



Citation: *Kolochuk v. Canada (Minister of Public Safety and Emergency Preparedness)*,  
2016 CART 6

Date: 20160301  
Docket: CART/CRAC-1834

**BETWEEN:**

**Raymond Kolochuk, Applicant**

**- and -**

**Minister of Public Safety and Emergency Preparedness, Respondent**

**BEFORE: Chairperson Donald Buckingham**

**WITH: Mr. Raymond Kolochuk, self-represented; and  
Ms. Melanie 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 27, 2015, upholding Notice of Violation 4971-14-0289 issued by the Canada Border Services Agency for a violation committed by the applicant of section 40 of the *Health of Animals Regulations*.

**DECISION (delivered orally on March 1, 2016)**

**Following a review of the decision of the Minister of Public Safety and Emergency Preparedness and the reasons for that decision issued May 27, 2015, and following an oral hearing and a review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal, by order, CONFIRMS the decision of the Minister. As a result, the monetary penalty of \$800 is payable by Raymond Kolochuk to the Canada Border Services Agency under Notice of Violation 4971-14-0289 within thirty (30) days after the day on which this decision is served.**

Hearing held in St. Catharines, ON  
on Tuesday, March 1, 2016.

**The Minister's decision of May 27, 2015:**

- i. made findings of fact necessary to determine that Mr. Kolochuk committed the violation;**
- ii. properly applied the law with respect to defining the elements necessary to substantiate a violation of section 40 of the HA Regulations; and**
- iii. assessed the penalty appropriately in this matter.**

**Therefore, the Tribunal confirms the decision of the Minister. As a result, the monetary penalty of \$800 is payable by Mr. Kolochuk to the Canada Border Services Agency under Notice of Violation 4971-14-0289 within thirty (30) days after the day on which this decision is served.**

**Additional written reasons will follow and will be sent to the parties.**

**Dated at St. Catharines, on this 1<sup>st</sup> day of the month of March, 2016.**

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**Dr. Donald Buckingham, Chairperson**

### **ADDITIONAL WRITTEN REASONS provide by the Chairperson on March 3, 2016**

[1] This case is about whether the Canada Agricultural Review Tribunal (Tribunal) should confirm, vary or set aside a decision of the Minister of Public Safety and Emergency Preparedness (Minister's Decision) dated May 27, 2015, finding against Raymond Kolochuk (Mr. Kolochuk).

[2] The Minister's Decision holds that, on the basis of Canada Border Services Agency (Agency) officials finding several containers of undeclared chicken soup mix in the luggage of Mr. Raymond Kolochuk upon his return from Mexico to Canada in March 2014, he contravened section 40 of the *Health of Animals Regulations* (HA Regulations) and was validly issued a Notice of Violation with Penalty of \$800.

[3] Mr. Kolochuk requested a review of the validity of the Minister's decision to this Tribunal on June 14, 2015.

[4] The hearing proceeded on March 1, 2016. Mr. Kolochuk provided no oral arguments at the hearing as he did not appear despite having been provided with notices of the hearing as early as January 28, 2016. Notices of the hearing were sent to him via registered mail and by courier at his last known address on at least two occasions. When Tribunal staff tried to confirm his attendance at the hearing by telephone in late February 2016, he did not answer and had no voice mail at that number. As well, Mr. Kolochuk provided no email address to the Tribunal, so it was impossible to contact him electronically.

[5] The Tribunal invoked Rule 54 of the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (Tribunal Rules) and proceeded with the hearing in his absence.

[6] The sole issue in this case is whether, on the record before the Tribunal, the Minister erred in his finding that the Agency has proven all the necessary elements of the violation and, as a result, sustained the Notice of Violation with Penalty. Mr. Kolochuk must have imported an animal by product, failed to declare it and failed to present any certificate or permit permitting its importation into Canada.

[7] Mr. Kolochuk does not contest that he imported containers of chicken soup mix, or that he failed to declare them.

[8] Having reviewed all the evidence and submissions, I agree with the Minister's conclusion. I see no merit in this request for review.

[9] With respect to the amount of the penalty assessed by the Minister in this case, I find that penalty of \$800 is justified in law and should not be varied.

[10] Finally, in his request for review to the Tribunal, Mr. Kolochuk requested that his Nexus card privileges be reinstated by this Tribunal. The Tribunal's power to grant a remedy comes from its enabling statutes. According to these statutes, the Tribunal does not have the mandate to revoke or restore Nexus card privileges.

[11] This violation is not a criminal offence. After five years, Mr. Kolochuk 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 AMP Act.

Dated at Ottawa, Ontario, on this 3<sup>rd</sup> day of March, 2016.

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Dr. Donald Buckingham, Chairperson