

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

K1A 0B7

Citation: *Ganchorka v Canada Border Services Agency*, 2019 CART 15

Docket: CART-1976

BETWEEN:

GANCHORKA

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Marthanne Robson, Member

**WITH: Mr. Sergii Ganchorka, Applicant; and
Ms. Bria Hearty, representing the Respondent**

DECISION DATE: October 11, 2019

WRITTEN SUBMISSIONS ONLY

1. OVERVIEW

[1] This is an application to the Canada Agricultural Review Tribunal to review the facts of a violation of section 40 of the [Health of Animals Regulations](#) (*HA Regulations*) under subsection 9(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (*AAAMP Act*).

[2] Mr. Ganchorka returned from the Ukraine with some bacon (pork fat) in his luggage. He admitted he did not declare it when he went through customs. A Border Services Officer discovered the bacon in Mr. Ganchorka's luggage and issued a Notice of Violation (*NOV*) with a penalty of \$800.

[3] Mr. Ganchorka asked the Tribunal to excuse him from paying the penalty because it was too high, he was helping his sick parents in the Ukraine and because it was his first time. None of those reasons are allowable defences (acceptable legal excuses). The Tribunal cannot reduce the amount of the penalty. Mr. Ganchorka must pay the \$800 penalty.

2. LEGAL FRAMEWORK

[4] Everyone must declare and present for inspection all food, plant and animal products they bring into Canada, whether the product is allowed entry or not. Even one incident of undeclared animal products can pose a serious risk to animal health, the food supply or the well-being of humans. The Canadian Food Inspection Agency determines what food, plant and animal products cannot be imported into Canada and what can be brought in with the proper permit or certificate. This information can be found in the [Automated Import Reference System](#) (*AIRS*) which is available to the public.

[5] Passengers arriving by air into Canada must complete and sign a Declaration Card. The card contains the statement "I am/we are bringing into Canada: meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts, plants, flowers, wood, animals, birds, insects, and any parts, products or by-products of any of the foregoing." Mr. Ganchorka completed and signed the Declaration Card and checked "no" next to that statement.

[6] After finding the bacon in Mr. Ganchorka's luggage, the Officer consulted the *AIRS* database and confirmed that raw pig fat, bacon fat or pork fat from the Ukraine may not be brought into Canada. The *NOV* was for importing an animal by-product, bacon, without meeting the legal requirements (section 40 of the [HA Regulations](#)).

[7] When the Tribunal reviews the facts of a NOV, the Canada Border Services Agency must prove all elements of the violation ([Doyon](#)¹ and section 19 of the [AAAMP Act](#)). If that is done, the Tribunal considers whether Mr. Ganchorka has an allowable defence (permissible legal excuse) for bringing in the bacon.

3. ISSUES

[8] There are four issues in this case.

1. What are the elements of the violation that the Agency must prove?
2. Did the Agency prove all the elements of the violation?
3. Does Mr. Ganchorka have an allowable defence?
4. Can the Tribunal reduce the penalty in this case?

4. ANALYSIS

Issue 1: What are the elements of the violation that the Agency must prove?

[9] The Agency proposed that there are only two essential elements to prove a violation:

- a. Mr. Ganchorka is the person who committed the violation, and
- b. he imported an animal by-product into Canada;

[10] In previous cases, the Federal Court of Appeal and the Tribunal decided that the Agency must prove to additional elements ([Doyon](#)² and [Campbell](#)³):

- a. Mr. Ganchorka did not declare the animal by-product at first contact with the Agency Officer and therefore did not make it available for inspection; and
- b. the animal by-product did not have any exceptions listed in Part IV of the [HA Regulations](#).

Issue 2: Did the Agency prove all the elements of the violation?

[11] The Agency must prove, on a balance of probabilities, that it is more likely than not that the violation occurred.

¹ [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152. [*Doyon*]

² [Ibid.](#)

³ [Campbell v. Canada \(Canada Border Services Agency\)](#), 2018 CART 4.

[12] The Agency proved elements a), b) and c). Mr. Ganchorka's passport and Permanent Resident Card confirmed his identity. Mr. Ganchorka admitted in a letter to the Tribunal that he imported the bacon and did not declare it. He did not declare it on the Declaration Card and he answered "no" when the Officer asked him if he had anything to declare.

[13] The Agency did not address element d), whether there were any exceptions that might apply in this case. It is possible to import an animal by-product if the country of origin confirmed its safety or if the Officer believed that the animal by-product would not introduce disease into Canada. The person importing the animal by-product could also produce a certificate or permit allowing its importation into Canada.

[14] No exceptions, element d), apply in this case. The Officer did not ask Mr. Ganchorka for a permit or certificate. Mr. Ganchorka did not have a permit or certificate that would allow him to bring bacon into Canada. A person is not excused if no documentation ever existed, even if an Officer did not ask for permits or certificates ([Castillo](#)⁴).

[15] The Officer relied on the information in the AIRS database that bacon from the Ukraine is not allowed entry. This information gave the Officer reasonable grounds to believe that the bacon would introduce disease into Canada.

[16] The Agency proved, on a balance of probabilities, all the elements of the violation.

Issue 3: Does Mr. Ganchorka have an allowable defence?

[17] There are very few allowable defences for importing an animal by-product without declaring it. The law does not allow a reasonable mistake of fact as an excuse. An example would be: "I didn't know I was supposed to declare the bacon fat." Or "I didn't know the bacon was in my luggage." Due diligence is not an allowable defence. An example would be: "I tried to find out what the rules were but I couldn't." (section 18(1) of the [AAAMP Act](#)).

[18] The common law historically allows certain justifications or excuses (section 18(2) of the [AAAMP Act](#)). These are some examples (see [Doyon](#)⁵):

1. Mistake of law induced by a person of authority: for example, a person in authority, such as a Border Services Officer, told the person they didn't have to declare bacon from Ukraine. ([Jorgensen](#)⁶)
2. Automatism: the person, because of illness or shock, had no idea what they were doing and couldn't declare the animal by-product ([Klevstov](#)⁷ and [Stone](#)⁸).

⁴ [Canada Border Services Agency v. Castillo](#), 2013 FCA 271.

⁵ [Doyon](#), *supra* note 1.

⁶ [R. v. Jorgensen](#), [1995] 4 SCR 55, 1995.

⁷ [Klevstov v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2017 CART 10.

⁸ [R. v. Stone](#), [1999] 2 SCR 290, 1999.

3. Necessity: something terrible would happen, like someone dying, and there was no other reasonable choice but to bring in the bacon without declaring it ([Perka](#)⁹ and [Maple Lodge](#)¹⁰).

[19] None of these possible legal excuses apply in this case.

[20] Mr. Ganchorka admitted he brought bacon into Canada; that he understood it was wrong and that he was guilty, but that the penalty was too high. Mr. Ganchorka also told the Tribunal that it was his first time. Mr. Ganchorka is a truck driver; he admitted he crossed the border often. The Officer confirmed this by checking Mr. Ganchorka's travel history. The Officer's notes recorded that Mr. Ganchorka said that he had brought bacon across the border before. It does not matter whether this was the first time. Mr. Ganchorka admitted in this case that he had brought bacon into Canada.

[21] Mr. Ganchorka does not have an allowable defence.

Issue 4: Can the Tribunal reduce the penalty in this case?

[22] Mr. Ganchorka asked the Tribunal to reduce the penalty because it was too high, he was helping his sick parents in the Ukraine and because it was his first time.

[23] According to the legal rules, violations are classified as minor, serious or very serious. Bringing an animal by-product into Canada without declaring it is a "serious violation". The legal rules specify penalties for violations: \$500 for a minor violation, \$800 for a serious violation and \$1,300 for a very serious violation (section 4 of the [AAAMP Regulations](#)). These penalties are fixed.

[24] Mr. Ganchorka had the option of paying a reduced penalty of \$400 within fifteen days of receiving the NOV. He did not do so.

[25] The Tribunal does not have the power to change the amount of the penalty because of a person's situation or financial responsibilities ([Li v Canada](#)¹¹).

[26] The Agency proved all the elements of the violation of section 40 of the [HA Regulations](#). Mr. Ganchorka did not provide an allowable defence. The Tribunal does not have the power to reduce the amount of the penalty for the violation in this case.

5. ORDER

⁹ [Perka v. The Queen](#), [1984] 2 SCR 232, 1984.

¹⁰ [Maple Lodge Farms Ltd c Canada \(ACIA\)](#), RTA no 60291, RTA n° 60295, RTA n° 60296, and RTA n° 60297.

¹¹ [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 11.

[27] I find that Mr. Ganchorka has committed the violation in NOV 4971-17-0064, dated January 16, 2018, and must pay the penalty of \$800 to the Agency within thirty (30) days after the day on which Mr. Ganchorka receives this decision.

[28] I wish to inform Mr. Ganchorka that this violation is not a criminal offence. Five years after the date on which the penalty is paid, 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 11th day of October 2019.

(Original signed)

Marthanne Robson
Member
Canada Agricultural Review Tribunal