

**SUPREME COURT OF CANADA**

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| **Citation:** Parrish & Heimbecker Ltd. *v.* Canada (Agriculture and Agri-Food), 2010 SCC 64, [2010] 3 S.C.R. 639 | **Date:** 20101223  **Docket:** 33006 |

**Between:**

**Parrish & Heimbecker Limited**

Appellant

and

**Her Majesty the Queen in Right of Canada as represented**

**by the Minister of Agriculture and Agri-Food,**

**Attorney General of Canada and Canadian Food Inspection Agency**

Respondents

**Coram:** Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 22) | Rothstein J. (Binnie, LeBel, Deschamps, Abella, Charron and Cromwell JJ. concurring) |

Parrish & Heimbecker Ltd. *v.* Canada (Agriculture and Agri-Food), 2010 SCC 64, [2010] 3 S.C.R. 639

**Parrish & Heimbecker Limited** *Appellant*

*v.*

**Her Majesty The Queen in Right of Canada as**

**represented by the Minister of Agriculture and**

**Agri-Food, Attorney General of Canada and**

**Canadian Food Inspection Agency** *Respondents*

**Indexed as:** Parrish & Heimbecker Ltd. ***v.* Canada (Agriculture and Agri-Food)**

2010 SCC 64

File No.: 33006.

2010: January 20, 21; 2010: December 23.

Present: Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the federal court of appeal

*Courts* — *Federal Court* — *Procedure* — *Plaintiff bringing action in Federal Court against federal Crown for damages for various torts arising from licensing decisions* — *Plaintiff not seeking judicial review of licensing decisions* — *Whether plaintiff entitled to seek damages by way of action without first proceeding by way of judicial review* — *Federal Courts Act, R.S.C. 1985, c. F-7, ss. 17, 18.*

P&H obtained import permits from the Canadian Food Inspection Agency (“CFIA”) to import wheat. As P&H’s chartered vessel neared Halifax, the CFIA revoked the permits and P&H was prohibited from offloading its cargo. The CFIA subsequently issued a new import permit with different conditions. P&H complied, however the new conditions rendered the wheat unacceptable to its intended customers. P&H did not seek judicial review of either licensing decision, but initiated an action against the Crown in the Federal Court seeking damages for various torts, and seeking to recover the additional costs required to fulfill its sales contracts, the loss of profit and the additional expenses incurred as a result of the new permit. The Crown was successful in bringing a motion to strike the statement of claim on the basis that, absent a successful challenge of the licensing decisions by way of judicial review, the Federal Court did not have jurisdiction to hear the matter in light of *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287.

Held: The appeal should be allowed.

For the reasons given in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the Federal Court should have decided P&H’s claim for damages without requiring it to first be successful on judicial review. Section 17 of the *Federal Courts Act* gives the Federal Court concurrent jurisdiction over claims for damages against the Crown. Section 18 of the Act does not derogate from this concurrent jurisdiction. Nothing in ss. 17 or 18 of the Act requires a plaintiff to be successful on judicial review before bringing a claim for damages against the Crown. Bringing an application for judicial review to invalidate the licensing decisions in this case would serve no practical purpose, since P&H complied with the re-issued import licence and fulfilled its contracts. The merits of the defence of statutory authority, if raised, may be determined at trial.

**Cases Cited**

**Applied:** *Canada (*Attorney General) v. TeleZone Inc., 2010 SCC 62, [2010] 3 S.C.R. 585; **overruled:** *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287.

**Statutes and Regulations Cited**

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 8.

*Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 17, 18.

*Plant Protection Act*, S.C. 1990, c. 22, s. 47.

*Plant Protection Regulations*, SOR/95-212, s. 34.

APPEAL from a judgment of the Federal Court of Appeal (Nadon, Sharlow and Pelletier JJ.A.), 2008 FCA 362, [2009] 3 F.C.R. 568, 303 D.L.R. (4th) 608, 384 N.R. 85, [2008] F.C.J. No. 1642 (QL), 2008 CarswellNat 4409, affirming a decision of Barnes J., 2007 FC 789, [2007] F.C.J. No. 1032 (QL), 2007 CarswellNat 2112. Appeal allowed.

Matthew G. Williams, for the appellant.

Christopher M. Rupar, Alain Préfontaine and Bernard Letarte, for the respondents.

The judgment of the Court was delivered by

1. Rothstein J. — The issue in this appeal is whether a plaintiff seeking damages for the revocation and re-issuance of an import licence must first bring an application for judicial review of the licensing decisions.

I. Facts

1. Parrish & Heimbecker Limited (“Parrish”) is a Canadian grain trader. On October 24, 2002, Parrish obtained two import permits from the Canadian Food Inspection Agency (“CFIA”) to import wheat from Ukraine and Russia. Parrish chartered a vessel, the *Nobility*. On November 17, 2002, the *Nobility* left Ukraine destined for Halifax with a full cargo of wheat.
2. On December 5, 2002, as the *Nobility* was nearing Halifax, the CFIA revoked Parrish’s import permits, allegedly pursuant to s. 34 of the *Plant Protection Regulations*,SOR/95-212. As a result, Parrish was prohibited from offloading its cargo.
3. The *Nobility* remained moored in the port of Halifax for the month of December. Parrish made numerous inquiries as to why the licences were revoked. According to Parrish, the CFIA refused to explain the revocation and it refused to test the wheat for contaminants or otherwise try to settle the matter.
4. On December 31, 2002, the CFIA issued a new import permit with different conditions. The new permit required that the wheat be pelletized and offloaded in Montréal and Québec. Parrish complied with the new permit; however, the new permit conditions rendered the wheat unacceptable to its intended customers. Parrish filled its original contracts with alternate wheat that it had to purchase at a greater cost.
5. Parrish did not seek judicial review of either licensing decision. In its statement of claim it stated that, “time considerations meant it was entirely impractical for Parrish & Heimbecker to address the purported revocation of the import permits through the judicial review process” (R.R., at p. 68). Parrish further explained that it could not wait for legal proceedings as it had to address the ongoing overtime use charges for the *Nobility* and fulfill its contractual obligations with its customers.
6. On December 2, 2005, Parrish initiated the present action against the respondents (collectively the “Crown”) in the Federal Court. It seeks damages for misfeasance in public office, unlawful interference with economic relations, negligent misrepresentation and negligence. Parrish seeks to recover the additional costs required to fulfill its sales contracts, the loss of profit and the additional expenses incurred as a result of the new import permit.
7. Before filing a statement of defence, the Crown brought a motion to strike Parrish’s statement of claim on the basis that the Federal Court did not have jurisdiction to hear the matter and that the statement of claim failed to disclose a reasonable cause of action.

II. Judicial History

A. *Federal Court, 2006 FC 1102, 303 F.T.R. 21*

1. Prothonotary Morneau allowed the Crown’s motion to strike Parrish’s action. He assessed Parrish’s claims and determined that they relied, to a large extent, on the invalidity or unlawfulness of the decisions to revoke the licences and then issue another one (para. 22). He concluded that the action for damages was a collateral or indirect challenge of the decisions and was barred by the Federal Court of Appeal’s decision in *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287, at paras. 29-30. Prothonotary Morneau found that Parrish must first challenge the licensing decisions by way of judicial review.
2. Prothonotary Morneau suspended the order striking the action to permit Parrish to bring a motion to extend the time for initiating an application for judicial review. Parrish’s action would be struck if it was unsuccessful either in obtaining an extension of time or on its application for judicial review (para. 34).

B. *Federal Court, 2007 FC 789 (CanLII)*

1. Parrish appealed the decision of the Prothonotary and, alternatively, sought an extension of time to file an application for judicial review. Barnes J. decided the appeal *de novo*, but reached the same conclusion as Prothonotary Morneau. Barnes J. concluded that the present case was indistinguishable from *Grenier* (para. 12). He permitted Parrish an extension of time to file its application for judicial review, but refused to merge the application and action, as it would constitute an “end run” around *Grenier* (para. 26).

C. *Federal Court of Appeal, 2008 FCA 362, [2009] 3 F.C.R. 568*

1. Pelletier J.A. upheld the lower court decisions, again concluding that Parrish’s claim “falls squarely within the principle stated in *Grenier*” (para. 13). He upheld Barnes J.’s decision to extend the time to file an application for judicial review and the decision not to merge the application and the action.
2. Nadon J.A. concurred with Pelletier J.A. In his view, it had not been shown that *Grenier* was “manifestly wrong” (para. 29). It was therefore binding authority and barred Parrish from bringing its action without first seeking judicial review.
3. Sharlow J.A. dissented. She acknowledged that Parrish’s action for damages would require an evaluation of the lawfulness of the licensing decisions. She stated: “The question that arises in this case is who is to determine, in the first instance, whether the exercise of statutory authority is valid” (para. 37). Sharlow J.A. concluded that there was no indication in the relevant statutes that this could only be completed through judicial review. In particular, she saw s. 8 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, which codifies the defence of statutory authority, as evidence that the assessment of lawfulness can be done in the course of a claim for damages (para. 39). Further, she noted that s. 18(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, gives the Federal Court jurisdiction to grant traditional public law remedies. It does not say that a dispute over the lawfulness of exercise of statutory authority cannot be assessed in the course of a trial governed by the *Crown Liability and Proceedings Act* (para. 44). In her view, the manifest intention of Parliament is that claims for damages can be heard by both the Federal Court or provincial superior courts (para. 46). She would have allowed the appeal and allowed Parrish’s action for damages to proceed.

III. Relevant Provisions

1. *Plant Protection Regulations*, SOR/95-212

**34.** (1) A person who imports a thing under a permit shall comply with all the conditions set out in the permit.

(2) Where the Minister determines that it is necessary to prevent the introduction into Canada or the spread within Canada of any pest or biological obstacle to the control of a pest, the Minister shall amend a permit by adding, removing or amending a condition or any information set out in the permit.

(3) The Minister may revoke a permit issued to a person or refuse to issue any other permit to a person where the Minister determines that the person has not complied with

(*a*) any condition set out in the permit;

(*b*) any provision of the Act or any regulation or order made thereunder; or

(*c*) any order made by the Minister under subsection 15(3) of the Act.

(4) The Minister may revoke a permit issued to a person or refuse to issue a permit to a person where the Minister has reasonable grounds to believe that

(*a*) there is an infestation in the country or place of origin of a thing or the country or place from which the thing was re-shipped; or

(*b*) the person has not complied with

(i) any condition set out in the permit,

(ii) any provision of the Act or any regulation or order made thereunder, or

(iii) any order made by the Minister under subsection 15(3) of the Act.

(5) Where a foreign exporter has shipped to Canada any thing that is a pest, infested or a biological obstacle to the control of a pest or that contravenes any provision of the Act or any regulation or order made thereunder, the Minister may revoke a permit issued to any person, or refuse to issue a permit in respect of a thing to any person, to import from that foreign exporter or from the country or place of origin or reshipment until

(*a*) the thing shipped or to be shipped is no longer a pest, infested or a biological obstacle to the control of a pest;

(*b*) the phytosanitary authorities in the country or place of origin or reshipment have identified to the Minister the cause or source of the infestation that is the subject-matter of the contravention; and

(*c*) the foreign exporter or the phytosanitary authorities referred to in paragraph (*b*) have given a written undertaking to comply with the provisions of the Act and all regulations and orders made thereunder.

IV. Analysis

1. On the basis of *Grenier*, the Crown argues that Parrish’s action is a collateral attack on its administrative decisions to revoke the import licences and issue another one. It argues that “Parrish cannot succeed in its claims without attacking the lawfulness or validity of the revocation decisions” (R.F., at para. 23). According to the Crown, this attack on the licensing decisions must first occur by way of judicial review.
2. For the reasons given by Binnie J. in the companion decision of *Canada (Attorney General) v.* *TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the Crown’s arguments must fail.
3. Unlike in *TeleZone*, the Federal Court’s jurisdiction is not at issue in this appeal. Parrish brought its action in the Federal Court. However, the correct procedure — action or application for judicial review — is at issue. Section 17 of the *Federal Courts Act* gives the Federal Court concurrent jurisdiction over claims for damages against the Crown. Section 18 of the *Federal Courts Act* does not derogate from this concurrent jurisdiction. There is nothing in ss. 17 or 18 that requires Parrish to be successful on judicial review before bringing its claim for damages against the Crown.
4. Parrish complied with the re-issued import licence. It imported the wheat and fulfilled its contracts. Bringing an application for judicial review to invalidate the licensing decisions would serve no practical purpose. Parrish now brings an action in tort to recover the additional costs of complying with the CFIA’s licensing decisions.
5. The Crown may seek to defend against the action by relying on its statutory authority, under s. 47 of the *Plant Protection Act*, S.C. 1990, c. 22, and s. 34 of the *Plant Protection Regulations*, to revoke or amend import permits. If it does so, the merits of this defence will have to be determined at trial.
6. For the reasons given in TeleZone, the Federal Court should have decided Parrish’s claim for damages without requiring it to first be successful on judicial review.

V. Conclusion

1. I would allow the appeal with costs throughout.

*Appeal allowed with costs.*

Solicitors for the appellant: Ritch Durnford, Halifax.

Solicitor for the respondents: Attorney General of Canada, Ottawa.