrative processes, appeals and judicial reviews (*Jayco, Inc v Her Majesty the Queen in Right of Canada*, 2021 ONSC 2120 at para 34; also see *Humby v Canada*, 2013 FC 1136 at paras 120-122 (aff'd 2015 FCA 266) and *Sailsman v Canada (National Revenue)*, 2014 FC 1033 at para 41). The Defendant argues the same conclusions must be reached here.

[63] The Defendant's submissions in this regard are persuasive. However, proximity in this case is claimed, at least in part, on the basis of alleged specific interactions between Ronsco and CBSA officials and the CBSA's conduct and representations during those interactions. The Supreme Court of Canada held in *Imperial Tobacco* that ruling a claim out of proximity may be difficult in these circumstances:

> [47] Since this is a motion to strike, the question before us is simply whether, assuming the facts pleaded to be true, there is any reasonable prospect of successfully establishing proximity, on the basis of a statute or otherwise. On one hand, where the sole basis asserted for proximity is the statute, conflicting public duties may rule out any possibility of proximity being established as a matter of statutory interpretation: *Syl Apps*. On the other, where the asserted basis for proximity is grounded in specific conduct and interactions, ruling a claim out at the proximity stage may be difficult. So long as there is a reasonable prospect that the asserted interactions could, if true, result in a finding of sufficient proximity, and the statute does not exclude that possibility, the matter must be allowed to proceed to trial, subject to any policy considerations that may negate the prima facie duty of care at the second stage of the analysis. [Emphasis Added]

[64] In light of the assertions of specific conduct and interactions, I am persuaded that the negligence claim should not be struck for a want of proximity. However, as I discuss below, policy reasons dictate against the recognition of a duty of care.

(b) *For policy reasons, a duty of care is not recognized*

[65] The second stage of the proximity test is not concerned with the relationship between the parties but instead the effect recognition of a duty of care will have on other legal obligations, the legal system and society more generally. The Federal Court wrote in *Almacén v Canada*, 2016 FC 300 at para 53:

> [53] The Appellant does not fully address the second *Anns* issue. He appears to think that the question is whether the decision to reject the H&C application was a policy decision. The issue is whether there are policy reasons in this case that weigh against finding that there is a duty of care. Prothonotary Aalto identified and addressed those policy considerations in his own reasons:
>
> > [72] Even if such a *prima facie* duty existed, the cause of action fails on the second part of the *Anns* test in any event: the existence of residual policy considerations that justify denying liability. The jurisprudence teaches that policy considerations "are not concerned with the relationships between the parties, but with the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally" (*Benaissa v Canada (Attorney General)*, 2005 FC 1220 at para. 33). In my view, imposing a duty of care for the failure to obtain a positive H&C decision has the potential to create an indeterminate liability for all H&C applications which are denied. H&C applications are discretionary and fact based. This H&C was also subjected to an application for leave and judicial review and re-consideration both of which were denied.

[66] The Defendant submits that holding there to be a duty of care within the context of the CBSA's mandate to impose duties in the administration of the *Customs Act* would open the door to an action in negligence whenever duties are imposed on importation. The result would be to create indeterminate liability and impose positive obligations on the CBSA to consider the broader implications and impacts of audits, verifications and duty imposition decisions, considerations that are not required under the legislative scheme. I agree.

[67] Ronsco submits the consequences of a finding that the CBSA owes a duty of care would be narrow because the circumstances alleged are uncommon. First, it argues that situations involving a limited number of importers within an industry, all importing identical or similar goods and selling to a narrow band of consumers, is not common. I am unpersuaded that this so.

[68] Second, Ronsco argues that in this instance there was only one possible reasonable outcome in regard to the question of retroactive duties. This argument is advanced on the premise that Ronsco had no "reason to believe" the import declarations were incorrect. This question underpins the decision to issue the July 2020 Adjustment Statements and the contravention finding that grounds this action. It is a question to be determined during this action and presumably will also be considered in the pending proceeding before the CITT.

[69] The alleged duty of care fails on this second branch of the test. A duty of care not having been established, I conclude it is plain and obvious that Ronsco's negligence claim will fail. Paragraphs 61 to 66 of the Claim will be struck.

D. *It is not plain and obvious that Ronsco's public law claim will fail*

[70] In *Paradis Honey*, the Federal Court of Appeal recognized the possibility of a private law claim alleging abusive administrative action warranting monetary relief based on public law principles (paras 115 and 118). The elements of a claim for a breach of public law duties, set out in *Paradis Honey* at paras 132 and 139, are:

1) A public law authority acts unacceptably and indefensibly in the administrative law sense; and
2) As a matter of discretion, a remedy is warranted.

[71] Ronsco has pleaded both elements of a claim alleging a breach of public law duties. Specifically, the pleadings allege:

1) The CBSA's conduct was unacceptable and indefensible in the administrative law sense, was offensive to public law values and constituted significant maladministration (paras 47 and 48 of the Claim). Ronsco was treated differently than similarly situated competitors importing substantially similar goods and the CBSA favoured certain importers to the detriment of others, which impacted the competitive landscape (para 49 of the Claim).

2) Representations were made by CBSA officials to the effect that Ronsco had no "reason to believe" its tariff declarations had been incorrect and therefore retroactive duties would be payable for the verification period only and going

forward. By imposing retroactive duties, the CBSA acted contrary to the representation made and CBSA's internal policies (paras 53 and 54 of the Claim).

3) The CBSA has explicitly taken contrary procedural positions that have resulted in significant and unnecessary cost, including professional fees (para 55 of the Claim);

4) There existed CBSA maladministration beyond the issuance of the July 2020 Adjustment Statements, damages are necessary and there is no public law justification for the CBSA's conduct (paras 50, 59 and 60 of the Claim).

[72] On a motion to strike, allegations of material facts are to be read generously and taken to be true. In doing so, the question to be asked is whether it is plain and obvious that a court would exercise its discretion against providing the claimant monetary relief (*Paradis Honey* at para 147). Ronsco's pleadings allege, and to a degree particularize, alleged misconduct that could warrant a discretionary monetary award if proven. It is not plain and obvious that Ronsco's public law claim will fail. I am similarly not convinced that the claim amounts to an abuse of process on these facts.

[73] Having concluded that Ronsco's public law claim will not be struck, I find it is unnecessary to consider Ronsco's argument that the Defendant's conduct, together with its representations, estop it from asserting a lack of jurisdiction in this Court. In pursuing the public law claim, Ronsco will be in a position to advance its arguments relating to the Defendant's alleged maladministration and, if successful, be awarded damages.

E. *Nor is it plain and obvious that Ronsco's claim for general and special damages will fail*

[74] The Defendant argues that in this case an award of monetary relief is neither necessary nor appropriate. This is a question to be determined with the benefit of evidence and not at this stage of the proceeding.

[75] Ronsco seeks both general damages and special damages. It pleads it has lost the opportunity to complete a planned expansion and it has incurred professional fees resulting from the CBSA's inconsistent procedural positions. While Ronsco will have to prove both the alleged conduct and its damages, I am in agreement with Ronsco that there is not a sufficient basis to strike its claims for general or special damages.

[76] It is not plain and obvious that Ronsco's claim for damages under these headings within the context of its public law claim will not succeed.

F. *Leave to Amend is not granted*

[77] When striking a pleading or portion thereof, Rule 221 requires a consideration of whether leave will be granted to amend the pleading. Leave to amend will normally be granted where the defect in the pleading is curable.

[78] Ronsco has requested, in the event portions of the Claim are struck, it be granted leave to amend. However, no amendments have been proposed.

[79] Paragraphs 1(a) and portions of paragraphs 1(d), 36 and 67(c) of the Claim have been struck because the *Customs Act* deprives the Court of jurisdiction. Ronsco's negligence claim at paragraphs 61 – 66 has been struck on the basis that no duty of care has been established. The deficiencies that have resulted in these portions of the Claim being struck are not curable by way of amendment.

[80] Paragraphs 1(a), 61 – 66 and the portions of paragraphs 1(d), 36 and 67(c) of the Claim are struck without leave to amend.

VII. Conclusion and Costs

[81] The Defendant's motion is granted in part. As the result on the motion is mixed, there shall be no costs awarded.

[82] Separately, Ronsco has sought costs thrown away. The hearing of this motion was adjourned twice at the last minute due to the sudden illness of counsel for the Defendant. Ronsco consented to the first of the two adjournments and in doing so did not seek costs.

[83] Ronsco now seeks costs relating to the first adjournment. Because Ronsco agreed to the adjournment, I am not prepared to entertain a claim for costs associated with that adjournment.

[84] Ronsco did not consent to the second adjournment and provided notice that it would seek costs thrown away if the adjournment request was granted.

[85] The motion was adjourned. However, it was set down and heard 22 calendar days later. While I accept that the short adjournment caused inconvenience and undoubtedly resulted in Ronsco incurring some incremental preparation costs, I am of the view that those costs would have been minimal given the short passage of time.

[86] Ronsco has calculated its costs thrown away based on the total time spent preparing for the second scheduled hearing. It has not placed an accounting before the Court of the incremental costs it incurred in preparing for the actual hearing only three weeks later. In the circumstances, and noting that costs are within the discretion of the Court, I award Ronsco costs thrown away in the nominal amount of $500 payable forthwith.

ORDER IN T-1295-20

THIS COURT ORDERS that:

1. The motion is granted in part;

2. The following paragraphs of the Fresh as Amended Statement of Claim are struck without leave to amend:

    a. Paragraph 1(a);

    b. The following struck out portions of Paragraph 1(d):

        d. ~~$2,544,628.30~~ compensating Ronsco for administrative monetary penalties, ~~the duties, and interest paid retroactively to CBSA as a result of CBSA's actions~~

    c. The following struck out portions of Paragraph 36:

        36. Ronsco did not have "reason to believe" that its tariff classification of the imported rough bore wheels was incorrect. ~~It should not have been required to pay the retroactive duties set out in the July 2020 DAS.~~

    d. Heading "VI CBSA Breached its Duty of Care"

    e. Paragraphs 61 – 66

    f. Paragraphs 67(c)(i) and (c)(ii).

3. The Defendant may serve and file an amended statement of defence within 30 days of the date of this Order;

4. The Plaintiff is awarded costs thrown away in the fixed amount of $500 payable forthwith; and

5. No costs on the motion.

"Patrick Gleeson"
Judge

Schedule 1

***Customs Act*, RSC 1985, c 1 (2nd Supp)**	***Loi sur les douanes*, LRC 1985, ch 1 (2e suppl)**
Accounting and payment of duties	**Déclaration en détail et paiement des droits**
32 (1) Subject to subsections (2) and (4) and any regulations made under subsection (6), and to section 33, no goods shall be released until	**32 (1)** Sous réserve des paragraphes (2) et (4), des règlements d'application du paragraphe (6), et de l'article 33, le dédouanement des marchandises est subordonné :
(a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the prescribed information; and	**a)** à leur déclaration en détail faite par leur importateur ou leur propriétaire selon les modalités réglementaires et, si elle est à établir par écrit, en la forme et avec les renseignements déterminés par le ministre;
(b) all duties thereon have been paid.	**b)** au paiement des droits afférents.
Correction to declaration of origin	**Correction de la déclaration d'origine**
32.2 (1) An importer or owner of goods for which preferential tariff treatment under a free trade agreement has been claimed or any person authorized to account for those goods under paragraph 32(6)(a) or subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,	**32.2 (1)** L'importateur ou le propriétaire de marchandises ayant fait l'objet d'une demande de traitement tarifaire préférentiel découlant d'un accord de libre-échange, ou encore la personne autorisée, sous le régime de l'alinéa 32(6)a) ou du paragraphe 32(7), à effectuer la déclaration en détail ou provisoire des marchandises, qui a des motifs de croire que la déclaration de l'origine de ces marchandises effectuée en application de la présente loi est inexacte doit, dans les

quatre-vingt-dix jours suivant sa constatation :

(a) make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and

a) effectuer une déclaration corrigée conformément aux modalités de présentation et de temps réglementaires et comportant les renseignements réglementaires;

(b) pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.

b) verser tout complément de droits résultant de la déclaration corrigée et les intérêts échus ou à échoir sur ce complément.

Corrections to other declarations

Autres corrections

(2) Subject to regulations made under subsection (7), an importer or owner of goods or a person who is within a prescribed class of persons in relation to goods or is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods shall, within ninety days after the importer, owner or person has reason to believe that the declaration of origin (other than a declaration of origin referred to in subsection (1)), declaration of tariff classification or declaration of value for duty made under this Act for any of those goods is incorrect,

(2) Sous réserve des règlements pris en vertu du paragraphe (7), l'importateur ou le propriétaire de marchandises ou une personne qui appartient à une catégorie réglementaire de personnes relativement à celles-ci, ou qui est autorisée en application de l'alinéa 32(6)a) ou du paragraphe 32(7) à effectuer la déclaration en détail ou provisoire des marchandises, ayant des motifs de croire que la déclaration de l'origine de ces marchandises, autre que celle visée au paragraphe (1), la déclaration du classement tarifaire ou celle de la valeur en douane effectuée à l'égard d'une de ces marchandises en application de la présente loi est inexacte est tenue, dans les quatre-vingt-dix jours suivant sa constatation :

(a) make a correction to the declaration in the prescribed form and manner, with the prescribed information; and

(b) pay any amount owing as duties as a result of the correction to the declaration and any interest owing or that may become owing on that amount.

Four-year limit on correction obligation

(4) The obligation under this section to make a correction in respect of imported goods ends four years after the goods are accounted for under subsection 32(1), (3) or (5).

Determination by officer

58 (1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section, may determine the origin, tariff classification and value for duty of imported goods at or before the time they are accounted for under subsection 32(1), (3) or (5).

a) d’effectuer une correction à la déclaration en la forme et selon les modalités réglementaires et comportant les renseignements réglementaires;

b) de verser tout complément de droits résultant de la déclaration corrigée et les intérêts échus ou à échoir sur ce complément.

Obligation de corriger limitée à quatre ans

(4) L’obligation de corriger une déclaration, prévue au présent article, à l’égard de marchandises importées prend fin quatre ans après leur déclaration en détail au titre des paragraphes 32(1), (3) ou (5).

Détermination de l’agent

58 (1) L’agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d’agents, de l’application du présent article peut déterminer l’origine, le classement tarifaire et la valeur en douane des marchandises importées au plus tard au moment de leur déclaration en détail faite en vertu des paragraphes 32(1), (3) ou (5).

Détermination présumée

(2) Pour l’application de la présente loi, l’origine, le classement tarifaire et la

Deemed determination

(2) If the origin, tariff classification and value for duty of imported goods are not determined under subsection (1), the origin, tariff classification and value for duty of the goods are deemed to be determined, for the purposes of this Act, to be as declared by the person accounting for the goods in the form prescribed under paragraph 32(1)(a). That determination is deemed to be made at the time the goods are accounted for under subsection 32(1), (3) or (5).

Review of determination

(3) A determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 59 to 61.
R.S., 1985, c. 1 (2nd Supp.), s. 58; 1992, c. 28, s. 11; 1997, c. 36, s. 166; 2005, c. 38, s. 73

Re-determination or further re-determination

59 (1) An officer, or any officer within a class of officers, designated by the

valeur en douane des marchandises importées qui n'ont pas été déterminés conformément au paragraphe (1) sont considérés comme ayant été déterminés selon les énonciations portées par l'auteur de la déclaration en détail en la forme réglementaire sous le régime de l'alinéa 32(1)a). Cette détermination est réputée avoir été faite au moment de la déclaration en détail faite en vertu des paragraphes 32(1), (3) ou (5).

Intervention à l'égard d'une détermination

(3) La détermination faite en vertu du présent article n'est susceptible de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 59 à 61.
L.R. (1985), ch. 1 (2e suppl.), art. 58; 1992, ch. 28, art. 11; 1997, ch. 36, art. 166; 2005, ch. 38, art. 73

Révision et réexamen

59 (1) L'agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article peut :

a) dans le cas d'une décision prévue à l'article 57.01 ou d'une détermination prévue à

President for the purposes of this section may

(a) in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within

(i) four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1, or

(ii) four years after the date of the determination, if the Minister considers it advisable to make the re-determination; and

(b) further re-determine the origin, tariff classification or value for duty of imported goods, within four years after the date of the determination or, if the Minister deems it advisable, within such further time as may be prescribed, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1 that is conducted after the granting of a refund under paragraphs

l'article 58, réviser l'origine, le classement tarifaire ou la valeur en douane des marchandises importées, ou procéder à la révision de la décision sur la conformité des marques de ces marchandises, dans les délais suivants :

(i) dans les quatre années suivant la date de la détermination, d'après les résultats de la vérification ou de l'examen visé à l'article 42, de la vérification prévue à l'article 42.01 ou de la vérification de l'origine prévue à l'article 42.1,

(ii) dans les quatre années suivant la date de la détermination, si le ministre l'estime indiqué;

b) réexaminer l'origine, le classement tarifaire ou la valeur en douane dans les quatre années suivant la date de la détermination ou, si le ministre l'estime indiqué, dans le délai réglementaire d'après les résultats de la vérification ou de l'examen visé à l'article 42, de la vérification prévue à l'article 42.01 ou de la vérification de l'origine prévue à l'article 42.1 effectuée à la suite soit d'un remboursement accordé en application des alinéas 74(1) c.1), c.11), e), f) ou g) qui est assimilé, conformément au paragraphe 74(1.1), à une révision au titre de l'alinéa a), soit d'une correction effectuée en

74(1)(c.1), (c.11), (e), (f) or (g) that is treated by subsection 74(1.1) as a re-determination under paragraph (a) or the making of a correction under section 32.2 that is treated by subsection 32.2(3) as a re-determination under paragraph (a).

Review of re-determination or further re-determination

(6) A re-determination or further re-determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 59(1) and sections 60 and 61.
R.S., 1985, c. 1 (2nd Supp.), s. 59; 1997, c. 36, s. 166; 2001, c. 25, s. 41; 2005, c. 38, s. 74

Re-determination and Further Re-determination by President

Request for re-determination or further re-determination

60 (1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking.

application de l'article 32.2 qui est assimilée, conformément au paragraphe 32.2(3), à une révision au titre de l'alinéa a).

Intervention à l'égard d'une révision ou d'un réexamen

(6) La révision ou le réexamen fait en vertu du présent article ne sont susceptibles de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 59(1) ou aux articles 60 ou 61.
L.R. (1985), ch. 1 (2e suppl.), art. 59; 1997, ch. 36, art. 166; 2001, ch. 25, art. 41; 2005, ch. 38, art. 74

Révision ou réexamen par le président

Demande de révision ou de réexamen

60 (1) Toute personne avisée en application du paragraphe 59(2) peut, dans les quatre-vingt-dix jours suivant la notification de l'avis et après avoir versé tous droits et intérêts dus sur des marchandises ou avoir donné la garantie, jugée satisfaisante par le ministre, du versement du montant de ces droits et intérêts, demander la révision ou le réexamen de l'origine, du classement tarifaire ou de la valeur en douane, ou d'une décision sur la conformité des marques.

The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.

No review

62 A re-determination or further re-determination under section 60 or 61 is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67.
R.S., 1985, c. 1 (2nd Supp.), s. 62; 1992, c. 28, s. 14; 1993, c. 44, s. 93; 1997, c. 36, s. 166

Appeals and References

Appeal to the Canadian International Trade Tribunal

67 (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

Appeal to Federal Court

Intervention à l'égard d'une révision

62 La révision ou le réexamen prévu aux articles 60 ou 61 n'est susceptible de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 67.
L.R. (1985), ch. 1 (2e suppl.), art. 62; 1992, ch. 28, art. 14; 1993, ch. 44, art. 93; 1997, ch. 36, art. 166

Appels et recours

Appel devant le Tribunal canadien du commerce extérieur

67 (1) Toute personne qui s'estime lésée par une décision du président rendue conformément aux articles 60 ou 61 peut en interjeter appel devant le Tribunal canadien du commerce extérieur en déposant par écrit un avis d'appel auprès du président et du Tribunal dans les quatre-vingt-dix jours suivant la notification de l'avis de décision.

Recours devant la Cour d'appel fédérale

68 (1) La décision sur l'appel prévu à l'article 67 est, dans les quatre-vingt-dix jours suivant la date où elle est rendue, susceptible de recours devant la Cour d'appel

68 (1) Any of the parties to an appeal under section 67, namely,

(a) the person who appealed,
(b) the President, or
(c) any person who entered an appearance in accordance with subsection 67(2), may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.

Penalties and Interest

Designated provisions

109.1 (1) Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.

Assessment

109.3 (1) A penalty to which a person is liable under section 109.1 or 109.2 may be assessed by an officer and, if an assessment is made, an officer shall serve on the person a written notice of that assessment by sending it by

fédérale sur tout point de droit, de la part de toute partie à l'appel, à savoir :

a) l'appelant;
b) le président;
c) quiconque a remis l'acte de comparution visé au paragraphe 67(2).

Pénalités et intérêts

Dispositions désignées

109.1 (1) Est passible d'une pénalité maximale de vingt-cinq mille dollars fixée par le ministre quiconque omet de se conformer à une disposition d'une loi ou d'un règlement, désignée par un règlement pris en vertu du paragraphe (3).

Cotisation

109.3 (1) Les pénalités prévues aux articles 109.1 ou 109.2 peuvent être établies par l'agent. Le cas échéant, un avis écrit de cotisation concernant la pénalité est signifié à personne ou par courrier recommandé ou certifié par l'agent à la personne tenue de la payer.

Paiement de la pénalité

109.4 La pénalité établie en vertu de l'article 109.3 est exigible à compter de la date

registered or certified mail or delivering it to the person.

When penalty becomes payable

109.4 A penalty assessed against a person under section 109.3 shall become payable on the day the notice of assessment of the penalty is served on the person.
1993, c. 25, s. 80

Request for Minister's decision

129 (1) The following persons may, within 90 days after the date of a seizure or the service of a notice, request a decision of the Minister under section 131 by giving notice to the Minister in writing or by any other means that is satisfactory to the Minister:

(d) any person on whom a notice is served under section 109.3 or 124.

Decision of the Minister

131 (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(c) in the case of a penalty assessed under section 109.3

de signification de l'avis de cotisation la concernant.
1993, ch. 25, art. 80

Demande de révision

129 (1) Les personnes ci-après peuvent, dans les quatre-vingt-dix jours suivant la saisie ou la signification de l'avis, en s'adressant au ministre par écrit, ou par tout autre moyen que celui-ci juge indiqué, présenter une demande en vue de lui faire rendre la décision prévue à l'article 131 :

d) celles à qui a été signifié l'avis prévu aux articles 109.3 ou 124.

Décision du ministre

131 (1) Après l'expiration des trente jours visés au paragraphe 130(2), le ministre étudie, dans les meilleurs délais possible en l'espèce, les circonstances de l'affaire et décide si c'est valablement qu'a été retenu, selon le cas :

c) le motif de non-conformité aux paragraphes 109.1(1) ou (2) ou à une disposition désignée en vertu du paragraphe 109.1(3) pour justifier l'établissement d'une pénalité en vertu de l'article 109.3, peu importe s'il y a réellement eu non-conformité.

Recours judiciaire

against a person for failure to comply with subsection 109.1(1) or (2) or a provision that is designated under subsection 109.1(3), whether the person so failed to comply.

Judicial review

(3) The Minister's decision under subsection (1) is 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 subsection 135(1).
R.S., 1985, c. 1 (2nd Supp.), s. 131; 1993, c. 25, s. 84; 2001, c. 25, s. 72

Where there is contravention

133 (1) Where the Minister decides, under paragraph 131(1)(a) or (b), that there has been a contravention of this Act or the regulations in respect of the goods or conveyance referred to in that paragraph, and, in the case of a conveyance referred to in paragraph 131(1)(b), that it was used in the manner described in that paragraph, the Minister may, subject to such terms and conditions as the Minister may determine,

(a) return the goods or conveyance on receipt of an

(3) La décision rendue par le ministre en vertu du paragraphe (1) n'est susceptible d'appel, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues au paragraphe 135(1).
L.R. (1985), ch. 1 (2e suppl.), art. 131; 1993, ch. 25, art. 84; 2001, ch. 25, art. 72

Cas d'infraction

133 (1) Le ministre, s'il décide, en vertu des alinéas 131(1)a) ou b), que les motifs d'infraction et, dans le cas des moyens de transport visés à l'alinéa 131(1)b), que les motifs d'utilisation ont été valablement retenus, peut, aux conditions qu'il fixe :

a) restituer les marchandises ou les moyens de transport sur réception du montant déterminé conformément au paragraphe (2) ou (3), selon le cas;

b) restituer toute fraction des montants ou garanties reçus;

c) réclamer, si nul montant n'a été versé ou nulle garantie donnée, ou s'il estime ces montant ou garantie

amount of money of a value equal to an amount determined under subsection (2) or (3), as the case may be;

(b) remit any portion of any money or security taken; and

(c) where the Minister considers that insufficient money or security was taken or where no money or security was received, demand such amount of money as he considers sufficient, not exceeding an amount determined under subsection (4) or (5), as the case may be.

Federal Court

135 (1) A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant.

insuffisants, le montant qu'il juge suffisant, à concurrence de celui déterminé conformément au paragraphe (4) ou (5), selon le cas.

Cour fédérale

135 (1) Toute personne qui a demandé que soit rendue une décision en vertu de l'article 131 peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action devant la Cour fédérale, à titre de demandeur, le ministre étant le défendeur.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1295-20
STYLE OF CAUSE:	RONSCO INC. v HER MAJESTY THE QUEEN
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 17, 2021
ORDER AND REASONS:	GLEESON J.
DATED:	JULY 13, 2022

APPEARANCES:

Colin S. Baxter Christopher Trivisonno	FOR THE PLAINTIFF
Peter Nostbakken Charles Maher	FOR THE DEFENDANT

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