



Citation: *Raymond v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2017 CART 9

Date: 20170308
Dockets: CART/CRAC-1943

BETWEEN:

Magali Raymond,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

[Translation of the official version in French]

BEFORE: Chairperson Donald Buckingham

**WITH: Magali Raymond, self-represented; and
Sherri-Lynn Foran and Dannah Draper, representing the Respondent**

In the matter of a request made by the applicant, pursuant to subsection 13(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review by the Tribunal of the Minister's Decision 16-01968 dated January 11, 2017, holding that the applicant on May 3, 2016, violated subsection 16(1) of the *Health of Animals Act*.

DECISION

The Canada Agricultural Review Tribunal ORDERS that the application for a review of the Minister's Decision 16-01968 dated January 11, 2017, requested by the applicant, Magali Raymond, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.

By written submissions only.

OVERVIEW

[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) finding against Magali Raymond (Ms. Raymond) for importing sausages without meeting the requirements to declare them to officers of the Canada Border Services Agency (Agency).

[2] The Minister's Decision, dated January 11, 2017, upholds Notice of Violation 3961-16-0833 issued to Ms. Raymond by the Agency on May 3, 2016, for events taking place on that date which constituted a violation of subsection 16(1) of the *Health of Animals Act* (HA act).

[3] On January 23, 2017, Ms. Raymond requested that the Tribunal review the Minister's Decision.

[4] Ms. Raymond provided information in her request (Request for Review) why she believed the Minister's Decision of January 11, 2017, should not be confirmed by the Tribunal under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

[5] For her request to be admissible, Ms. Raymond must meet an admissibility threshold by offering some permissible basis on which she might succeed in the matter before the Tribunal.

[6] For the reasons that follow, I find Ms. Raymond has failed to meet this admissibility threshold for the Request for Review she has initiated and that the Minister's Decision, therefore, should be confirmed.

REASONS FOR INADMISSIBILITY OF REQUEST

Issue

[7] There is only one issue in this case: Did Ms. Raymond meet the Tribunal's admissibility threshold by offering some permissible basis upon which she might succeed in this matter?

Analysis and Applicable Law

[8] The Tribunal is an expert and independent body constituted by Parliament pursuant to the *Canada Agricultural Products Act* and its jurisdiction consists of responding to requests to review matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[9] The AMP Act provides for a review by the Tribunal of a first-instance decision made by the Minister (subsection 12(2) and paragraph 13(2)(b) of the AMP Act).

[10] Powers given to the Tribunal by Parliament in conducting this exercise are set out in paragraph 14(1)(a) of the AMP Act, *"After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be, (a) confirm, vary or set aside any decision of the Minister..."*.

[11] A Request for Review is a right that Parliament extends to applicants which allows them, for a very limited expenditure of time and money, to have their notices of violation, or Minister's decisions concerning such notices of violations, reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the rendering of a decision, considerable time and money from all parties will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved. Where the applicant does not meet the requirements of the AMP Act, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (AMP Regulations) and the *Rules of the Review Tribunal (Canada Agricultural Review Tribunal)* (Tribunal Rules), the Tribunal may rule that the applicant's Request for Review is inadmissible.

[12] Permissible reasons that an applicant might raise to set aside a Minister's decision include a finding by the Tribunal that the alleged violation did not occur or that the person named in the Notice of Violation is not the person who committed the violation or that the person has raised a permissible defence or justification for his actions.

[13] In the present case, Ms. Raymond has communicated the following reasons for her Request for Review in letters dated January 23, 2017 and February 7, 2017:

- a. Ms. Raymond arrived in Canada from France on May 3, 2016, and she clearly remembers the events surrounding her arrival at Montreal airport that day that left her truly traumatized and which produced a profound negative effect on her stay in Montreal;
- b. Ms. Raymond remembers that she did not talk to the Agency officer about the sausage she had in her bags when asked by the officer if she had anything to declare prior to the secondary inspection of her bags;
- c. At secondary inspection, the Agency officer found two sausages that Ms. Raymond had wrapped in items contained in her suitcase;
- d. Ms. Raymond states : [TRANSLATION] "In effect, I did not declare the sausages because I did not believe myself to be dishonest and I did not declare everything I was bringing since I did not realise that it was illegal...I did not think I was 'defrauding', the error was committed through ignorance. I should certainly have informed myself better before departing because it would have avoided all these problems. I did not 'lie' voluntarily but through ignorance";

- e. Ms. Raymond states that she is an honest person and was not trying to defraud anyone and that as she has no fixed employment, and that paying the proposed fine will put both her and her daughter in grave financial hardship. She asks that the penalty be reduced or eliminated for this reason.

[14] Where the Agency meets its burden of proof to prove the elements of the alleged violation, as the Minister has found in this case, the applicant will be held liable for a violation under the AMP system, unless he can establish a defence or excuse permitted under the AMP Act, the AMP Regulations, or as it pertains to these cases, the HA Act. The facts admitted by Ms. Raymond and listed in (a), (b) and (c) of paragraph 13 support the Minister's findings of proof of the elements of the alleged violation.

[15] Moreover, neither of the reasons provided in (d) and (e) of paragraph 13 reveals a basis on which Ms. Raymond could possibly succeed in her request to have the Tribunal rule that the Minister erred in his finding that the alleged violation was committed.

[16] Reason (d) offered by Ms. Raymond is impermissible pursuant to section 18 of the AMP Act (and the Federal Court of Appeal decision in *Doyon v. Canada (Attorney General)*, 2009 FCA 152, at paragraph 11), which prohibits defences of mistake of fact (that is, the applicant was mistaken about the facts that led to committing the violation) and due diligence (that is, the applicant tried her best not to commit the violation).

[17] Reason (e) offered by Ms. Raymond relates to a request for a cancellation or a reduction of the penalty. It is clear that the very strict administrative monetary penalties system established by Parliament under the AMP Act and the AMP Regulations can have harsh repercussions for Canadians, permanent residents and all other persons subjected to these requirements and especially someone like Ms. Raymond who states she cannot afford to pay this large penalty. Unfortunately, the Tribunal cannot cancel or vary the penalty imposed based on circumstantial, humanitarian or financial grounds. 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 set aside or dismiss a notice of violation or a decision of the Minister on circumstantial, humanitarian or financial grounds, nor is it empowered to do so.

[18] 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 complaints from Canadians, permanent residents, and other travellers against its actions or those of its officers. Travellers, who feel aggrieved by the Agency, may take up their concerns via the Agency's website service under the title "Compliments, Comments and Complaints".

[19] On the record before me then, I find that Ms. Raymond has failed to meet the Tribunal's admissibility threshold of offering some permissible basis upon which she might succeed before the Tribunal in this matter.

Disposition

[20] The Tribunal therefore orders that Ms. Raymond's Request for Review of Minister's Decision is inadmissible and therefore dismissed.

[21] As a result, the Minister's Decision 16-01968, dated January 11, 2017, is confirmed.

[22] By operation of subsection 9(3) of the AMP Act, Ms. Raymond is deemed to have committed the violation indicated in Notice of Violation 3961-16-0833 and the penalty of \$1,300 is due to the Agency within thirty (30) days after the day on which this decision is served.

[23] Ms. Raymond may wish to contact the Agency's representatives directly to inquire whether they would agree to a manageable payment schedule for the penalty amount.

[24] These violations are not criminal offences. After five years, Ms. Raymond 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 8th day of March, 2017.

Dr. Donald Buckingham, Chairperson