



Citation: *Gantcheff v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 CART 14

Date: 20181107
Docket: CART | CRAC-1921

BETWEEN:

George Gantcheff,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Élisabeth Ouaknine, for the Applicant; and
Michèle Hobbs and Pierre Dastous, for the Respondent**

[Translation of the official French version]

In the matter of a request made by the Applicant, pursuant to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of a decision of the Minister of Public Safety and Emergency Preparedness of Canada, namely, decision CS-79149, dated July 21, 2016, in which the Minister concluded that the Applicant violated subsection 16(1) of the [Health of Animals Act](#).

DECISION

Following a review of all submissions of the parties, the Canada Agricultural Review Tribunal CONFIRMS the Minister's decision CS-79149 and by order, determines that, on a balance of probabilities, the Applicant, George Gantcheff, committed the violation set out in Notice of Violation 3961-15-1462, dated November 2, 2015, and is liable for the payment of the penalty in the amount of \$1,300 within thirty (30) days after the day on which notice of this decision is served.

Hearing held in Montréal, Quebec,
on Tuesday, February 20, 2018.

Table of Contents

REASONS FOR DECISION.....	2
I. BACKGROUND.....	2
II. JURISDICTION AND POWERS	3
III. ISSUES.....	4
IV. ANALYSIS	4
V. ORDER.....	8

REASONS FOR DECISION

I. BACKGROUND

[1] This case involves a traveller’s failure to declare the importation of beef-stuffed peppers at Montréal’s Pierre Elliot Trudeau International Airport on November 2, 2015, on board a private aircraft.

[2] After the aircraft had landed, a border services officer boarded the plane to verify the contents of the passengers’ and crew’s luggage and other personal effects. During the inspection, she found two “Metro” bags, each containing undeclared food products, including the beef-stuffed peppers. The two “Metro” bags in question were identified as belonging to George Gantcheff. The Canada Border Services Agency (Agency) alleges that Mr. Gantcheff did not declare the beef-stuffed peppers, which he should have done through his pilot. Mr. Gantcheff was therefore issued Notice of Violation No. 3961-15-1462, with a penalty of \$1,300, by the Agency for an alleged violation of subsection 16(1) of the [Health of Animals Act](#) (HA Act).

[3] Mr. Gantcheff requested a review of the Notice of Violation by the Minister of Public Safety and Emergency Preparedness (Minister), who upheld the Notice of Violation on July 21, 2016, in its decision CS-79149. On August 11, 2016, Mr. Gantcheff requested a review of the Minister’s decision by the Canada Agricultural Review Tribunal (Tribunal).

[4] On January 11, 2018, the parties participated in a case management conference in preparation for the hearing. On February 14, 2018, the Tribunal issued an order rejecting Mr. Gantcheff's motion to present new evidence in the shape of testimony at the hearing.

II. JURISDICTION AND POWERS

[5] The Tribunal is an expert and independent body constituted by Parliament pursuant to section 4.1 of 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.

[6] Subsection 13(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AMP Act) provides for a review by the Tribunal of a first-instance decision made by the Minister.

[7] The 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 . . ."*. The Tribunal therefore 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 administrative decisions of first instance.

[8] 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 the applicable legislation and jurisprudence favour that the Tribunal perform a "*de novo*" type of administrative appellate review of the Minister's decisions under the [AMP Act](#), see [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\)](#), 2015 CART 19, at paragraphs 28 to 50.

[9] The appropriate type of review for the Tribunal to perform is to complete a *de novo* examination of the facts and to draw its own factual and legal conclusions with little or no deference to the findings, reasoning and conclusion contained in the Minister's decision of July 21, 2016.

[10] A *de novo* examination of the facts does not require the Tribunal to ask the parties to present the evidence in this case anew. The Tribunal must apply the appropriate law to the factual findings of the case to determine whether the decision of the Minister should be confirmed, varied or set aside.

III. ISSUES

[11] This case raises two issues:

- i. Did the Minister err in his finding that the Agency has proven each of the essential elements of an alleged violation of subsection 16(1) of the [HA Act](#)?
- ii. Did the Applicant establish an admissible defence?

IV. ANALYSIS

Issue 1: Did the Minister err in his finding that the Agency has proven each of the essential elements of an alleged violation of subsection 16(1) of the [HA Act](#)?

[12] The courts have examined violations arising from the [AMP Act](#) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AMP Regulations) in some detail, particularly given that these violations are of absolute liability ([Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 (*Doyon*), at paragraphs 11 and 27).

[13] Furthermore, the Federal Court of Appeal has established that enforcement agencies have the burden to prove each of the essential elements of an alleged violation under the administrative monetary penalty regime to be able to find a violator liable for a violation ([Doyon](#), at paragraph 42).

[14] In determining the essential elements of a particular violation, the Tribunal is guided by the method proposed in [Doyon](#), which requires parsing out the required elements from the statutory language of the provision that establishes the violation ([Doyon](#), at paragraph 41).

[15] Subsection 16(1) of the [HA Act](#) is drafted as follows:

16(1) *Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.*

[16] In [*Cikotic v. Canada \(Canada Border Services Agency\)*, 2017 CART 11](#) (*Cikotic*) and [*Gavryushenko v. Canada \(Canada Border Services Agency\)*, 2016 CART 33](#), the Tribunal identified three essential elements the Agency has to prove, on a balance of probabilities, for violations of subsection 16(1) of the [*HA Act*](#):

- Element 1 – Mr. Gantcheff is the person who committed the violation;
- Element 2 – Mr. Gantcheff imported an animal product or animal by-product into Canada; and
- Element 3 – Mr. Gantcheff failed to present the animal by-product to border services officers before being referred to the Customs secondary area for luggage inspection.

Findings with respect to Element 1

[17] Mr. Gantcheff's identity as the alleged violator is not in dispute. Mr. Gantcheff was the alleged violator identified by the border services officer during the secondary inspection, and the products in question found in the "Metro" bags belonged to him. The pilot, and Mr. Gantcheff himself, confirmed to the officer that the bag and the food products in these bags belonged to Mr. Gantcheff. Mr. Gantcheff's identity was confirmed with his Canadian passport, a photocopy of which was included in the record upon review of the notice of violation by the Minister.

[18] I find that the evidence entered in the record by the Agency before the Minister was sufficient to establish this first element, on a balance of probabilities.

Findings with respect to Element 2

[19] It is also undisputed that Mr. Gantcheff imported an animal product or animal by-product, in this case, beef-stuffed peppers. The photographs of the beef-stuffed peppers in the record seem to show a large quantity of this food product. Furthermore, a printout from the Automated Import Reference System (AIRS) entered in the record shows that beef from Bulgaria should be refused entry into Canada.

[20] I find that the evidence entered in the record by the Agency before the Minister was sufficient to establish, on a balance of probabilities, the second essential element of the violation.

Findings with respect to Element 3

[21] Mr. Gantcheff does not dispute that he did not declare the beef-stuffed peppers through his pilot. However, he challenges the fact that these stuffed peppers should have been declared since he intended to throw them away.

[22] The administrative monetary penalty regime set up by the [AMP Act](#) and the [AMP Regulations](#) is an absolute liability regime. Parliament's intention to create an absolute liability regime is confirmed by the wording of subsection 18(1) of the [AMP Act](#), which makes a defence of due diligence or reasonable mistake of fact unavailable to violators.

[23] Even if Mr. Gantcheff intended to throw the beef-stuffed peppers away, this product was nonetheless imported to Canada without being declared to an Agency inspector. His intention to throw this food product away does not assist him. In other words, even if Mr. Gantcheff honestly believed that food products destined for the trash can did not have to be declared, this belief is mistaken. This constitutes a reasonable mistake of fact defence, which is expressly excluded by subsection 18(1) of the [AMP Act](#) and which the Tribunal cannot consider.

[24] Moreover, Mr. Gantcheff seems to blame the failure to declare the beef-stuffed peppers on the pilot of the private aircraft. Similarly, the pilot's mistake regarding the

declaration of one of his passengers is a defence that is expressly excluded by subsection 18(1) of the [AMP Act](#).

[25] I find that the evidence entered in the record by the Agency before the Minister was sufficient to establish, on a balance of probabilities, the third essential element of a violation under subsection 16(1) of the [HA Act](#).

Issue 2 – Did the Applicant establish an admissible defence?

[26] Subsection 18(2) of the [AMP Act](#) has the following to say about the grounds of defence admissible under this provision:

Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

[27] At paragraph 11 of [Doyon](#), Justice Létourneau presents the following discussion of the grounds of defence that may be raised by applicants under subsection 18(2) of the [AMP Act](#):

These defences include intoxication, automatism, necessity, mental disorder, self-defence, res judicata, abuse of process and entrapment. I must say that, apart from the necessity defence, as used in [Maple Lodge Farms Ltd. v. Canada \(Canadian Food Inspection Agency\)](#), [2008] C.A.R.T.D. No. 9, and a break in the chain of causation, I do not really see the benefit of most of these defences, especially if one compares them with the due diligence defence, which is excluded.

[28] Mr. Gantcheff claims in his defence that the food was not declared because it was going to be thrown away. He also argues that it was the pilot's and not his responsibility to declare the food, including the beef-stuffed peppers. Finally he notes that the law and travellers' duties to declare are unclear with respect to food that is to be thrown away.

[29] Mr. Gantcheff therefore does not raise any of the common law defences set out by the Federal Court of Appeal in the excerpt from its decision above.

V. ORDER

[30] I find that the evidence entered in the record by the Agency establishes that Mr. Gantcheff imported an animal by-product without presenting it to an inspector, contrary to subsection 16(1) of the [HA Act](#). I therefore **CONFIRM** the Minister's decision CS-79149, which supports the issuance of Notice of Violation 3961-15-1462, dated November 2, 2015.

[31] I also **CONFIRM** that the amount of the penalty is correct under the [AMP Regulations](#).

[32] I **ORDER** Mr. Gantcheff to pay the Agency \$1,300 within thirty (30) days after the day on which notice of this decision is served, in accordance with subsection 15(3) of the [AMP Regulations](#).

[33] I wish to inform Mr. Gantcheff that this violation is not a criminal offence. In five years, Mr. Gantcheff may apply to the Minister of Agriculture and Agri-Food to have the violation removed from his record, in accordance with section 23 of the [AMP Act](#).

Dated at Ottawa, Ontario, on this 11th day of November 2018.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal