

Federal Court



Cour fédérale

Date: 20250514

Docket: T-2292-23

Citation: 2025 FC 568

Toronto, Ontario, May 14, 2025ⁱ

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

MARC MARIC

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

AMENDED JUDGMENT AND REASONS

I. OVERVIEW

[1] In the summer of 2023, the Applicant – Mr. Marc Maric – attended the “Superstash” cannabis exposition in Denver, Colorado. On arrival back in Canada, the Canada Border Services Agency [CBSA] conducted an examination of the Applicant’s possessions and seized several hundred cannabis seeds in his possession. Mr. Maric contested this seizure, maintaining in part that the seeds were not cannabis. However, a Senior Program Advisor [referred to here as the

Minister or the Minister's Delegate] within the CBSA confirmed both the determination that Mr. Maric had contravened the *Customs Act*, and the seizure of the seeds. On this application for judicial review, Mr. Maric challenges the Minister's decision to seize and hold as forfeit, without conditions for release, these cannabis seeds.

[2] This application for judicial review is dismissed. The decision to seize the cannabis seeds as forfeit, without terms of release was not only reasonable, but was the *only* reasonable outcome available to the Minister's Delegate. The Delegate engaged with the evidence and accurately interpreted this evidence in light of the applicable law. The Delegate drew logical conclusions from the application of fact to law and, as such, the Applicant has failed to identify any reviewable errors.

II. BACKGROUND

A. *Facts*

[3] As noted, in June 2023, Mr. Maric re-entered Canada from the USA at Vancouver International Airport, where he indicated in his customs declaration at a primary inspection kiosk that he was not returning with cannabis or goods containing cannabis. He was referred to a secondary inspection area for verification of his declaration, at which point a CBSA officer conducted an examination of the Applicant's carry-on luggage. According to a seizing report prepared following the secondary inspection, the officer found a small box labelled "cannabis seeds" and several other packets. The box's label also contained statements such as "check with local laws and regulations" and some of the packets contained words such as "feminised" or

“germinate” and indicated how long it would take for a seed to flower. Eventually, the officer found 47 packets, amounting to 465 seeds.

[4] Mr. Maric was informed that the cannabis seeds were subject to seizure for being unlawfully imported by reason of non-report, in contravention of s.12 of the *Customs Act* [also referred to here as the “Act”]. There were no terms of release for the goods seized.

[5] In July 2023, the Applicant appealed the seizure, on various grounds, including the following:

- a) He did not need to declare the seeds as they are not considered cannabis since they do not contain any cannabinoids;
- b) The *Cannabis Act* does not define seeds as cannabis;
- c) He verbally declared he brought items back from the cannabis trade show;
- d) The seeds do not contain THC or CBD;
- e) He was unlawfully detained; and
- f) He should be exonerated of any wrongdoing and the cannabis seeds should be returned.

[6] In a letter dated August 9, 2023, the Applicant was provided with a Notice of Reasons for Action as required by s.130 of the *Customs Act*. The Notice explained that the seeds were seized by reason of non-report in contravention of s.12 of the *Customs Act*, and that they were being held as forfeit pursuant to s.117(2). It also reminded Mr. Maric of his responsibility to declare

goods at first instance and advised that the seeds had been sent to the Canadian Food Inspection Agency [CFIA] laboratory to test whether they were viable.

[7] In September 2023, the CBSA sent Mr. Maric a copy of the CFIA's Report of Analysis of the seeds. The Report identified the seeds as "Cannabis sativa" but noted that it was unable to distinguish them as marijuana or hemp seeds. According to the Report, the majority, but not all, of the seeds were found to be viable. Indeed, of the 48 batches of seeds tested, all but two of those batches were listed as containing 100% viable cannabis sativa seeds. Mr. Maric contests the percentage of seeds that were actually viable because, as I understand it, many of those tested had not exhibited "radicle emergence" at the end of the testing period.

B. *Decision under Review*

[8] In October 2023, the Minister's Delegate rejected the Applicant's appeal, finding that the Applicant had indeed contravened section 12 of the *Customs Act* in respect of the 47 packets of cannabis seeds that were seized.

[9] In coming to this conclusion, the Delegate determined that because at least some significant percentage of the seeds were found to be viable, they were properly considered to be cannabis, as defined under the *Cannabis Act*. Of note, "cannabis" is defined in the *Customs Act* as having the same meaning as provided at subsection 2(1) of the *Cannabis Act*. As a result, the Delegate concluded that the Applicant contravened s.12 of the *Customs Act* by failing to disclose the cannabis seeds at the primary inspection kiosk, which constituted a failure to report the

importation of cannabis. Furthermore, the Minister noted that s.117(2) of the *Customs Act* prevents the return of cannabis when it is properly seized.

[10] Having set out the reasons why the appeal could not be accepted, the Minister's Delegate then provided detailed information as to further opportunities for redress that were available to Mr. Maric. The Delegate stated:

The following information is intended to inform you of other avenues of redress in this case. Please take note of the prescribed time frames.

To appeal the decision made pursuant to section 131, you may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*. You must file your action within 90 days of the date of the mailing of this decision.

To appeal the decision made pursuant to section 133, you may appeal this decision by way of an application for judicial review under section 18.1(1) of the *Federal Courts Act*. An application to the Court must normally be filed within 30 days of the date of the mailing of this decision.

[11] Mr. Maric has brought an application for judicial review of the Delegate's Decision. Of note, he has not challenged the Decision by way of an action.

III. ISSUES and STANDARD OF REVIEW

[12] The Applicant challenges the reasonableness of the Decision. He argues that the Minister erred in seizing and holding the seeds as forfeit, as the seeds are not cannabis. He maintains that the seeds were not considered cannabis by the seller and are instead considered hemp seeds, due to the lack of cannabinoids or THC, and in any event, they are in the embryonic stage and are not, therefore, a part of the cannabis plant.

[13] The standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [*Vavilov*]. A reasonable decision bears the hallmarks of justification, transparency and intelligibility, with the burden resting on the challenging party to show that the decision is unreasonable: *Vavilov* at paras 99-100.

IV. LEGAL FRAMEWORK

[14] This application involves a tangle of legislative provisions, the most relevant of which are as follows.

[15] First, under section 12 of the *Customs Act*, individuals entering Canada are required to declare, at first instance, all goods imported.

[16] Under section 110 of the Act, an Officer may seize goods as forfeit where there are reasonable grounds to believe that that there has been a contravention of the Act in relation to those goods.

[17] Under section 129 of the Act, an individual may request a Ministerial decision in relation to a seizure, including the finding of a contravention and any penalty determined.

[18] Under section 131 of the Act, the Minister must decide whether a contravention of the Act has taken place. Assuming such a contravention is found, the Minister then separately decides the appropriate penalty, pursuant to section 133. The remedy can include the return of certain goods, but of particular importance to this case is subsection 117(2) of the Act, which prohibits the return of various items, including cannabis:

Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, cannabis, raw leaf tobacco, excise stamps, tobacco products or vaping products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

[19] As can be seen from the above, navigating the *Customs Act* is no easy task, and I recognize the difficulty that Mr. Maric has experienced as a self-represented individual. Understanding the Act frequently requires the cross-referencing of several provisions; it incorporates other pieces of legislation such as the *Cannabis Act*; and it creates a somewhat complex appeal and review process. For example, the Ministerial review process referred to above involves two distinct determinations: first, the Minister reviews and decides whether there was a contravention of the *Customs Act*; then, the Minister reviews the appropriateness of the penalty. These reviews are separate, although they are often communicated through a single decision letter.

[20] To make matters more complicated, the *Customs Act* also bifurcates judicial oversight in relation to the above-referenced decisions of the Minister. Any challenge to the finding of a contravention, pursuant to s.131 of the Act, must be brought before the Federal Court by way of an action: see s.135 of the *Customs Act*. By contrast, a challenge to the penalty imposed by the Minister, following a contravention finding, is brought before the Court by way of an application for judicial review.

[21] Finally, as I noted above, the *Customs Act* adopts the definition of cannabis under the *Cannabis Act*. As set out under the *Cannabis Act*, cannabis is everything listed in Schedule 1 of the Act, whereas everything listed in Schedule 2 is not cannabis:

SCHEDULE 1

1. Any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in Schedule 2
2. Any substance or mixture of substances that contains or has on it any part of such a plant
3. Any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.

SCHEDULE 2

1. A non-viable seed of a cannabis plant
2. A mature stalk, without any leaf, flower, seed or branch, of such a plant
3. Fibre derived from a stalk referred to in item 2
4. The root or any part of the root of such a plant

ANNEXE 1

- 1 toute partie d'une plante de cannabis, notamment les phytocannabinoïdes produits par cette plante ou se trouvant à l'intérieur de celle-ci, peu importe si cette partie a subi un traitement quelconque, à l'exception des parties visées à l'annexe 2
- 2 toute substance ou tout mélange de substances contenant, y compris superficiellement, toute partie d'une telle plante
- 3 une substance qui est identique à tout phytocannabinoïde produit par une telle plante ou se trouvant à l'intérieur de celle-ci, peu importe comment cette substance a été obtenue

ANNEXE 2

- 1 une graine stérile d'une plante de cannabis
- 2 une tige mature sans branches, feuilles, fleurs ou graines d'une telle plante
- 3 des fibres obtenues d'une tige visée par l'article 2
- 4 une racine ou toute partie de la racine d'une telle plante

[22] Combining the effects of the *Customs Act* and the *Cannabis Act*, any properly seized item that is listed under Schedule 1 of the *Cannabis Act*, must be held in forfeit without any possible term of release.

V. ANALYSIS

A. *Preliminary Issue: Style of Cause*

[23] The Respondent correctly submits that the Applicant improperly named the Canada Border Services Agency in the style of cause. The Decision in this matter was made by a delegate of the Minister of Safety and Emergency Preparedness. Pursuant to s. 303(2) of the *Federal Court Rules*, the responding party should be the Attorney General of Canada.

B. *Preliminary Issue: The Applicant's Affidavit*

[24] The Respondent also submits that the Applicant's affidavit should be struck, as it is dominated by irrelevant information, and contains argument and improper opinion. The Applicant is self-represented in this matter and naturally has limited knowledge as to what can be provided by way of affidavit evidence. While I certainly agree that elements of the Applicant's affidavit are improper, I make no further comment on this issue, as this application cannot succeed regardless of the affidavit's contents.

C. *The Minister's decision was reasonable*

[25] As indicated above, the issues that can be considered in this application for judicial review are limited to the Minister's decision to seize and hold as forfeit the seeds that the Applicant imported into Canada, in contravention of the *Act*: As I indicated to Mr. Maric at the outset of the hearing into this matter, various other issues that he has raised are simply beyond the scope of what can be challenged by way of this application for judicial review. The issues

that are beyond the scope of this proceeding, and will not be considered, include: i) whether (and when) the Applicant properly declared that he had brought back items from the cannabis trade show; ii) whether the Applicant was unlawfully detained; and iii) any arguments touching on the Minister's contravention determination under s.131 of the *Customs Act*, for which an action (and not an application for judicial review) must be brought before this Court.

[26] On this last issue, the Courts have been very clear that, although findings related to contravention and penalty are linked, they are to be treated as different decisions, with different avenues of redress: see *Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para 9, and *Leslie v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 119.

[27] At the hearing, Mr. Maric expressed some frustration at the limited scope of the judicial review process. While I can certainly understand that the *Customs Act* may have a frustratingly splintered process of review, I would also reiterate that the Minister's Delegate took particular care to explain the different remedial avenues that were open to Mr. Maric.

[28] The narrow scope of judicial review in this matter leaves the core issue to be determined the question of whether it was reasonable for the Minister to hold the seeds as forfeit without terms of release. I find that it was. Indeed, as I noted above, I find that it was the only reasonable outcome in the circumstances.

[29] The essence of Mr. Maric's argument is that the seized seeds can be understood as hemp seeds rather than cannabis seeds and, as such, it was unreasonable for the Minister to find that he had contravened the *Cannabis Act* (a question that, as noted above, is outside the scope of this

application) and to hold them as forfeit (which is properly before the Court). While Mr. Maric emphatically believes that he has done nothing wrong, there is no legal merit to his argument. I have arrived at this conclusion for the following reasons.

[30] First, the Minister's Delegate clearly and accurately considered the evidence that had been adduced, including the following facts: 1) the CBSA officer stated that a label on a seed packet read "cannabis seeds"; 2) the packets also contained language such as: "check with local laws and regulations," "feminized," "germinate" and provided information related to the timing of flowering; 3) the CFIA report clearly identified the seeds as being cannabis sativa seeds, even if those seeds could not be identified as either marijuana or hemp; and 4) the majority of the seeds tested were determined to be viable.

[31] Second, the Delegate's decision was responsive to Mr. Maric's arguments, the most important of which, for our purposes, was that the seeds should not be considered cannabis because they do not contain any cannabinoids. The Delegate considered this argument, but concluded that it was not supported by the applicable provisions of the *Customs Act* and the *Cannabis Act*.

[32] Third, the Delegate's interpretation of the applicable legislation and the Delegate's application of the particular facts to this legislation were entirely reasonable. As noted above, the *Customs Act* imports the definition of "cannabis" as set out in the *Cannabis Act*. Therefore, the Minister is statutorily bound by the meaning of "cannabis" as set out in s.2(1) of the *Cannabis Act*, which includes "anything referred to in Schedule 1 but does not include anything referred to in Schedule 2." Recall that Schedule 1 includes:

Any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in Schedule 2

[33] Schedule 2, in turn, excludes from the meaning of cannabis, not all seeds, but only a “non-viable seed of a cannabis plant.” Putting these two schedules together, it was a reasonable exercise of statutory interpretation for the Delegate to conclude that “only non-viable seeds are not considered cannabis” under the *Cannabis Act*, and by extension, the *Customs Act*.

[34] As a corollary to this issue, I see no merit to the Applicant’s argument that seeds are better understood as “embryos” rather than as parts of a plant. First, the Applicant provides no authority to support this contention. And second, this characterization of seeds is incompatible with the specific exclusion of non-viable seeds in Schedule 2. Expressed in a slightly different way, it is crystal clear that if Parliament intended to exclude *all* seeds from the definition of cannabis, it would have indicated ‘all seeds’ in Schedule 2. The necessary implication of the inclusion of only ‘non-viable seeds’ in Schedule 2 is that viable seeds fall under Schedule 1 and are, therefore, considered cannabis under that Act.

[35] Fourth, it was entirely reasonable for the Delegate to rely on the CFIA Report to conclude that the seized seeds were cannabis seeds, and that a significant percentage of these seeds were viable seeds. It was therefore reasonable for the Delegate to conclude that the seeds were considered cannabis for the purposes of the *Customs Act*.

[36] Finally, I see no error arising from the fact that the CFIA testing could not determine if the seeds were marijuana or hemp seeds. The definition of “cannabis” under the *Cannabis Act*

does not deal with distinctions between marijuana and hemp, both of which come from the cannabis plant. The CFIA's statement that it could not determine whether the seeds were marijuana or hemp seeds is thus irrelevant to the Minister's determination that the seeds were properly considered cannabis under the meaning of the *Cannabis Act*. What is relevant is the Report's finding that the packets contained cannabis seeds, and that they were overwhelmingly characterized as viable. The Applicant has failed to raise any reviewable errors in the above findings.

[37] Having reasonably characterized the seized seeds as cannabis, it was also reasonable (indeed, inevitable) for the Delegate to determine that the seeds should be held as forfeit. As noted above, s.117(2) of the *Customs Act* does not allow for the return of properly seized cannabis. The Minister was bound not to return the cannabis seeds, and the decision to this effect was therefore reasonable.

VI. CONCLUSION

[38] For the foregoing reasons, this application for judicial review should be dismissed.

[39] The Respondent did not address the issue of costs. In the exercise of my discretion, I will make no order of costs in this matter.

JUDGMENT in T-2292-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. The style of cause is hereby amended to reflect the Attorney General of Canada as the appropriate Respondent to this proceeding.
3. No costs.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2292-23

STYLE OF CAUSE: MARC MARIC v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: FEBRUARY 18, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: MAY 14, 2025

APPEARANCES:

Marc Maric	FOR THE APPLICANT (Self-Represented)
Zoe Stevens	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT
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ⁱ The Judgment and Reasons in this matter were originally signed on March 28, 2025, and sent to the Registry. However, due to administrative error, it was not communicated to the parties. It was re-signed on May 14, 2025.