Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Klevtsov* v. *Canada* (*Minister of Public Safety and Emergency Preparedness),* 2017 CART 10

Date: 20170327
Docket: CART/CRAC-1907

BETWEEN:

Elena Klevtsov,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

BEFORE: **Chairperson Donald Buckingham**

WITH: **Elena Klevtsov, self-represented; and**
Melanie A. Charbonneau, representative for 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 CS-78996 dated June 6, 2016, holding that the applicant on October 9, 2015, violated section 39 of the *Plant Protection Regulations*.

DECISION

Following a review of the decision of the Minister of Public Safety and Emergency Preparedness and the reasons for that decision issued June 6, 2016, and an oral hearing and a review of all written submissions of the parties, the Canada Agricultural Review Tribunal, by order, SETS ASIDE the decision of the Minister. As a result, no monetary penalty is payable by Elena Klevtsov to the Canada Border Services Agency under Notice of Violation 4974-15-0812.

The hearing was held in Toronto, ON,
On Monday, January 23, 2017.

OVERVIEW

[1] October 8 and 9, 2015, were very bad days for Elena Klevtsov (Ms. Klevtsov).

[2] In the space of these two days, a series of unfortunate events unfolded in Ms. Klevtsov's life:

- the airline (Transaero) on which Ms. Klevtsov was supposed to fly from Russia to Toronto went bankrupt;
- chaos and concern ensued about how now stranded passengers would get from Moscow back to Toronto;
- a human stampede occurred when a replacement airline company sent a plane to fly stranded passengers back to Toronto;
- Ms. Klevtsov was pushed or jostled, such that she fell down a flight of stairs causing her to suffer head and leg injuries during the stampede to the plane;
- Ms. Klevtsov, injured and without medical treatment for fear of losing her place on the replacement airline, boarded the plane and flew almost ten hours to arrive at Toronto;
- Ms. Klevtsov did not declare the 10 apples in her luggage from her mother's garden in the Ukraine when going through Canadian Customs;
- the Canada Border Services Agency (Agency) issued her an $800 Notice of Violation for failing to declare the apples; and
- once having exited the Toronto airport, Ms. Klevtsov attended to her medical injuries at a Toronto area clinic.

These were very long and very bad days indeed.

[3] Ms. Klevtsov sought review of the Agency's decision to issue her a Notice of Violation with an $800 penalty by taking her case for review to the Minister of Public Safety and Emergency Preparedness (Minister) on October 20, 2015.

[4] In his decision dated June 6, 2016 (Minister's Decision), the Minister upheld Notice of Violation 4974-15-0812 issued to Ms. Klevtsov by the Agency on October 9, 2015, for events taking place on that date. The Minister's Decision also indicated that the Notice of Violation includes the appropriate penalty of $800, pursuant to the *Agriculture and*

Agri-Food Administrative Monetary Penalties Regulations (AMP Regulations)), and alleges Ms. Klevtsov contravened section 39 of the *Plant Protection Regulations* (PP Regulations).

[5] Ms. Klevtsov has come to the Canada Agricultural Review Tribunal (Tribunal) seeking to have the Minister's Decision finding against her set aside.

[6] Ms. Klevtsov does not contest that she imported apples into Canada. Ms. Klevtsov does not contest that she failed to declare the product to Agency officers prior to secondary inspection of her luggage. Ms. Klevtsov does not contest that she did not have any certificates or permits that would have allowed the importation of the product.

[7] She does, however, contest that the Minister's Decision is flawed because he failed, as did Agency officers, to take into consideration her medical condition on the day of the alleged violation.

[8] This case then raises two issues:

- whether the Minister erred in his finding that the Agency has proven all the necessary elements of the violation required to sustain the Notice of Violation; and

- whether Ms. Klevtsov's medical condition upon arrival at Pearson International Airport, was adequately considered by the Minister as a basis for a valid defence, excuse or justification under *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act).

REASONS

1. Applicable Law and Standard of Review

[9] 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 for review of matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[10] 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).

[11] 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..."*. As such, the Tribunal performs a function not as a decision-maker of first

instance or as a court conducting a judicial review, but rather as a specialized or appellate administrative tribunal reviewing an administrative decision of first instance.

[12] Although the AMP Act provides for a review, as well as possible remedies, it does not specify the type of review to be conducted by the Tribunal. This Tribunal has held that relevant legislation and jurisprudence favours that the Tribunal apply a "*de novo"* type of administrative appellate review of a minister's decision under the AMP Act (see *Hachey Livestock Transport Ltd. v. Minister of Agriculture and Agri-Food*, 2015 CART 19, at paragraphs 28 to 50).

[13] The appropriate type of review for the Tribunal to employ is to complete a *de novo* examination of the facts and draw its own factual and legal conclusions with little or no required deference to the findings, reasoning and conclusion as contained in the Minister's Decision of June 6, 2016.

[14] A *de novo* examination of the facts does not require the Tribunal to ask the parties to present anew the evidence in this case. In fact, it would be a very rare occasion and only with permission of the Tribunal, that parties will enter new evidence before the Tribunal. Therefore, the exercise undertaken by the Tribunal when it reviews a Minister's Decision will require the Tribunal to fully examine and consider the evidence presented, its relevance and weight, the factual findings made by the Minister and additional factual findings, if any, that are required to be made for the resolution of the case. The Tribunal must also apply the appropriate law to the factual findings of the case to determine if the decision of the Minister should be confirmed, varied or set aside.

[15] As well, in considering the possible grounds raised by Ms. Klevtsov to vary or set aside the Minister's Decision, I am mindful of the clear instructions of the Federal Court of Appeal in the decision of *Doyon v. Canada (Attorney General)*, 2009 FCA 152 (*Doyon),* at paragraph 11: "*Violations of the Act are absolute liability offences for which, as stipulated in section 18 [of the AMP Act], a defence of due diligence or honest and reasonable mistake of fact is not available....*"

2. Analysis

2.1 Did the Minister err in his finding that the Agency has proven all the necessary elements of the violation?

[16] For the Minister to uphold a Notice of Violation issued by the Agency for the alleged commission of a violation of section 39 of the PP Regulations, he must be convinced that, on a balance of probabilities, the Agency has proved each of the following essential elements:

- Element 1 - Ms. Klevtsov is the person who committed the violation;

- Element 2 - Ms. Klevtsov imported a plant product into Canada;

- Element 3 - the imported plant product was or could have been infested or constituted or could have constituted a biological obstacle to the control of a pest; and

- Element 4 - Ms. Klevtsov failed to declare the plant product she imported into Canada to Agency officers upon her arrival to Canada.

[17] The record shows the following undisputed facts. On October 9, 2015:

- Ms. Klevtsov arrived at the Toronto airport. She signed and completed the English side of the Agency Declaration Card, presented it for primary inspection and had marked "No" to the question as to whether she was bringing any food, plant or animal products into Canada.

- At secondary inspection, Ms. Klevtsov's bags were inspected and apples were found. Agency officers conducted a search of the Government of Canada's Automated Import Reference System (AIRS) Import Requirements for apples from the Russian Federation, which indicated that such apples should be refused entry into Canada.

- Ms. Klevtsov offered no certificates, permits, licences or documents to the Agency officers that would have permitted the importation of the apples.

[18] Given this undisputed evidence, Elements 1, 2, 3 and 4 of the violation are established. As a result, I find that the Minister could reasonably have concluded that the Agency has established each of necessary elements of the violation to prove, on a balance of probabilities, that a violation of section 39 of the PP Regulations had occurred.

[19] In a typical case of this nature, the analysis would need to proceed no further. However, the arguments raised by Ms. Klevtsov in her Request for Review to the Minister and in Request for Review to the Tribunal, as well as several facts of this case, do raise important issues which were ignored, or at least insufficiently considered, given the content of the Minister's Decision. This case was not typical, it was exceptional.

2.2 Did the Minister err in his finding in failing to adequately consider Ms. Klevtsov's medical condition as a valid defence, excuse or justification for her actions on October 9, 2015, and if he did, should his decision be set aside?

[20] Three issues require exploration: (1) did the Minister fail to adequately consider, if at all, the defence raised by Ms. Klevtsov in her Request for Review?; (2) is there a basis in law for a valid defence to the alleged violation as raised by Ms. Klevtsov?; and (3) is there

evidence, on the balance of probabilities, sufficient to allow Ms. Klevtsov to rely on the defence of automatism to excuse her behaviour on October 9, 2015?

2.2.1 Did the Minister fail to adequately consider Ms. Klevtsov's medical condition when issuing his Decision?

[21] Ms. Klevtsov raises the defence that it was a result of her medical condition that she failed to declare the apples when she came into Canada on October 9, 2015. Did the Minister fail to adequately consider, if at all, this defence?

[22] Ms. Klevtsov clearly raised this issue in her Request for Review to the Minister dated October 20, 2015. Recounting the episode that led to her fall in Moscow and her subsequent health concerns she states (at pages 69 and 70 of the Ministerial Record (MR)) [*verbatim*]:

…

> *On October 8th, 2015 my mother gave me some snacks to eat on my way to the airport. Among them were some apples from Ukraine. I had them in my carry on.*
>
> *When I came to the airport, there was a huge crowd of people with canceled Transaero flights. There were no services to register online anymore, so everyone tried to register for at different flight desks; it was a disaster there. After three hours after registration it was announced that our flight was delayed for four hours due to the changing of airplanes to fly to Toronto.*
>
> *After four and a half hours they opened the boarding desk for passengers. Being afraid that the last people to board would not be accepted due to the smaller size of the airplane, people rushed to the boarding desk. On the stairs to the airplane I was pushed by an unknown person from the back and fell down the stair case. I was found bleeding and could not stand up. I hit my head and nose. I had a concussion, scrapes and bruises.*
>
> *I refused to be taken to a medical office because I did not want to lose my flight home. Officials helped me reach the airplane. During the whole flight I did not eat because I was in pain and was nauseous. Attendants on the board gave me pain killers and extra pillows.*
>
> *I received the Customs declaration and filled it as usual because I never took any food to Canada before; there is no point for me to do so. Due to the trauma and stressful situation I experienced, as well as my sleepless night, I completely forgot about the apples that I did not eat in the airport. I did not mean to make a false statement in my declaration or lie about those apples. If I had*

remembered about them, I would have thrown them out. But at the time I was in serious pain, bleeding in my arm and could not think properly. I was still bleeding even on the Border check, and I told that to the officer.

My medical conditions are proved by different Canadian doctors who treated me for my injuries (attached 4 pages). Also, the full disclosure of my medical condition can be requested from my family doctor Dr. Ali Enfanfar at Bayview Finch Medical Centre [...] including all further examinations as a result of my accident in Vnukovo airport.

...

[23] The Minister's Decision of June 6, 2016, includes only the following with respect to the issues raised by Ms. Klevtsov in her Request for Review [*verbatim*]:

...

In your appeal you explained that your mother had provided you with apples from the Ukraine, which were located in your carry on. You explained that upon your return to Canada, you were subject to many delays at the airport, further explaining that you had fallen while boarding the plane which resulted in some injury. You stated that as a result of the stressful situation, you forgot about the apples, however it was not your intention to make a false declaration. You apologized and requested reconsideration of the penalty assessed.

I appreciate and empathize with the explanation you have provided within your letter of appeal, outlining the extenuating circumstances of that day. The evidence on file does not indicate that you had discussed the events of your day with the CBSA officers, or that you suggested the stress of your day was the cause of your forgetting to declare the apples. It appears that you did not understand the seriousness of the false declaration, further noting that they were only "apples" and not "drugs".

...

Further to the above, either before, or at the time of importation, you did not present the Apples, or the dog food products, on the E311 Declaration Card or to the Primary Border Services Officer. Consequently, when your luggage was examined and the apples were discovered, point of finality was reached and a violation occurred in that you failed to present the "plant product" to the CBSA. ***Please note that the element of intent does not have to be proven for there to be a violation of this nature****. I should clarify that the authority of the Minister is restricted to determining whether or not the violation took*

> *place and if so, whether the penalty assessed was in accordance with the Regulations, the Minister has no ability to change the notice of violation with a penalty to one with a warning, to reduce the penalty or to forgive the violation.* ***Consequently, it has been concluded that you have not provided sufficient reason to cancel or amend this NOV.***
>
> [Emphasis added]

[24] In follow-up submissions, received by the Tribunal on July 8, 2016, Ms. Klevtsov writes [*verbatim*]:

> …
>
> *I request to review the Minister's Decision because it was not taken into consideration the fact that my incident in Vnukovo airport caused me serious head injury, right side hip and arm injury with terrible pain. My medical condition prevented me to follow the correct airport regulations and caused loss of memory with regards to the snack I had in my carry on from Ukraine for almost two days before arriving to Pearson airport.*
>
> *The medical reports from three Canadian doctor's and examinations with CT scan, ultrasound and x-ray were enclosed to the request form to the Ministry.*
>
> …

[25] I find that the Minister's Decision does demonstrate a significant, if not an almost complete, inattention to the evidence submitted by Ms. Klevtsov regarding her medical condition at the time of the alleged violation.

[26] If there is any consideration of Ms. Klevtsov's defence by the Minister, it consists of a misclassification of the defence raised by Ms. Klevtsov as a defence based on lack of intention (*mens rea*) which would not be available in an absolute liability regime. There is a total lack of any consideration of the availability of common law defences permitted under section 18(2) of the AMP Act.

2.2.2 Is there a basis in law for a valid defence to the alleged violation as raised by Ms. Klevtsov?

[27] Pursuant to subsection 18(2) of the AMP Act, Parliament specifically permits applicants to raise common law defences to defend themselves against alleged violations under the AMP Act, unless such defences are inconsistent with the AMP Act as set out in subsection 18(1).

[28] Common law defences which have been recognized as applicable to contraventions enforced via AMP Act notices of violation include "intoxication, automatism, necessity, mental disorder, self-defence, *res judicata*, abuse of process and entrapment" *(Doyon*, at paragraph 11; see also (*Canada (ACG) v. Stanford*, 2014 FCA 234, at paragraph 21). Necessity, as a common law defence, has been successfully raised before this Tribunal (see *Maple Lodge Farms Ltd. v. Canada (CFIA),* RTA#60291, RTA#60295, RTA#60296 and RTA# 60297). I see no reason that Ms. Klevtsov should not be permitted to raise the defence of automatism.

[29] Automatism based on a concussion or head trauma was recognized by Lord Denning, as early as in the 1960s, in *Bratty v. Attorney-General for Northern Ireland*, [1963] A.C. 386 (H.L.), at page 409, where he groups concussions under the automatism defence:

> *No act is punishable if it is done involuntarily: and an involuntary act in this context -- some people nowadays prefer to speak of it as "automatism" -- means an act which is done by the muscles without any control by the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleep-walking.*

[30] In Canada in *R. v. Bleta,* [1964] SCR 561 *(Bleta)*, the Supreme Court of Canada recognized the common law defence of automatism following a cranial trauma. After hitting his head during an altercation, Mr. Bleta was found to be in a state of automatism when he stabbed his victim to death and was found not guilty as a result.

[31] Automatism falls within the category of defences which deny the commission of the *actus reus*. The Supreme Court of Canada, in *R. v. Parks*, [1992] 2 SCR 871 *(Parks)* at 872, described how the defence attaches to the *actus reus*, rather than to the *mens rea* of a contravention: "*Automatism, although spoken of as a "defence", is conceptually a sub-set of the voluntariness requirement, which in turn is part of the* actus reus *component of criminal liability*."

[32] The leading case on automatism from the Supreme Court of Canada, however, is *R. v. Stone* [1999] 2 SCR 290 *(Stone)* which defines automatism as "a state of impaired consciousness, rather than unconsciousness, in which an individual, though capable of action, has no voluntary control over that action" (at paragraph 156). Agreeing with the *Parks* case, *Stone* states "voluntariness, rather than consciousness, is the key legal element of automatistic behaviour since a defence of automatism amounts to a denial of the voluntariness component of the *actus reus*." (at paragraph 170).

[33] The defence of automatism, based on suffering concussions, head injuries or head trauma, has been successfully raised in murder cases (*Bleta*) and impaired driving related cases (*R. v. Hickey,* [2000] B.C.J. No. 2627, 2000 BCPC 171 and *R. v. Sterns*, 2006 BCPC 130).

[34] But can the defence of automatism be relied upon outside the criminal law context in relation to absolute liability regulatory contraventions?

[35] In order to be found liable for a criminal offense or a regulatory offense, the volitional element of the *actus reus* must be present. Furthermore, the necessary volition which forms part of the *actus reus* of an offense has also been recognized as a principle of fundamental justice by the Supreme Court of Canada in *R. v. Daviault*, [1994] S.C.J. No. 77 *(Daviault)*, (at paragraph 66).

[36] Based on the Supreme Court of Canada's findings in cases such as *Daviault*, *Parks* and *Stone*, noted criminal law author Hughes Parent concludes that automatism is an available defence to contraventions issued within absolute liability regimes (see Hughes Parent, *Traité de Droit Criminel, Tome II—La culpabilité (actus reus et mens rea)*, 2nd ed. (Montréal: Thémis, 2007) at page 452; see also Kent Roach, *Criminal Law*, 5th ed. (Toronto: Irwin Law, 2012) at page 222). Automatism thus renders the *actus reus* of a given offence or violation involuntary, thereby also applying to absolute liability offenses (see also *R. v. Hales*, [1995] O.J. No. 735 (*Hales*)). At paragraph 7 of *Hales*, Judge Greco writes:

> *It is put, however, that the mental element of voluntariness in most cases forms a part of the element of the crime known as* actus reus*. It is further put that if the alleged wrongful act of the accused was not his voluntary act, then it may be said that the act done although it was done by the accused cannot be ascribed to him as being his wrongful act, with the result that the Crown, in such a case, will have failed to prove the only thing the Crown need prove in absolute liability offenses, i.e.,* actus reus*, with the further result that in such circumstances the charge against the accused would have to be dismissed -- but dismissed on that basis, i.e., that the Crown has failed to prove* actus reus*, not dismissed on the basis that in the* mens rea *sense the accused was free of fault, i.e., that he took all reasonable care to prevent the event from happening.*

[37] Following this reasoning, someone who acts under a state of automatism does not act voluntarily with respect to the *actus reus* and therefore cannot be said to have committed the violation. Therefore, an applicant seeking to defend himself or herself against an alleged violation under the AMPs regime can raise a defense founded on suffering a head trauma or concussion. This type of defense would fall under the larger category of automatism defences, which have been recognized by the Supreme Court of Canada as defences to the commission of the *actus reus* of criminal acts (see *Bleta* and *Stone)*. This defence is applicable to absolute liability offences and violations because it attacks the voluntary nature of the impugned act (see *R. v. Théroux,* [1993] 2 S.C.R. 5, *Daviault* and *Hales*). And of course, the defence's potential application is explicitly acknowledged by the Federal Court of Appeal as applying to notices of violations issued pursuant to the AMP Act (see *Doyon,* at paragraph 11).

[38] Therefore, this defence is available to Ms. Klevtsov. In failing to address the defence raised in her Request for Review, the Minister erred. Consequently, as set out in paragraph 14 above, it is now up to me to fully examine and consider the evidence presented, apply the appropriate law to the factual findings of the case to determine if Ms. Klevtsov has proved the defence of automatism in her case. If she has, I must set aside the Minister's Decision.

2.2.3 Is there evidence, on the balance of probabilities, sufficient to allow Ms. Klevtsov to rely on the defence of automatism to excuse her behaviour on October 9, 2015?

[39] What kind of evidence is required to prove a defence of automatism? First, case law holds that there is a legal presumption of voluntariness to commit an act and in order for an applicant to successfully raise this defence, the applicant must establish a proper evidentiary foundation proven, on a balance of probabilities (*Stone,* at paragraphs 171 and 179). Second, the applicant must also prove that the involuntariness occurred during the relevant timeframe (*Stone*, at paragraph 183).

[40] With respect to the first aspect, Ms. Klevtsov has provided her own personal evidence, as well as medical evidence of her head injury and resulting medical condition. She recounted in her Request for Review to the Minister and in her Request for Review to the Tribunal that: (1) she had experienced a fall and head injury in Russia just prior to her departure for Toronto; (2) she was bleeding from the head during the relevant time; (3) she asked for and took pain killers from airline stewards during the flight; (4) she did not eat while on the plane (despite having snacks, including her mother's apples in her carry on); (5) she felt nauseous; (6) she felt trauma; (7) she was in serious pain; (8) she could not think properly; (9) she told Customs officers about her condition, and (10) she visited several medical professionals after the injury when she was back in Toronto to try to remedy her medical condition.

[41] The evidence she provided from her medical professionals, while not providing a definitive diagnosis of a "concussion", did clearly allude to a head injury and trauma. Some of those practitioners noted on her professional charts the condition of "concussion" or "head trauma". In the doctor's note dated October 9, 2015 (the day of the incident), from Dr. Bennett at an after-hours clinic, he notes "bruise + concussion" (page 72 of the MR). In a note with respect to a radiology exam on Ms. Klevtsov's right hip, dated October 14, 2015, it records that she suffered a "fall from stairs" (page 74 of the MR). In the consultation request sent from Dr. Ali Erfanfar, Ms. Klevtsov's family doctor, dated October 20, 2015, he notes "complain of flutter in the eyes she had history of head trauma, 3 weeks ago" (page 75 of the MR).

[42] It is important to note that the standard of proof that Ms. Klevtsov must offer to establish the defence of automatism is the balance of probabilities. This is not a full murder

trial before a superior court where the parties are represented with sophisticated legal counsel and several expert witnesses. This Tribunal is an administrative body meant to address issues coming before it correctly and expeditiously given the parties that appear before for it. The evidence presented by Ms. Klevtsov of her head injury or concussion and the resulting trauma and mental confusion arising therefrom, to prove the involuntariness of her action of failing to declare 10 apples to Customs officers, is not perfect. It is, however, real and substantial, and on a balance of probabilities, it is sufficient for Ms. Klevtsov to rebut the presumption of voluntariness of her actions with respect to the non-declaration of the apples she was importing into Canada on October 9, 2015.

[43] I am aware that there is evidence in the record from Agency officers who state that Ms. Klevtsov did not mention her medical condition to them, that they did not see any blood and that Ms. Klevtsov did not take seriously the process they were engaged in. Ms. Klevtsov denies these allegations. Even if I was to accept the Agency officers' evidence at face value, I would not find this evidence sufficient however, to override the probative value of the evidence offered to both the Minister and to the Tribunal from Ms. Klevtsov herself and from her treating physicians. Furthermore, there was no evidence offered by the Agency officers that they were in any way trained to identify head injuries, head trauma or concussions and the effects that such could have on a traumatized passenger navigating the Customs declaration process. For the Agency officers to allege that they saw nothing untoward in the behaviour, demeanour and physical health of Ms. Klevtsov would not be sufficient, over the evidence offered by Ms. Klevtsov, to prove that she was not operating in an automatistic state.

[44] On the second aspect required to prove the defence of automatism—acting involuntarily at the relevant time—all of the evidence from Ms. Klevtsov and her medical professionals shows Ms. Klevtsov's trauma and resulting medical condition as being contemporaneous with the occurrence of the alleged violation on October 9, 2015.

[45] I recognize that subsection 18(1) of the AMP Act would prohibit a defence if this resulting medical condition was simply responsible for her making a mistake of fact or her saying that she had been duly diligent. However, the circumstances of the her cases are much more than this and support a defence based on having suffered a head injury or concussion and the resulting trauma and mental confusion arising therefrom sufficient to render her act of importing an agricultural product without declaring before or at the time of importation involuntary.

[46] On this basis, I find that the Minister failed to consider Ms. Klevtsov's request that her actions constitute a common law defence, established by Ms. Klevtsov under subsection 18(2) of the AMP Act, on the balance of probabilities. Having reviewed the evidence tendered to support a defence of automatism, I find that on October 9, 2015, at the time of the alleged violation, Ms. Klevtsov was suffering from a head injury or concussion, and the resulting trauma and mental confusion arising therefrom, such that it

was sufficient to render her act of importing and agricultural product, without declaring before or at the time of importation, involuntary.

3. Disposition

[47] The Tribunal SETS ASIDE the Minister's Decision. Consequently, no monetary penalty is payable by Ms. Klevtsov to the Agency under Notice of Violation 4974-15-0812.

Dated at Ottawa, Ontario, on this 27th day of March, 2017.

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Dr. Donald Buckingham, Chairperson