



Citation: *Sinnadurai v. Canada* (Minister of Public Safety and Emergency Preparedness), 2018 CART 16

Date: 20181128
Docket: CART/CRAC-1959

BETWEEN:

Baskaran Sinnadurai,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Mr. Dov Maierovitz, for the Applicant; and
Ms. Valérie Larocque and Mr. Pierre Dastous, representative for the
Respondent**

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 by the Tribunal of the Minister's Decision 16-02460, dated May 2, 2017, holding that the Applicant violated section 16 of the [Health of Animals Act](#).

DECISION

The Canada Agricultural Review Tribunal, by ORDER, CONFIRMS the Minister's Decision 16 02460, dated May 2, 2017, and holds that the Applicant, Baskaran Sinnadurai, is liable for payment of the prescribed monetary penalty of \$1,300.

The hearing was held in Toronto, Ontario,

On January 18, 2018.

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REASONS FOR DECISION

I. BACKGROUND

[1] This case is about a traveller's undeclared importation of ghee at the Pearson International Airport in Toronto on May 26, 2016. Fifteen 1 litre cartons of ghee were discovered by an Officer of the Canada Border Services Agency (Agency) in the belongings of Mr. Baskaran Sinnadurai during a luggage examination in the customs secondary area. Mr. Sinnadurai was issued Notice of Violation number 4971-16-0887 (Notice of Violation), with penalty of \$1,300, by the Agency Officer for an alleged violation of section 16 of the [*Health of Animals Act*](#) (*HA Act*).

[2] Mr. Sinnadurai requested a review of the Notice of Violation to the Minister of Public Safety and Emergency Preparedness (Minister), who upheld the Notice of Violation on May 2, 2017, in decision number 16-04260 (Minister's Decision). On May 29, 2017, Mr. Sinnadurai requested a review of the Minister's Decision by the Canada Agricultural Review Tribunal (Tribunal).

[3] The Agency contends that the evidence on record before the Minister's delegate clearly shows that Mr. Sinnadurai imported ghee made with cow's milk without declaring it to its officers. The Agency asks that the decision of the Minister's delegate be confirmed by the Tribunal. Mr. Sinnadurai maintains that the product imported was a vegetable-based ghee, which is permitted.

II. ISSUE

[4] This case raises a single issue:

Did the Minister err in his finding that the Agency had proven all the essential elements of the alleged violation to sustain the Notice of Violation.

[5] I have reviewed all the evidence and arguments submitted by each of the parties and have concluded, for the reasons that follow, that the Minister's Decision should be confirmed, that Mr. Sinnadurai has committed a violation under section 16 of the [HA Act](#) and is liable for payment of the penalty in the amount of \$1,300.

III. JURISDICTION AND POWERS

[6] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(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.

[7] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP 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 [AAAMP Act](#)).

[8] Powers given to the Tribunal by Parliament in conducting this exercise are set out in paragraph 14(1) of the [AAAMP 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.

[9] Although the [AAAMP 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 [AAAMP Act](#) (see [Hachey Livestock Transport Ltd. v. Minister of Agriculture and Agri-Food](#), 2015 CART 19, at paragraphs 28 to 50).

[10] 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 May 2, 2017.

[11] A *de novo* examination of the facts does not require the Tribunal to ask the parties to present anew the evidence in this case. The Tribunal will examine the record which was before the Minister's delegate and apply the appropriate law to the factual findings of the case and determine whether the Minister's Decision should be confirmed, varied or set aside.

[12] As well, in considering the possible grounds raised by Mr. Sinnadurai to vary or set aside the Minister's Decision, I am mindful of the clear instructions of the Federal Court of Appeal (FCA) 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 AAAMP Act], a defence of due diligence or honest and reasonable mistake of fact is not available."*

IV. ANALYSIS

Did the Minister correctly decide that the Agency had proven each of the essential elements of the violation of section 16 of the [HA Act](#)?

[13] Section 19 of the [AAAMP Act](#) establishes that enforcement agencies issuing Notices of Violation have the burden of proof on a balance of probabilities standard. Furthermore, the FCA has confirmed that enforcement agencies have the burden of proving each of the essential elements of an alleged violation ([Doyon](#), at paragraph 42).

[14] Subsection 16(1) of the [HA Act](#) describes the violation in the following manner:

*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.*

[15] The short-form description of the violation found at Schedule 1, Part 1, Division 1 of the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) describes the violation of section 16 of the [HA Act](#) as follows: “Fail to present an animal or thing”. This violation is classified as very serious and subject to a \$1,300 penalty in accordance with subsection 5(1) of the [AAAMP Regulations](#).

[16] Section 2 of the [Health of Animals Regulations](#) (HA Regulations) and subsection 2(1) of the [HA Act](#) both provide for the following definitions:

animal product includes cream, eggs, milk, non-fertilized ova and semen;
(produit animal)

animal by-product includes blood or any of its components, bones, bristles, feathers, flesh, hair, hides, hoofs, horns, offal, skins and wool, and any thing containing any of those things; (sous-produit animal)

[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] The three essential elements that need to be proven for a violation of section 16 of the [HA Act](#) are:

- Element 1 – Mr. Sinnadurai is the person who committed the violation;
- Element 2 – Mr. Sinnadurai imported an animal product or animal by-product into Canada; and
- Element 3 – Mr. Sinnadurai failed to declare the animal product or animal by-product at first contact with the Agency’s officers and thus did not make it available for inspection.

Findings with Respect to Element 1

[19] Element 1 of the violation, namely Mr. Sinnadurai's identity as the person who imported the ghee, is not disputed by the parties. Furthermore, the Agency has clearly established this element through copies of Mr. Sinnadurai's identity documents on record, including his passport and driver's license.

Findings with Respect to Element 2

[20] Ghee made with cow's milk falls within the definition of an animal product pursuant to section 2 of the [HA Regulations](#) and subsection 2(1) of the [HA Act](#). The Automated Import Reference System report on record also confirms that ghee made from cow's milk should be "refused entry".

[21] The Agency submitted to the Minister various pieces of evidence to prove that the ghee imported by Mr. Sinnadurai was made with cow's milk. The Agency officer's narrative report, as well as the photos taken of the product, establishes this element. It is significant to note that the imported product is labelled as cow's ghee and described as "ghee made from cow's milk" with a very prominent picture of a cow on the packaging.

[22] Mr. Sinnadurai attempted to counter this evidence by submitting new evidence in the form Wikipedia general information on ghee and various newspaper articles which talk about the prevalence of counterfeit ghee in some areas of India. At the hearing, the Agency objected to the admission of this new evidence, which was not before the Minister's delegate, and I sustained their objection. However, even if I had allowed it, this new evidence had very little probative value and would not have altered my finding.

[23] Mr. Sinnadurai provided various arguments with respect to confusing labelling on ghee products and argues that the picture of a cow does not signify that the ghee is made from cow's milk.

[24] Mr. Sinnadurai also argues that the Agency could have tested the product to definitely establish that it was milk-based but failed to do so and cites [Tao v. Canada \(Canada Border Services Agency\), 2014 CART 6](#) (*Tao reconsideration*) in support of this assertion. While I agree that lab testing the imported product could have provided a definitive conclusion as to the composition of the ghee, the standard of proof that the Agency has to meet for violations is on a balance of probabilities, not beyond a reasonable doubt (section 19 of the [AAAMP Act](#))

[25] Finally, Mr. Sinnadurai argues that any admissions he made on the day of the violation that he forgot to check the box, implying that he knew he was importing something which needed be declared, should be ignored and given little weight based on the fact that he was not cautioned. Mr. Sinnadurai cites paragraphs 34, 37 and 43 of “Tao”. However, the paragraphs referenced appear to relate to the Tribunal’s initial decision in [Tao v. Canada \(Canada Border Services Agency\), 2013 CART 16](#) (*Tao initial decision*) which was set aside on judicial review by the FCA in [Canada \(Border Services Agency\) v. Tao, 2014 FCA 52](#) (*Tao judicial review*). The FCA clearly rejected the idea that Agency officers are required to caution travellers before proceeding in their questioning and that statements made without caution could be rejected by the Tribunal ([Tao judicial review](#) at paragraphs 26 and 27).

[26] I find that the Agency’s evidence, on record before the Minister’s delegate, established, on a balance of probabilities, that Mr. Sinnadurai imported an animal product, namely ghee made with cow’s milk and the Agency has therefore proven Element 2.

Finding with Respect to Element 3

[27] Finally, Element 3 has been established by the Agency’s customs declaration card showing that Mr. Sinnadurai declared “no” to the question pertaining to agricultural products. The fact that the ghee was not declared does not appear to be contested.

[28] Therefore the Minister’s delegate has correctly determined that the Agency has established that Mr. Sinnadurai committed a violation of section 16 of the [HA Act](#) by importing an animal product, namely ghee made from cow’s milk, without declaring it to Agency officers.

ORDER

[29] I find, on a balance of probabilities, that Mr. Sinnadurai did commit a violation of section 16 of the [HA Act](#), as described in Notice of Violation 4971-16-0887, dated October 25, 2016, and confirmed in Minister’s Decision 16-02460, dated May 2, 2017, and is liable for payment of the penalty in the amount of \$1,300 to the Agency within thirty (30) days after the day on which this decision is served.

[30] I wish to inform Mr. Sinnadurai that this violation is not a criminal offence. After five years, he 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 28th day of November, 2018.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal