



Citation: *Campbell v. Canada (Canada Border Services Agency)*, 2018 CART 4

Date: 20180525  
Docket: CART/CRAC-1947

**BETWEEN:**

**Camille Campbell,**

**APPLICANT**

**- and -**

**Canada Border Services Agency,**

**RESPONDENT**

**BEFORE: Luc Bélanger  
Chairperson**

**WITH: Ms. Camille Campbell, self-represented Applicant; and  
Ms. Valerie Larocque and Mr. Pierre Dastous, representatives for the  
Respondent**

In the matter of an application made by the Applicant to the Canada Agricultural Review Tribunal, pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the facts of a violation of section 40 of the [Health of Animals Regulations](#).

**DECISION**

**On consent of both parties, the Canada Agricultural Review Tribunal ORDERS that Notice of Violation 4971-17-0176, issued with penalty of \$800, is amended to a Notice of Violation with warning and that the Applicant, Camille Campbell, has committed the violation outlined in the amended Notice of Violation.**

The hearing was held in Niagara Falls, Ontario  
Tuesday, December 12, 2017

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## **REASONS FOR DECISION**

### **I. Background**

[1] This case is about a Notice of Violation with penalty of \$800 issued to Ms. Camille Campbell, on March 9, 2017, by the Canada Border Services Agency (the Agency) at Pearson International Airport in Toronto, for an alleged violation of section 40 of the [Health of Animals Regulations](#) (HA Regulations), related to her importation of Jamaican meat patties.

[2] Ms. Campbell sought a review of the issuance of Notice of Violation number 4974-17-0176 to the Canada Agricultural Review Tribunal.

[3] At the hearing, held on December 12, 2017, the Agency successfully met its burden of proof under section 19 of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) by demonstrating, on a balance of probabilities, each of the essential elements underlying the violation of section 40 of the [HA Regulations](#).

[4] In her testimony to the Tribunal, Ms. Campbell was honest and contrite about the fact that she had made a mistake and took responsibility for her action of not properly declaring the meat patties at first contact with Agency officers. She also acknowledged that, because of the nature of the applicable legislation, the fact that she had mistakenly imported the meat product was not an excuse.

[5] During their closing remarks, the Agency proposed that the Tribunal consider varying the Notice of Violation number 4974-17-0176, issued with a penalty of \$800, to a Notice of Violation with warning. The Agency presented this offer, believing that Ms. Campbell had acknowledged her mistake, had taken responsibility for her actions and that

the integrity of the program protecting the Canadian food supply chain had therefore been achieved.

[6] In her closing remarks, Ms. Campbell thanked the Agency for this gesture and accepted the Agency's proposal.

[7] I will treat the Agency's proposal as an offer to settle, consented to by both parties.

## II. Issues

[8] Three issues are raised by this case:

- i. has the Agency proven each of the elements of the violation of section 40 of the [HA Regulations](#);
- ii. has Ms. Campbell established a permissible defence;
- iii. can the Tribunal vary a Notice of Violation with penalty to a Notice a Violation with warning pursuant to section 14(1) of the [AAAMP Act](#)?

## III. Jurisdiction and Powers

[9] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(1) of the [Canada Agricultural Products Act](#), (CAP 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] Many of the Tribunal's general powers are outlined at section 8 of the [CAP Act](#):

*8 (1) The Board and the Tribunal are courts of record and each shall have an official seal that shall be judicially noticed.*

*(2) In addition to the powers conferred by subsection (1), the Board and the Tribunal each have, with respect to the appearance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of their orders and **other matters necessary or proper for the due exercise of their jurisdiction, all such powers, rights and privileges as are vested in a superior court of record...***

(Emphasis added)

[11] Subsection 12(1) of the [CAP Act](#) also states:

*...the Tribunal has sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which the Tribunal is given jurisdiction by this Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act.*

[12] These powers necessarily include the ability to decide all matters raised by the parties and to give effect, where appropriate, to settlement proposals consented to by them.

[13] The purpose of the [AAAMP Act](#) is the creation of an alternative to the existing penal system in order to supplement existing enforcement measures and to provide “*a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts*” (Section 3 [AAAMP Act](#)).

[14] Additionally, the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (the Rules) state the following:

*3. These Rules are to be interpreted and applied in order to permit the just, most expeditious and least expensive conduct of proceedings.*

*4. The Tribunal is to determine any procedural matter not provided for in these Rules in a manner that is consistent with these Rules.*

[15] The Tribunal’s powers must be provided by its enabling legislation or alternatively, must be practically necessary to the realization of the object and purpose of the statutory regime created by the legislature (see [ATCO Gas & Pipelines Ltd. v. Alberta \(Energy & Utilities Board\)](#), 2006 SCC 4 at paragraph 51).

#### IV. Analysis

##### **Issue 1: Has the Agency proven each of the elements of the violation of section 40 of the [HA Regulations](#)?**

[16] The Federal Court of Appeal (FCA) has confirmed that enforcement agencies have the burden of proving each of the essential elements of an alleged violation, on a balance of probabilities (see [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152, at paragraph 42 [Doyon]).

[17] In determining the essential elements of a particular violation the Tribunal is guided by the FCA’s approach of parsing out the required elements from the statutory language of the provision that establishes the violation ([Doyon](#), at paragraph 41).

[18] Section 40 of the [HA Regulations](#) states the following:

*No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.*

[19] The Agency outlined two essential elements that needed to be proven for a violation of section 40 of the [HA Regulations](#), namely:

- Element 1 – Ms. Campbell is the person who committed the violation;
- Element 2 – Ms. Campbell imported an animal by-product into Canada.

[20] I am of the view that the essential elements put forth by the Agency, for violations of section 40 of the [HA Regulations](#), are insufficient. A strict interpretation of the two essential elements suggested by the Agency, as their burden of proof, could potentially lead

to an absurd result where someone who has properly declared their animal by-product would still be found to have committed a violation of section 40 of the [HA Regulations](#). Such a result would go against the teachings of the FCA, in [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#) (*Savoie-Forgeot*), at paragraph 18, where it held:

*It follows that where individuals declare that they are carrying animal by-products and thus voluntarily make them available for inspection, they ought not to be found to have violated section 40 of the Regulations...*

[21] The FCA has provided further guidance as to the composition of the essential elements underlying a violation of section 40 of the HA Regulations in both [Savoie-Forgeot](#) and [Canada Border Services Agency v. Castillo, 2013 FCA 271](#) (*Castillo*).

[22] In [Savoie-Forgeot](#), at paragraph 16, the FCA described the burden that the Agency had to meet for violations of section 40 of the [HA Regulations](#) in the following terms:

*[...] In the case at hand, the CBSA thus needed to prove that Ms. Savoie-Forgeot “imported” into Canada an animal by-product that was not subject to one of the exceptions set out in Part IV of the Regulations.*

*(Emphasis added)*

[23] In [Castillo](#), which concerned an importation by a traveler of fried chicken from El Salvador, at paragraph 14 of its decision, the FCA listed the possible exceptions found in section IV of the [HA Regulations](#) and which could apply to a violation of section 40:

*Part IV of the [Health of Animals Regulations](#) operates to permit the importation of animal by-products from El Salvador in four circumstances:*

- 1) Where the importer produces documentation from the government of the country of origin attesting to certain safety requirements (paragraph 41(1)(c));*
- 2) Where an inspector has reasonable grounds to believe that the animal by-product would not introduce disease into Canada (subsection 41.1(1));*
- 3) Where the importer produces documentation showing the treatment of the by-product and where an inspector has reasonable grounds to believe (based on the document, its information, and any other relevant information, including potentially an inspection of the by-product) that the importation of the by-product would not, or would likely not, introduce disease (subsection 52(1)); or*
- 4) Where the Minister of Agriculture and Agri-Food has issued a permit allowing the importation of the animal by-product (subsection 52(2) and section 160);*

[24] Furthermore, in [Savoie-Forgeot](#), the FCA found that the Agency needed to prove the failure to declare an animal by-product, thus not making it available for inspection (at paragraphs 18-19). Specifically, the FCA stated as follows, at paragraph 19:

*... individuals who fail to declare the animal by-products they are carrying and thus do not make them available for inspection are in violation of section 40 of the Regulations. In their case, the failure to declare signals the end of the importation process as they have, through their failure, removed the possibility for the officer to inspect the items and also the officer's discretion under subsection 41.1(1) of the Regulations to allow the individual to retain them...*

[25] Additionally, in [Savoie-Forgeot](#), at paragraph 25, the FCA expressed the following:

*It should be noted that **disclosure of goods and making them available for inspection should occur at the first contact with customs officials and not later, when a search is imminent or under way.** A traveller is not allowed to gamble that he or she will not be directed to the secondary search area, and to declare the goods only if it appears they will be discovered as a result of a search...*

(Emphasis added)

[26] Given the instructions of the FCA in [Savoie-Forgeot](#) and [Castillo](#), I am of the view that the essential elements for a violation of section 40 of the [HA Regulations](#), in the traveller context, should include each of the following four elements:

- Element 1 – Ms. Campbell is the person who committed the violation;
- Element 2 – Ms. Campbell imported an animal by-product into Canada;
- Element 3 – the animal by-product was not subject to any of the exceptions listed in Part IV of the [HA Regulations](#); and
- Element 4 – Ms. Campbell failed to declare the animal by-product at first contact with Agency officers and thus did not make it available for inspection.

[27] Element 1 has been established by the Agency with the copy of Ms. Campbell's passport provided in their report and Ms. Campbell does not dispute this element.

[28] Element 2 is established by the photos and the labelling of the product and Ms. Campbell own admissions.

[29] Element 3 has been established through the *Automated Import Reference System* printout which was provided in the Agency's Report which states that the meat from Jamaica should be refused entry and as such does not fall into any of the exceptions listed at Part IV of the [HA Regulations](#).

[30] Finally, Element 4 is established by the copy of Ms. Campbell's customs declaration card where it appears that Ms. Campbell declared "no" to the question pertaining to agricultural products. Ms. Campbell also does not dispute that the meat patties were not declared until she was before the Agency Officer who was about to perform the luggage inspection. As the FCA explained in [Savoie-Forgeot](#), the disclosure of food items should occur at the first contact with Agency officers and not later when a search is imminent or under way (at paragraph 25).

## Issue 2: Has Ms. Campbell established a permissible defence?

[31] The FCA's decision in [Doyon](#), at paragraph 11, confirmed that: "*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....*"

[32] The defences raised by Ms. Campbell fall into the category of due diligence and reasonable mistake of fact defences which are explicitly excluded by subsection 18(1) of the [AAAMP Act](#).

[33] Ms. Campbell also pled for leniency at the hearing and in her written submissions acknowledging that she was responsible for her error in bringing back the beef patties and in not realizing the need to declare them. She also pointed to the fact that the assessed penalty of \$800 is extremely harsh given that she had committed a mistake.

[34] Unfortunately, the Tribunal is not empowered by statute to vary or set aside the penalty imposed based on circumstantial, humanitarian or financial grounds.

[35] During their closing arguments, the Agency and Ms. Campbell agreed to ask the Tribunal for an order varying the Notice of Violation with penalty of \$800 to a Notice of Violation with warning and that Ms. Campbell would admit that she had committed the alleged violation.

## Issue 3: Can the Tribunal issue an order varying a Notice of Violation with penalty to a Notice a Violation with warning pursuant to section 14(1) of the [AAAMP Act](#)?

[36] I am of the view that subsection 14(1) of the [AAAMP Act](#) does not empower the Tribunal to vary a Notice of Violation with penalty to a Notice of Violation with warning. Even so, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement.

[37] The Tribunal has therefore been invited by the parties to exercise its powers and issue an order varying the Notice of Violation with penalty of \$800 to a Notice of Violation with warning.

[38] In asking the Tribunal to issue this order, the Agency referred to the Tribunal's power under subsection 14(1) of the [AAAMP Act](#):

*14 (1) After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be,*

*confirm, vary or set aside any decision of the Minister under section 12 or 13, or*

*(b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty,*



[...]

*(Emphasis added)*

[39] A proper interpretation of subsection 14(1) of the [AAAMP Act](#) must not be limited to a pure textual analysis of this provision but should also consider the context and purpose of the applicable legislative scheme ([Canada \(AGC\) v. Stanford, 2014 FCA 234](#), at paragraphs 46).

[40] An applicant who receives a Notice of Violation issued under the [AAAMP Act](#) has the option to request a review at first instance by either the Minister or the Tribunal (9(2)(b) and (c) of the [AAAMP Act](#)). An applicant that chooses to have the Minister perform the first instance review, can then ask the Tribunal to review the Minister's first instance decision (12(2) and 13(2)(b) of the [AAAMP Act](#)).

[41] Section 14(1)(a) of the [AAAMP Act](#) applies where the Tribunal is reviewing a Minister's first instance decision. This view is supported by the references in this provision to sections 12 and 13 of the [AAAMP Act](#), which discuss the Minister's first instance review powers. In the present case, the Tribunal is not reviewing a Minister's decision but is instead performing a first instance review of a Notice of Violation.

[42] Upon review of a Minister's decision, the Tribunal has the power to confirm, vary them or set it aside. The Tribunal's powers to confirm or set aside Minister's decisions are relatively straightforward and amount to upholding or rejecting the factual or legal findings of the Minister or their delegate.

[43] The power to vary a Minister's decision is similar in nature to the power to correct a Notice of Violation which is found at section 14(1)(b) of the [AAAMP Act](#). The Tribunal may confirm that a violation has been committed but vary the amount of the penalty determined by the Minister's delegate, where it is not established in accordance with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).

[44] Similarly, with respect to a first instance review of a Notice of Violation, as is the case here, 14(1)(b) of the [AAAMP Act](#), provides that the Tribunal may correct the penalty amount where it finds that it has not been established in accordance with the [AAAMP Regulations](#).

[45] Subsection 7(2) of the [AAAMP Act](#) grants a designated officer with discretion to issue a Notice of Violation either with a warning or with a penalty established in accordance with the regulations. The language found at section 7 suggests that the Tribunal's power to correct a Notice of Violation, found at 14(1)(b) [AAAMP Act](#), is limited to situations where the Notice of Violation with penalty is not determined in accordance with the regulations. A Notice of Violation which does not respect section 5 of the [AAAMP Regulations](#) or the gravity valuation and penalty adjustment tables located at Schedules 2 and 3 of the [AAAMP Regulations](#) can be corrected by the Tribunal.



[46] Consequently, section 14(1) of the [AAAMP Act](#) does not specifically provide the Tribunal with the power to vary a Notice of Violation issued with penalty to a Notice of Violation issued with warning.

[47] Nonetheless, the Tribunal's powers are not only limited to section 14 of the [AAAMP Act](#) but can also be found at sections 8 and 12 of the [CAP Act](#) (cited above).

[48] Based on a reading of its specific powers, under the [CAP Act](#) and [AAAMP Act](#), and its powers by necessary implication, the Tribunal has amended Notices of Violation on motions presented by enforcement agencies (see [Knezevic v. Canada \(CBSA\), 2011 CART 21](#) at paragraph 10; and [Dai v. Canada \(CBSA\), 2012 CART 8](#), at paragraph 12) and, occasionally, with the consent of applicants (see for example [Kropelnicki v. Canada \(CFIA\) 2010 CART 22](#), at paragraph 5).

[49] In exercising this amending power, the Tribunal's main concern has been whether applicants would be prejudiced as a result of the amendment and in particular in knowing the case against them. Under the circumstances, given that both parties consent to amend the Notice of Violation, that consideration is not especially relevant.

## **V. Application of Law to the Facts**

[50] I am mindful that the Tribunal is mandated to exercise only the powers provided by statute or which by practical necessity and necessary implication flow from the regulatory authority conferred upon it.

[51] In that light, what would be the just and most efficient conduct of proceedings in this case, consistent with the Tribunal's powers and jurisdiction?

[52] The hearing has now occurred and the parties are in agreement with varying the Notice of Violation with penalty to a Notice of Violation with warning. It is important to note, that agreeing to a Notice of Violation with warning, is still an admission of responsibility by the Applicant, Ms. Campbell.

[53] I find that the just and most efficient outcome in this case is to amend the Notice of Violation with penalty of \$800 to a Notice of Violation with warning in accordance with the agreed upon settlement proposal.

## **VI. Order**

[54] I therefore ORDER that Notice of Violation number 4971-17-0176, originally issued with a penalty of \$800, be amended to a Notice of Violation with warning.

[55] I find that Ms. Campbell has committed the violation as alleged in the Notice of Violation, however, no penalty is owed to the Agency as a result of this finding.

[56] I wish to inform Ms. Campbell that this violation is not a criminal offence. After five years, she 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 at Ottawa, Ontario, on this 25<sup>th</sup> day of May, 2018.

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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal