



Citation: *Stracinski v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2015 CART 11

Date: 20150714
Docket: CART/CRAC-1832

BETWEEN:

Zdenka Stracinski, Applicant

- and -

Minister of Public Safety and Emergency Preparedness, Respondent

BEFORE: Chairperson Donald Buckingham

**WITH: Zdenka Stracinski, self-represented; and
Melanie A. Charbonneau, representative for the respondent**

In the matter of an application made by the applicant, pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of the Minister's decision dated May 19, 2015, holding that the applicant violated section 40 of the *Health of Animals Regulations*.

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal **ORDERS** that the applicant's request of June 8, 2015, made pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the Minister's Decision CS-71227 dated May 19, 2015, **IS INADMISSIBLE** and is, pursuant to this order, **DISMISSED**. The Canada Agricultural Review Tribunal therefore **CONFIRMS** the Minister's Decision CS-71227 upholding the Notice of Violation YYZ4971-0621 issued by the Canada Border Services Agency on August 25, 2013, holding that the applicant violated section 40 of the *Health of Animals Regulations*.

By written submissions only.

REASONS FOR DECISION ON INADMISSIBILITY

Alleged Incident and Issues

[1] This is a most unfortunate case. As these reasons for the decision will demonstrate, this case arose from a simple, but genuine, gesture of human kindness which started a chain of events which had significant and rigid legal consequences for Zdenka Stracinski (Stracinski).

[2] It is an unfortunate case because the uncontested facts are that Stracinski did not know that her parents had placed 15 pounds of sausage in her suitcase as a parting gift before she was due to return to Canada from a visit abroad.

[3] It is an unfortunate case because, having no knowledge of the meat products in her luggage, Stracinski had no opportunity to declare, on her Canada Border Services Agency E311 Declaration Card (Declaration Card) or orally to a primary inspection officer of the Canada Border Services Agency (Agency), that she was importing a meat product.

[4] It is an unfortunate case because it took almost two years for her request to the Minister for a review of the Notice of Violation she was issued, to be completed and forwarded to her.

[5] Finally, this is an unfortunate case because it subjects Stracinski to the full-blown harshness of the regime established by the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act), and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations). This regime provides “tough justice” to an applicant who wishes to provide some of context, albeit context which does not in the end have a legal impact, for assessing the events leading to the issuance of a notice of violation.

[6] However unfortunate this case and its circumstances may be, the Canada Agricultural Review Tribunal (Tribunal), has reviewed the reasons advanced by Stracinski to have set aside the Minister’s Decision CS-71227 (Minister’s Decision) reviewing the facts underlying a Notice of Violation issued to Stracinski by the Agency. Sadly, the Tribunal finds that Stracinski has failed to provide reasons which support any permissible grounds for setting aside the Minister’s Decision, a power provided to the Tribunal under section 14 of the AMP Act.

Documents and Submissions of the Parties

[7] Notice of Violation YYZ4971-0621, issued by the Agency on August 25, 2013, states that Stracinski committed a violation by importing an animal by-product into Canada on that date, without meeting the prescribed requirements, contrary to section 40 of the *Health of Animals Regulations* (HA Regulations). Stracinski challenged the validity of the Notice of Violation by requesting a review of it be completed by the Minister, or his delegate.

[8] The Minister's Decision indicates that the Notice of Violation was served on Stracinski on August 25, 2013. While the record before the Tribunal does not contain the exact date that Stracinski filed her request with the Minister, provisions of the AMP Act and AMP Regulation require that such a request be filed no later than 30 days after service of the Notice of Violation on the applicant. Since the Minister undertook a review, it is safe to assume that Stracinski must have filed her request for review no later than September 25, 2013.

[9] Jonathan Ledoux-Cloutier (Ledoux-Cloutier), Manager, Appeals Division, Recourse Directorate for the Minister of Public Safety and Emergency Preparedness, on May 19, 2015, issued the Minister's Decision, after concluding his review, pursuant to subsection 13(1) of the AMP Act. Ledoux-Cloutier concluded *[verbatim]*: "...that the facts as presented confirm that a violation of Section 40 of the Health of Animals Regulation was committed and the Notice of Violation with Penalty issued pursuant to Section 7(1) of the Act remains in effect. The amount of the penalty in the amount of \$800 is now owing to the Receiver General for Canada."

[10] Ledoux-Cloutier provides the following reasons for the Minister's Decision *[verbatim]*:

Reasons

On August 25th, 2013, you entered Canada at the Pearson International Airport in Toronto (Ontario) and presented a completed Declaration Card, E311 to a Canada Border Services Agency (CBSA) official. It was noted that you answered "no" to the following question: "I am/we are bringing into Canada: Meat/meat products; dairy products; fruits; vegetables; seeds; nuts; plants and animals or their parts/products; cut flowers; soil; wood/wood products; birds; insects".

The subsequent examination of your luggage revealed the presence of sausages, approximately fifteen (15) lbs for which you did not have permits or certificates for the imported products. According to the Agency's report, you were identified as the person who allegedly committed the violation; where you imported an animal by-product into Canada; and either before, or at the time of importation, you failed to present the 'sausages' to an Agency officer before secondary inspection of your bags.

In view of the circumstances, on August 25th, 2013, Notice of Violation #YYZ 4971-0621 was issued to, and served to you by the Agency ...

During the process review, you contented that your parents had placed the sausages inside your suitcase without your knowledge.

Unfortunately for you, these violations are in the nature of "strict-liability" violations and the reasons you have raised for not complying with the

prescribed Regulations are not defences by virtue of subsection 18(1) of the Agriculture and Agri-Food Monetary Penalties Act.

Section 18 of the AMP Act states:

18. (1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

The evidence on file established that you were the person who imported an animal by-product into Canada, namely sausages. The content of animal by-product was also confirmed by your admission that it was sausages that had been given by your parents. Further, either before, or at the time of importation, you did not present the 'sausages' on the E311, Declaration Card or to the primary Border Services Officer. Consequently, a violation occurred in that you failed to present the animal by-product to the CBSA.

...

[11] On June 8, 2015, by registered letter, Stracinski filed a request for review with the Tribunal (Request for Review to the Tribunal), requesting that the Tribunal review and set aside the Minister's Decision, a request permitted by paragraph 13(2)(b) of the AMP Act. In order to maintain her rights under the AMP Act, Stracinski has not paid the assessed penalty.

[12] By letter dated June 12, 2015, the Tribunal indicated to the Agency and to Stracinski as follows:

... As you may be aware, on May 8, 2015, the Rules of the Tribunal (Agriculture and Agri-Food) SOR/99-451 (the Old Rules) were repealed and replaced by the Rules of the Review Tribunal (Canada Agricultural Review Tribunal) (the New Rules), of which a copy from the Canada Gazette are attached.

As required by the Tribunal, under section 45 of the New Rules, the Tribunal hereby acknowledges receipt of the request by the applicant for a review of the Minister's decision of the Notice of Violation cited above. Attached is a copy of the request for review of the Minister's decision, as received from the applicant.

Therefore, the Tribunal hereby requests the following:

- 1. that the Canada Border Services Agency (Agency) or its representative or legal counsel, provide the necessary information to fully comply with*

*section 46 of the New Rules by **Monday, June 29, 2015**, which is 15 days after the day on which this letter is sent; and*

2. *that Zdenka Stracinski (Stracinski) or her representative or legal counsel, provide the necessary information to fully comply with section 47 of the New Rules by **Monday, June 29, 2015**, which is 15 days after the day on which this letter is sent.*

Then, pursuant to section 48 of the New rules, and on the basis of the information submitted to the Tribunal, the Tribunal will make a determination on the admissibility of this request within 60 days after the day on which this letter is sent and will send that decision to the parties in writing without delay.

...

[13] By email dated June 26, 2015, the Agency forwarded information required by section 46 of the Tribunal's New Rules. By fax dated June 28, 2015, and by two emails dated June 28 and June 29, 2015, Stracinski forwarded information required by section 47 of the Tribunal's New Rules.

[14] The written record before the Tribunal in this case consists of the following documents:

From the Minister and the Agency:

- (i) Minister's Decision dated May 19, 2015; and
- (ii) Email from the Agency, dated June 26, 2015, attaching proof of service of the Minister's Decision to Stracinski on May 25, 2015.

From Stracinski:

- (i) Letter dated June 8, 2015, setting out her Request for Review of the Minister's Decision, as well as reasons for her request and a copy of the Minister's Decision;
- (ii) Emails of June 28 and 29, 2015, to the Tribunal, setting out additional reasons for the request for review of the Minister's Decision and other information to comply with section 47 of the Tribunal's New Rules; and
- (iii) Fax of June 28, 2015, to the Tribunal, containing an additional copy (in part) of Minister's Decision and a copy (in part) of original Notice of Violation YYZ4971-0621 dated August 25, 2013.

[15] In her letter dated June 8, 2015, Stracinski explains *[verbatim]*:

Dear Registrar, please accept this letter since I am absolutely disgusted with this whole issue. Forgive my being so forward but I am very disappointed and very upset about this whole dealing with this issue.

On August 25, 2013...I was accused of completing incorrectly declaration form about sausages in my luggage. Why I answered "NO" is because I was not aware of these being in the luggage. Since the whole flight was delayed for a few days and luggage was packed by my elderly parents decided to surprise us when we get home in Canada with homemade sausages that we so love and they made. I will not continue with more writing since you have all this in your reports (I hope you do).

It took 2 years to hear back from Canada Border Services Agency. *Shortly after, I am accused without contact, phone call or even right to speak for myself. Unreal. It sure didn't take additional two years to convict me, why??? Letters starting coming much faster and no question asked. I am unable to pay \$800. I am a mother who supports two young children and on limited income. I am asking if you would be so kind and reconsider this fine amount and offer lesser amount. I am wondering if jail sentence is an option and how many days would \$800 cover. I am so sorry that this even happen in a first place I can't find words to explain. ...*

[16] In her additional submissions included in her email to the Tribunal of June 28, 2015, Stracinski further explains *[verbatim]*:

Travel

-I am in the airplane, filling out card, nothing to declare, I did not myself place anything to be declared in my suitcase

-meat found by guard in bag, I was questioned, meat thrown out in garbage can, guard not understanding me, cultural differences and would not listen to me, cut off my speaking many times

-given fine on-paper, taken home to Wasaga

-Read rules on back, sent in Letter dated----- within 30 day time period ----have copies of registered mail receipt and letter

-no contact received back from Canada – not one month, not six months, not one year, not one year six months---look up something from april....

-Letter rec'd from Canada in April 2015 demanding money

- May 8 2015 Rules of Tribunal repealed and replaced

-Canada responds one year 8 months later demanding money from me?

-This makes no sense to me

Section 47 of New Rules

After timeline and proof, here are my thoughts about this:

I am a Canadian Citizen who was returning home after a visit with my parents. I did not know that my parents placed 15 lbs of sausage into my suitcase. I understand that yes, this was my suitcase, and yes when I noticed the smell I knew it was familiar as sausages...the border guard then threw them in the garbage, which to me should have been end of the story. I was saddened because I did not know about such a surprise coming from my parents. As you can understand, this would then have been a lot of meat for them to acquire and gift to me. Should the argument not be then, that Canada should place more emphasis on alerting others in their embassy districts about not sending meat overseas? [Before people get on the plane? Why should I check and recheck my bag? This is not realistic during travel.]

Too much time has passed, I responded within the Rules as they were at the time in 2013, I was not responded to which would be fair to say that it seemed likely to be thrown out. After two years, after the Rules change, someone looks into these things and finds this? Then requests money from me? I do not feel that this is a fair situation. I was very cooperative, had no response, then since rules change I have to pay, and believe I should have this thrown out. ...

[17] One can sense, and even empathize with, the frustration and injustice that Stracinski feels. She maintains, and Ledoux-Cloutier writing for the Minister, does not cast any doubt on this fact, that Stracinski did not know that her suitcase contained 15 pounds of sausage. Therefore, it is hardly surprising that Stracinski would not have indicated on her Declaration Card, at the time of her coming into Canada, that she was importing any meat products. Moreover, she clearly would not have tried to secure, even if she had been able to, a certificate allowing the importation of the sausage that she did not know she had in her possession.

Analysis and Applicable Law

[18] The AMP Act establishes a possibly unique, if not somewhat perplexing, two-pronged procedure for challenging a notice of violation issued pursuant to it. Under the AMP Act, a person served with a notice of violation may choose one of two preliminary routes to contest its validity—a request for review to the Minister of Agriculture and Agri-Food, or the Minister of Health, as the case may be (subsection 8(1) and paragraph 9(2)(b) of the AMP Act) or a request for review to this Tribunal (subsection 8(1) and paragraph 9(2)(c) of the AMP Act).

[19] In both cases, the review, which takes place, is an administrative review of an enforcement agency's exercise of discretion to issue a notice of violation with warning or with a penalty. During this review, the reviewer—either the Minister or the Tribunal, as chosen by the applicant—receives evidence from the parties, considers applicable law, applies the facts of the case to the applicable law and then determines whether or not the person requesting the review committed the violation. This exercise, in either case, leads to a “first-instance” administrative adjudicative decision on the matter.

[20] Stracinki chose to follow the “first-instance” administrative adjudicative with the Minister. She followed all the requirements to challenge before the Minister the facts that lead to the issuance of the Notice of Violation YYZ4971-0621 and the \$800 fine it solicited. All of Stracinski's actions appear to have been completed in the required time, on or before September 25, 2013. Then there was no reply to her request for almost two years, and then in May of 2015 Stracinki received a decision upholding the violation and reiterating that she had 15 pounds of sausages in her luggage, that she did not declare them, and that she did not have any certificate that would justify their importation. It is little wonder that Stracinki felt harshly and unjustly treated given the lack of understanding, and perhaps of compassion, by government officials in August 2013, and then a lack of timeliness and dialogue by government officials in May 2015.

[21] So having received the Minister's Decision, Stracinki then exercised her rights to request that a review of the Minister's decision be carried out by the Tribunal pursuant to paragraph 13(2)(b) of the AMP Act.

[22] In reviewing a Minister's decision, the Tribunal may confirm it, vary it or set it aside (paragraph 14(1)(a) of the AMP Act) and as such, performs a function not as a decision-maker of first instance but rather as a body reviewing a decision of first instance. The Tribunal is subject to, and guided by, Canadian administrative law and procedure in reviewing a Minister's decision. Of course, parties who are in turn dissatisfied with the Tribunal's decision on a review of a Minister's decisions, have yet again the opportunity to seek judicial review of that decision before the Federal Court of Appeal.

[23] The AMP Act and the AMP Regulations that establish the AMP system for agriculture and agri-food violation, can often enough dictate harsh, inflexible, and seemingly unjust results.

[24] Courts, which have examined the AMP regime, have recognized that this is the case, especially given that the violations entail absolute liability. In *Doyon v. Attorney General of Canada*, 2009 FCA 152 (*Doyon*), Létourneau JA, writing on behalf of the Federal Court of Appeal (FCA), cautions that the AMP regime leaves a person with an AMP violation very little means of defending his or her actions:

[27] *In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an actus reus which the prosecutor does not have to prove beyond a*

reasonable doubt, leaves the person who commits a violation very few means of exculpating him– or herself.

[25] The limited means of defending oneself under the AMP regime has been made clear by a general statutory decree in section 18 of the AMP Act (cited above by in the Minister's Decision) which excludes the defences of due diligence and of mistake of fact. Even in cases where the applicant did not know that he or she had meat products in their luggage at the time of their coming into Canada, so long as the Agency meets its legal burden of proving all the elements of the violation, on the balance of probabilities, the applicant will be liable for a violation under the AMP regime.

[26] The FCA, in *Canada Border Services Agency v. Castillo* 2013 FCA 271, had to rule on facts that were very similar to the ones in the present case. The Court held, at paragraphs 23 and 24, as follows:

[23] The facts before the Tribunal clearly show that there was an importation by Mr. Castillo of an animal by-product as defined in the Health of Animals Regulations to which none of the exceptions set out within Part IV of these regulations applied.

[24] Mr. Castillo may have been unaware that the chicken was in his luggage, but this is of no assistance to him given a plain reading of the provisions and the clear intention of Parliament to provide for an absolute liability regime for these types of violations. As this Court has noted before, the AMP system can be harsh (Westphal-Larsen at paragraph 12) but it is clear that Parliament intended that it be so, given the important stated objective of protecting Canada from the introduction of foreign animal diseases.

[27] The law is therefore quite settled on the question of whether the applicant needed to be aware of the fact that he or she was importing a meat product. She did not.

[28] As a result, when Stracinski requested a first-instance Ministerial review, it was the responsibility of the legal representative of the Minister, Ledoux-Cloutier in this case, to assess whether the Agency who issued the Notice of Violation has proven, on the balance of probabilities, that Stracinski committed the act prohibited by the agri-food provision listed in the AMP Act or the AMP Regulations (agri-food provision). Section 19 of the AMP Act establishes the burden of proof that an agency must prove to uphold a violation:

19. *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[29] Where a violation of section 40 of the HA Regulations is alleged, two essential elements must be proved by the Agency, on the balance of probabilities:

- Element #1 - Stracinski is the person who committed the violation; and
- Element #2 - Stracinski imported an animal by-product into Canada.

[30] On the record before the Tribunal, it is clear that the evidence before Ledoux-Cloutier, on the essential elements, was not in dispute. Stracinski did import 15 pounds of sausage into Canada on August 25, 2013. She did not have, or present, any documentation that would have permitted the importation of the sausages.

[31] The evidence is also clear, however, that she did not know she was importing such a product, as her parents put it in her luggage without her knowledge. Neither is it disputed that it took almost two years for the Minister's representative to issue his decision in response to Stracinski's request for review. Unfortunately, under the AMP regime, neither of these two matters impact upon the validity of the Notice of Violation or enable the Tribunal to set aside the Minister's Decision for these reasons alone.

[32] Under the Tribunal's New Rules, which came into force on May 8, 2015, the Tribunal must, before it proceeds to a full hearing of a matter, make a decision on the admissibility of an request for the review of a Minister's Decision pursuant to section 48 of the Tribunal's New Rules. In coming to its decision on admissibility, the Tribunal will consider, among other things, the sufficiency of the reasons advanced by the applicant for the setting aside of the Minister's Decision. If there are no grounds, from the materials filed by the parties, pursuant to sections 46 and 47 of the Tribunal's New Rules, upon which the applicant could possibly succeed, then the Tribunal may declare the request for review of the Minister's decision inadmissible.

[33] Such is the case here. The parties do not dispute the evidence which proves, on the balance of probabilities, the two elements in this case - that Stracinski is the person who committed the violation; and that she imported an animal by-product consisting of 15 pounds of sausage into Canada. She has no justification for the importation, as without knowledge of the product clandestinely in her luggage, she made no attempt to declare the product as she came into Canada or to obtain a certificate for its importation. Section 18 of the AMP Act excludes due diligence and mistake of fact to justify her actions. Given Parliament's clear intention on the issue of prohibited versus permitted defences, the Tribunal finds that none of the reasons given by Stracinski are permitted defences under section 18 of the AMP Act.

[34] Hence, the Tribunal declares that Stracinski's request for review of the Minister's decision inadmissible, as no grounds are revealed, from the materials filed by the parties, pursuant to sections 46 and 47 of the Tribunal's New Rules, upon which the applicant could possibly succeed to substantiate an order by this Tribunal to set aside the Minister's Decision CS-71227 dated May 19, 2015.

[35] As a result of this finding of inadmissibility of her Request for Review to the Tribunal, Stracinski is deemed to have committed the violation indicated in Notice of

Violation YYZ4971-0621 dated August 25, 2013, and served on her that same day. Subsection 9(3) of the AMP Act provides as follows:

(3) Where a person who is served with a notice of violation that sets out a penalty does not pay the penalty in the prescribed time and manner or, where applicable, the lesser amount that may be paid in lieu of penalty, and does not exercise any right referred to in subsection (2) in the prescribed time and manner, the person is deemed to have committed the violation identified in the notice.

[36] The Tribunal has considered these matters in light of the provisions of the AMP Act, the AMP Regulations, the Tribunal New Rules, applicable jurisprudence, and all submissions provided by the parties.

[37] Agency officers are charged with protecting Canadians, the food chain and agricultural production in Canada from the risks posed by biological threats to plants, animals and humans. There is no doubt that these duties must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing traveller complaints against inspectors who have conducted themselves improperly towards travellers.

[38] As well, Agency officers have discretion in how they handle travellers who have undeclared products in their possession. In certain circumstances, perhaps such as in this case, where passengers genuinely lack knowledge of an offending product in their baggage, an oral warning or Notice of Violation with Warning under the AMP Act may seem a more just and humane remedy than a Notice of Violation with Penalty. However, it is not the Tribunal's role to revisit the procedure and civil remedy chosen by the Agency against an alleged violator.

[39] The very strict AMP system established by Parliament, and set out in the AMP Act, protects Canada's agricultural and food systems against contamination and disease. The penalties set out in the AMP Act, as in this case, can nonetheless have important repercussions for Canadians, especially someone like Stracinski. Stracinski has asked the Tribunal, for humanitarian, compassionate, or financial reasons, to alter the penalty imposed in this case, even to the point of suggesting she serve a "jail sentence" to "cover" the \$800 fine. The Tribunal doubts that the AMP system was ever intended to have such dire consequences for Canadians, that is, that they would have to be willing to sacrifice their freedom to meet obligations imposed by an administrative penalty under an absolute liability regime.

[40] That said, the Tribunal's ability to grant relief comes only from its enabling statutes. According to these laws, the Tribunal has neither the mandate, nor the jurisdiction, to set aside or dismiss a notice of violation, or a Minister's Decision, for humanitarian, compassionate, or financial reasons. However, Stracinski may wish to approach Agency representatives to inquiry as to whether a schedule of payments or some other arrangement to pay the fine would be acceptable to the Agency.

[41] The Tribunal wishes to inform Ms. Stracinki that this violation is not a criminal offence. After five years, she will be entitled to apply to the Minister to have the violation removed from the records, in accordance with section 23 of the AMP Act:

23. (1) Any notation of violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from (a) where the notice of violation contained a warning, the date the notice was served, or (b) in any other case, the payment of any debt referred to in subsection 15(1), unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa, Ontario, on this 14th day of July, 2015.

Don Buckingham, Chairperson