



Citation: *Kahraman v Minister of Public Safety and Emergency Preparedness*, 2024
CART 03

Docket: CART-2023-BMR-026

BETWEEN:

ECEM KAHRAMAN

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia L. Farnese, Member

**WITH: Ecem Kahraman, self-represented
Stéphanie Bélanger and Kristian Turenne, representing the
Respondent**

DECISION DATE: March 11, 2024

**VIRTUAL
HEARING DATE: February 28, 2024**

1. INTRODUCTION

[1] Ms. Kahraman was issued a Notice of Violation (“Notice”) with a \$1300 penalty for contravening subsection 16(1) of the [Health of Animals Act](#) (*HA Act*) after beef sausages were found in her checked luggage at the Vancouver International Airport. Ms. Kahraman allegedly did not declare that she was carrying raw or cooked meat. Ms. Kahraman’s appeal to the Minister of Public Safety and Emergency Preparedness was unsuccessful. Ms. Kahraman now asks that the Tribunal review the Minister’s decision to uphold the Notice.

[2] After a thorough review of the evidence before the Minister and provided during the oral hearing, I find no error that would allow me to vary or set aside the Minister’s decision. The evidence establishes, on a balance of probabilities, that Ms. Kahraman failed to disclose that she was importing beef sausages into Canada from Turkey. Neither her honest belief that the sausages were removed from her luggage prior to her departure nor a finding that Border Security Officers only questioned her about the content of her carry-on luggage are permissible defences.

2. LEGAL FRAMEWORK

[3] Subsection 12(1) of the [Customs Act](#) requires travellers to declare all goods they are bringing into Canada. The declaration must be made at the first opportunity after arriving in Canada. For those entering the country by air, this declaration typically occurs at the Primary Inspection Kiosk (PI Kiosk) or by using the ArriveCAN app. The timing of declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening before deciding to declare. Anyone bringing goods into Canada has a duty to fully declare what they are bringing into the country whether they are asked by a Border Security Officer or not.¹

[4] While failing to declare is an offence under the *Customs Act*, a person who fails to accurately declare animal by-products may receive a Notice for violating the *HA Act* or the [Health of Animals Regulations](#) (*HA Regulations*). The *HA Act* and *HA Regulations* work together to prevent the introduction of animal diseases into Canada.

[5] Subsection 16(1) of the *HA Act* requires that any person who imports an animal, animal product or animal by-product into Canada present the item to an Officer for inspection either before or at the time of importation. Answering ‘yes’ to the question at the PI Kiosk or in the ArriveCan app that asks whether you are bringing any raw or cooked meat into Canada is a sufficient declaration.

¹ *Canada (AG) v Savoie-Forgeot*, [2014 FCA 26](#) at para 25.

[6] Section 40 of the *HA Regulations* prohibits the import of all animal by-products into Canada except as permitted by Part IV. Part IV allows a person to import some agricultural products, including animal by-products, under certain conditions. The Canadian Food Inspection Agency (CFIA) decides the conditions that allow agricultural products to be imported into Canada. Officers rely on the [Automated Import Reference System](#) (AIRS),² which is also available to the public, to identify these import requirements when they encounter an animal product during an inspection. The requirement to declare in subsection 16(1) gives Border Security Officers the opportunity to confirm whether a person is allowed to import the animal by-product.

[7] The *HA Act* and the *HA Regulations* are enforced through the uniform enforcement process set out in the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (*AAAMP Act*), and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (*AAAMP Regulations*). The *AAAMP Act* and *AAAMP Regulations* categorize each violation as either minor, serious, or very serious and impose mandatory penalties based on the category of violation. Subsection 16(1) of the *HA Act* is classified as a very serious violation, which attracts a \$1300 penalty.

[8] The Minister of Public Safety and Emergency Preparedness (the Respondent) must prove the following essential elements of subsection 16(1) of the *HA Act*, on a balance of probabilities:³

1. Ms. Kahraman is the person identified in the Notice;
2. Ms. Kahraman imported an animal, animal product or animal by-product, or animal food into Canada;
3. none of the exceptions listed in Part IV of the [HA Regulations](#) applied; and,
4. Ms. Kahraman did not make the product in question available for inspection because she did not declare it at her first opportunity.

[9] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. The Tribunal can subsequently review the Minister's decision. Subsection 14(1) of the *AAAMP Act* authorizes the Tribunal to confirm, vary, or set aside the Minister's decision after deciding whether the applicant committed the violation. The *AAAMP Act* regime creates absolute liability offences which means that there are only a few defences that can be relied upon to avoid the Notice once the elements of the violation have been proven.

3. ISSUES

² Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

³ *Santos v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2021 CART 17](#).

[10] Ms. Kahraman does not dispute that the sausages were found in her luggage, that she did not declare that she was importing them, or that Part IV of the *HA Regulations* does not permit the sausages import. At the hearing, she questioned the Respondent's assertion that the sausages were beef and argued that because she was unaware the sausages were still packed in her luggage, she failed to make the necessary declaration. She also argued that sausages were no longer hers because she gifted them to her mother who neglected to remove them from her suitcase. Ms. Kahraman further denies that she was given multiple opportunities to declare the sausages to Border Security Officers as the Respondent alleges. She argues that the \$1300 penalty is unreasonable as result.

[11] Ms. Kahraman's admissions have left three issues to be considered:

1. Were the sausages beef?
2. Can Ms. Kahraman avoid liability for the violation because she previously gifted the sausages to her mother?
3. Are findings that Ms. Kahraman was only questioned about the contents of her carry-on luggage and was questioned by Border Security Officers fewer times than the Respondent alleges permissible defenses?

4. ANALYSIS

I. Issue #1: Were the sausages beef?

[12] I find that the Respondent has proven, on a balance of probabilities, that the sausages were beef. Ms. Kahraman raised the issue of the sausages not being beef for the first time at the oral hearing. She testified that she had no personal knowledge of the sausages' ingredients and suggested that they could have been a plant-based product. When questioned as to why this issue was not raised prior to the oral hearing, Ms. Kahraman testified that she relied on the Respondent's assertion that they were beef as she assumed the sausages were tested.

[13] Although the photographs of the seized sausages' labels do not display an ingredient list, I find the Respondent has proven that the sausages were more likely than not beef. In Ms. Kahraman's request for review, she explained that she purchased "a couple of beef sausage snacks" for her parents. Ms. Kahraman did not deny that the photographs provided to the Tribunal are of the sausages seized from her when she received the Notice. The sausages, which are unpackaged, visually resemble ready-to-eat cured meat in an animal-derived casing. If not an animal product, but possibly a vegan alternative as Ms. Kahraman suggests, one would expect that their visual similarity to an animal product would have prompted clear labelling as vegan by the vendor, either on the product or within the store. I, therefore, find it improbable that Ms. Kahraman did not know whether she was buying an animal product or a vegan alternative.

[14] I find that if Ms. Kahraman believed there was a possibility that the sausages were vegan, she would have raised that possibility either when she received the Notice or during her request before the Minister or the Tribunal. The seizing officer's notes taken near contemporaneously with his interaction with Ms. Kahraman also outlined that she understood that she was receiving the Notice for failing to declare an animal product. It defies reason to accept that she would not have protested when she received the Notice if she had any cause to believe the sausages were not beef.

II. Issue #2: Can Ms. Kahraman avoid liability for the violation because she previously gifted the sausages to her mother?

[15] In her oral submission, Ms. Kahraman argued that her situation is comparable to the applicant in *Kozicka v Canada (CBSA)*⁴ who was found not liable for a violation after the Tribunal decided that undeclared turkey slices belonged to the applicant's son. Ms. Kahraman argues that the sausages similarly did not belong to her because she gifted them to her parents. This argument fails for three reasons.

[16] First, subsection 16 of the *HA Act* does not limit violations to owners of undeclared products. Subsection 16 provides:

Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer. (emphasis added)

The *HA Act* imposes the obligation to declare animal products on any person who brings animal products into Canada. To limit the obligation to declare to owners would undermine the very purpose of the legislation by permitting anyone other than owner to bring these products into Canada without a declaration.

[17] Second, even if I were to accept Ms. Kahraman's interpretation of *Kozicka*, she has not proven that she was no longer the owner of the sausages because she had gifted them to her parents. To establish a valid gift, the common law requires proof of an intention to gift, acceptance of the gift by the intended recipient, and delivery sufficient to demonstrate the giftor's loss of possession and/or control of the gift.⁵ Ms. Kahraman admitted in her request for review that the sausages were never removed from her bag by her mother. In other words, Ms. Kahraman has provided no proof of her mother's acceptance of the gift or of the gift's delivery.

⁴ *Kozicka v. Canada (CBSA)*, [2010 CART 3](#)

⁵ *Bayoff Estate, Re* [2000 SKQB 23](#) (CanLii) at para 11.

[18] Third, the facts of *Kozicka* are distinguishable from the present case because in *Kozicka*, the applicant was travelling with her son for whom the undeclared animal product had been purchased. As a result, the respondent failed to prove that the applicant, and not the son, had the obligation to declare. Ms. Kahraman was travelling alone and, therefore, is liable for failing to declare that she was carrying beef sausages.

III. Issue #3: Are findings that Ms. Kahraman was only questioned about the contents of her carry-on luggage and was questioned by Border Security Officers fewer times than the Respondent alleges permissible defenses?

[19] On the eve of the hearing, Ms. Kahraman wrote to the Tribunal requesting that she be permitted to cross-examine the Border Security Officer who issued her the Notice and requested that the hearing be adjourned to allow the Officer to be notified of his requirement to attend. The Respondent objected to these requests. I declined to adjourn the hearing based on Ms. Kahraman's written request but indicated to the parties that I would hear oral submissions as a preliminary issue at the oral hearing.

[20] At the hearing, Ms. Kahraman explained that she wished to question the Border Security Officer because she disputes the number of times the Officer alleges she was given the opportunity to declare the sausages prior to their discovery in her luggage. She also disagrees with the Officer's statement that she was specifically questioned about the contents of her checked luggage prior to the final search that found the sausages. Based on the reasons Ms. Kahraman wished to question the Border Security Officer, I declined to adjourn the hearing. I explained that I did not need the Border Security Officer's evidence on these points to determine the outcome of this review.

[21] Ms. Kahraman has a positive obligation to declare any animal products she is importing into Canada. She does not dispute that she failed to declare the sausages or that the sausages were in her luggage. Even though I accept Ms. Kahraman's evidence that she was waived through the first inspection point after the Kiosk without speaking to an officer and that she believed that she was only being questioned about the contents of her carry-on luggage, these facts did not relieve her of her obligation to declare the sausages. I have no grounds to disturb the Minister's decision as Ms. Kahraman has not raised a permissible defence.

[22] The Respondent has proven that Ms. Kahraman failed to declare beef sausages when she entered Canada. Section 5 of the *AAAMP Regulations* classifies subsection 16 of the *HA Act* as a very serious violation that attracts a penalty of \$1300. I do not have the authority to reduce or substitute the penalty for a warning.

5. ORDER

[23] The Minister's decision is confirmed.

[24] Ms. Kahraman must pay the penalty of \$1300 within 30 days of the release of this decision.

[25] This violation is not a criminal offence. After five years, Ms. Kahraman is entitled to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records, in accordance with section 23 of the *AAAMP Act*.

Dated this 11th day of March 2024.

(Original Signed)

Patricia Farnese
Member
Canada Agricultural Review Tribunal