



Citation: *Bhanji v Canada Border Services Agency*, 2020 CART 29

**Docket: CART – 2129**

**BETWEEN:**

**SALMA BHANJI**

**APPLICANT**

**- AND -**

**CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**BEFORE: Luc Bélanger, Chairperson**

**WITH: Ms. Salma Bhanji, representing herself; and  
Mr. Jonathan Ledoux-Cloutier, representing the Respondent**

**DECISION DATE: December 18, 2020**

**WRITTEN SUBMISSION ONLY**

**DECISION**

**The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement reached by the parties.**

## **1. OVERVIEW**

[1] This matter concerns a request for review of the Notice of Violation # 7011-19-0426 (NOV) by Ms. Bhanji to the Canada Agricultural Review Tribunal (Tribunal), pursuant to paragraph 9(2)(c) of the [\*Agriculture and Agri-Food Administrative Monetary Penalties Act\*](#) (AAAMPA).

[2] On June 1, 2019, following her arrival at the Calgary International Airport, Ms. Bhanji allegedly imported a quantity of butter without the required certificate to do so. Consequently, the Canada Border Services Agency (Agency) issued her a NOV for violating paragraph 34(1)(b) of the [\*Health of Animals Regulations\*](#).

## **2. PROCEDURAL HISTORY**

[3] On June 3, 2019, Ms. Bhanji applied to the Tribunal for a review of the NOV # 7011-19 0426.

[4] On July 30, 2019, the Tribunal determined that the request for review was admissible.

## **3. OFFER TO SETTLE**

[5] The Tribunal sought clarifications with regard to correspondence from the Agency in this case.

[6] On November 16, 2020, the Agency in response to the request for clarifications presented a written offer to settle the case to Ms. Bhanji, which offered to vary the NOV originally issued with a penalty of \$800 to a NOV with warning and no monetary penalty.

[7] Ms. Bhanji communicated her acceptance to this offer via email, received by the Tribunal on December 11, 2020.

[8] As explained in the Agency's offer to settle, their systems will reflect that a settlement has been reached and confirm the removal of the penalty amount.

[9] Ms. Bhanji must understand that all travelers entering into Canada may be subject to secondary examinations by the Agency, regardless of previous enforcement action.

[10] Furthermore, I wish to reiterate to Ms. Bhanji that the introduction of undeclared food, plant or animal products into Canada can result in serious risk to our plant and animal health and can endanger our food supply, agriculture, economy, environment and even our own wellbeing.

#### **4. THE SETTLEMENT**

[11] The Tribunal has the sole and exclusive jurisdiction to hear and determine all questions of fact or law regarding any matter over which it is given jurisdiction under the [AAAMPA](#) or any Act of Parliament, pursuant to section 38(1) of the [AAAMPA](#).

[12] Moreover, as a court of record, the Tribunal is vested with additional powers to the ones explicitly conferred by its enabling legislation. These powers are available to the Tribunal as they are necessary to fulfill the purpose and objective of the statutory regime created by the legislature.<sup>1</sup> This ensures the enforcement of its orders and other matters necessary to duly exercise its jurisdiction pursuant to section 41(2) of the [AAAMPA](#).

[13] The Tribunal does not have the explicit authority to vary a NOV with penalty to a NOV without penalty. However, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement as established in *Atkinson*<sup>2</sup>.

[14] Given these powers provided to me by statute, I agree that the most just and efficient outcome in this case is to amend the NOV with a penalty of \$800 to a NOV with warning and no monetary penalty.

[15] This is not an order of the Tribunal which can be the subject of a judicial review application pursuant to section 38(2) of the [AAAMPA](#).

[16] This settlement agreement constitutes a final settlement of the rights of both parties in relation to CART - 2129 and the events which occurred on June 1, 2019.

[17] This settlement should not be cited as a precedent or otherwise relied on except in relation to the current NOV.

#### **5. ORDER**

[18] As requested by the parties and pursuant to the powers coffered to me, I confirm, by **ORDER**, the settlement agreement.

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<sup>1</sup> [ATCO Gas & Pipelines Ltd. v. Alberta \(Energy & Utilities Board\)](#), 2006 SCC 4 at para 51.

<sup>2</sup> *Atkinson v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 CART 3.

Dated at Ottawa, Ontario, on this 18<sup>th</sup> day of December 2020.

(Original signed)

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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal