



Citation: *Santos v Minister of Public Safety and Emergency Preparedness*, 2021 CART 17

Docket: CART – 2061

BETWEEN:

LIZA SANTOS

APPLICANT

-AND-

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Marthanne Robson, Member

**WITH: Ms. Liza Santos, representing herself; and
Ms. Bria Hearty, representing the Respondent**

DECISION DATE: July 6, 2021

VIRTUAL HEARING DATE: February 24, 2021

1. OVERVIEW

[1] This is a request to review the Minister's decision concluding that the Applicant, Ms. Liza Santos, violated subsection 16 (1) of the [Health of Animals Act](#)¹ (*HA Act*) by failing to present for inspection, canned corned beef found in her luggage.

[2] Ms. Santos returned to Canada by air from the Philippines accompanied by her mother and husband. She completed and signed a Declaration Card on behalf of her family indicating they were bringing food into Canada. A Border Services Officer (Officer) at primary inspection asked Ms. Santos what kind of food she was bringing into Canada. She specified only dried fish, which was noted on the Declaration Card as "Dry fish OK".

[3] Ms. Santos and her family were randomly referred for secondary inspection. The Secondary Officer asked what food she was bringing into Canada. She did not provide any further details. Examination of the luggage revealed fresh pork sausage, boiled duck eggs, canned corned beef, beef and chicken broth as well as dried fish. The Officer issued a Notice of Violation (Notice) with a penalty of \$1300.

[4] Ms. Santos asked the Minister to review the facts of the violation. The Minister's delegate concluded that the Notice was properly issued and that Ms. Santos must pay the penalty. Ms. Santos then asked the Canada Agricultural Review Tribunal (Tribunal) to review the Minister's decision. In both requests for review, Ms. Santos maintained that she fully declared the food products she imported by answering "yes" on the Declaration Card.

[5] It is not sufficient to simply answer "yes" on the Declaration Card and fail to provide specifics when asked. A person importing an animal product, such as canned corned beef, must present it for inspection to an Officer at the first opportunity. In addition to accurately completing a Declaration Card, a traveller must also truthfully answer questions asked by an Officer. In this case, Ms. Santos did not specify all the agricultural products she imported. By not declaring specifically, Ms. Santos did not truthfully answer questions about what food she was bringing into the country. Instead she chose to rely completely on the statement in the Declaration Card. In doing so, she failed to present a product she imported for inspection in violation of subsection 16 (1) of the [HA Act](#). The \$1300 penalty was properly determined, and she must pay it. This decision explains why.

2. LEGAL FRAMEWORK

¹ [Health of Animals Act, SC 1990, c 21](#), s 16(1).

[6] The purpose of the [Health of Animals Act](#) and [Regulations](#)² (*HA Regulations*) is to prevent the introduction of animal disease into Canada. One incident can pose a serious risk to plant, animal and human welfare, as well as potential harm to the food supply, the economy and the environment. Travellers must declare and present for inspection all agricultural products imported so that customs officials can identify specific products and verify if such products meet regulatory requirements. These obligations are found in several legislative provisions outlined below.

[7] The [Customs Act](#)³ requires that travellers entering Canada declare all goods they import to an authorized customs officer. They must also truthfully answer any questions asked by an officer.⁴ Travellers arriving by commercial transport must make a declaration in writing.⁵ Travellers arriving by air into Canada must complete and sign a CBSA E311 Declaration Card.

[8] The Declaration 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 part, products or byproducts of any of the foregoing.” Ms. Santos completed and signed the Declaration Card and checked “yes” next to that statement.

[9] Subsection 16 (1) of the [HA Act](#) requires that any person who imports an animal, animal product or animal by-product into Canada must present the item to a customs officer for inspection either before or at the time of importation. 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 underway. A traveller is not allowed to gamble that they will not have a secondary search, and declare the goods only if it appears they will be discovered. An individual transporting goods into Canada has a duty to fully declare what they are bringing into the country.^{6 7}

[10] 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 documentation. A person may import some agricultural products from certain countries if accompanied by the required documentation under exceptions set out in part IV of the [HA Regulations](#). Details can be found in the [Automated Import Reference System](#) (AIRS)⁸ which is available to the public. The AIRS database specifies that canned corned beef from the Philippines should be refused entry.

² [Health of Animals Regulations, CRC, c 296](#) [*HA Regulations*].

³ [Customs Act, RSC 1985, c 1 \(2nd Supp\)](#), s 12(1).

⁴ [Ibid](#) s 13(a).

⁵ [Reporting of Imported Goods Regulations](#), ss 5(1) and 5(3).

⁶ [Canada \(Attorney General\) v Savoie-Forgeot, 2014 FCA 26](#) [*Savoie-Forgeot*].

⁷ [Johnson v. Canada \(Minister of Public Safety and Emergency Preparedness\), 2017 CART 4](#) [*Johnson*].

⁸ Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

[11] The essential elements of a violation of subsection 16 (1) of the [HA Act](#) are:

1. The applicant is the person identified in the Notice;
2. the applicant imported an animal, animal product, animal by-product or animal food into Canada;
3. none of the exceptions listed in Part IV of the [HA Regulations](#) applied; and
4. the applicant did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

[12] These are almost identical to the essential elements of a similar violation under section 40 of the [HA Regulations](#), importing an animal by-product without meeting the prescribed requirements, as set out in the Tribunal's decision in [Campbell](#)⁹. However, I find that the first element should be "the person identified in the Notice" rather than "the person who committed the violation". This way, the analysis comes before the conclusion whether the applicant committed the violation.

[13] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)¹⁰ (AAAMP Act) and [Regulations](#)¹¹ (AAAMP Regulations) establish a system of administrative monetary penalties (fines) as a fair and efficient alternative to criminal charges to enforce agri-food legislation, such as the [HA Act](#) and [HA Regulations](#). Subsection 16 (1) of the [HA Act](#) is classified as a "very serious" violation; the penalty is set at \$1300.^{12 13}

[14] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. If they are not satisfied with the decision, they can request a further review by the Tribunal. The Tribunal can confirm, vary or set aside the Minister's decision.¹⁴ The Tribunal conducts a *de novo* review of the Minister's decision which means that the Tribunal examines all the evidence and draws its own factual and legal conclusions about the validity of the Notice.¹⁵ The Tribunal will typically conduct its review based on the documents submitted to the Minister. The Tribunal may also hear oral testimony and receive new evidence at the review hearing under certain conditions.¹⁶ The Canada Border Services Agency (Agency) represented the Minister at this Tribunal hearing.

⁹ [Campbell v. Canada \(Canada Border Services Agency\), 2018 CART 4.](#)

¹⁰ [Agriculture and Agri-Food Administrative Monetary Penalties Act \(S.C. 1995, c. 40\)](#) [AAAMP Act].

¹¹ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations \(SOR/2000-187\)](#) [AAAMP Regulations].

¹² [Ibid.](#), Schedule 1, item 11.

¹³ [HA Regulations](#), [supra](#) note 2, s 5(1)(c).

¹⁴ AAAMP Act, [supra](#) note 10, s 14(1).

¹⁵ [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\), 2015 CART 19.](#)

¹⁶ See [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\), SOR/2015-103](#), rule 10 and 44.

[15] The agency issuing the Notice must prove on the balance of probabilities all the essential elements of the violation. If all the elements are proven, the Tribunal considers whether the applicant has raised an allowable defence. Violations under this system are absolute liability offences, meaning there are very few allowable defences. The Federal Court of Appeal in the [Doyon](#)¹⁷ decision described this system of violations and penalties as draconian and highly punitive. Due diligence (I did my best) and mistake of fact (I did not know) are not allowable defences.¹⁸ If the applicant does not establish an allowable defence, the Tribunal considers whether the penalty was imposed in accordance with the law.

3. ISSUES

[16] Given the legal framework outlined, in this case I must consider the following issues.

1. Did the Agency prove all the essential elements of a violation of subsection 16 (1) of the [HA Act](#).
2. What questions were asked of and answered by the Applicant at primary and secondary inspection?
3. Is simply answering “yes” to importing agricultural products on a Declaration Card sufficient to present goods imported into Canada for inspection?
4. Did the Applicant establish an allowable defence to the violation?
5. Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

[17] In her requests for review, Ms. Santos raised customer service complaints about the delay and conduct of the secondary inspection. They are not relevant to whether Ms. Santos committed the violation.

4. ANALYSIS

¹⁷ [Doyon v. Canada \(Attorney General\), 2009 FCA 152](#) at para 21 [*Doyon*].

¹⁸ *AAAMP Act*, [supra](#) note 10, s 18(1).

I. Issue 1.: Did the Agency prove all the essential elements of a violation of subsection 16 (1) of the [HA Act](#)?

[18] Only element 4 is in dispute, that is, whether Ms. Santos failed to declare the canned corned beef at first contact with Agency Officers and therefore did not make it available for inspection. The Agency and Ms. Santos agreed that she is the person identified in the Notice (element 1) and that she imported canned corned beef into Canada (element 2). An exception existed at the time of the incident allowing a person to import canned corned beef from the Philippines for personal use with the proper documentation.¹⁹ There is no evidence that Ms. Santos had documentation permitting the importation of the canned corned beef, therefore no exceptions listed in the [HA Regulations](#) applied (element 3). This proves elements 1, 2 and 3 of the violation.

II. Issue 2.: What questions were asked of and answered by the Applicant at a primary and secondary inspection?

[19] Ms. Santos did not testify at the hearing. She made written submissions in her communications with the Minister and the Tribunal in conjunction with her requests for review, as well as in her opening and closing statements at the hearing. Ms. Santos' husband testified at the hearing. The Agency submitted the written record from the Minister's review, which included copies of both the handwritten notes and typed Narrative Report of the Secondary Officer. The Officer prepared both sets of notes on the day of the incident and I conclude that they are equally reliable. Ms. Santos and the Agency submitted an agreed *Joint Statement of Facts*.

[20] Ms. Santos noted in her written request for review to the Minister that she was aware that she was bringing some food which was "not allowed", and that she marked "yes" on the Declaration Card. Her husband confirmed that he and Ms. Santos discussed on the plane that they would declare everything and mark yes on the declaration form.

[21] There were two points of customs inspection with two different Officers, Primary and Secondary. In her opening statement, Ms. Santos noted two questions asked by the Primary Officer and her answers.

1. Question. "What kind of food are you bringing?" Answer. "Bulk of fish".
2. Question. "What kind of fish?" Answer. "Dried fish."

[22] In her closing statement Ms. Santos submitted for the first and only time that she answered, "bulk of fish, among others" (emphasis added). Ms. Santos' husband did not hear any questions at primary inspection. Ms. Santos and the Agency agreed that "Dry fish OK" was written on the Declaration Card by the Primary Officer. The parties agreed that Ms. Santos was randomly referred for secondary inspection.

¹⁹ Government of Canada, *Automated Import Reference System* (AIRS) online, [supra](#) note 8, Import Details for Requirement: 45581 version: 7.

[23] At the secondary inspection, the Narrative Report, but not the handwritten notes, documented the questions the Secondary Officer asked Ms. Santos and her answers.

1. Question. "Do you have any more food than dried fish?" Answer.: No.
2. Question. "Are you sure you don't have any other food in those boxes like canned liver or anything else?" Answer. No.

[24] Ms. Santos' husband testified that the Secondary Officer asked about what food they were bringing into the country. In her submissions, Ms. Santos did not dispute the questions and answers at secondary inspection noted in the Narrative Report.

[25] The parties agreed that the Secondary Officer found canned corned beef and fresh pork sausages in Ms. Santos' luggage. The Narrative Report notes that Ms. Santos claimed she had told the Primary Officer about the corned beef, however when the Primary Officer arrived to confirm her statement, Ms. Santos recanted. Ms. Santos did not submit any evidence to contradict this. The parties agreed that Ms. Santos admitted that she did not itemize all the food that she brought to the Primary or Secondary Officer.

[26] I conclude that the Primary and Secondary Officers asked about what food Ms. Santos brought into the country and she did not specifically declare the canned corned beef to either the Primary or Secondary Officers.

III. Issue 3.: Is simply answering "yes" to importing agricultural products on a Declaration Card sufficient to present goods imported into Canada for inspection?

[27] The parties agreed that Ms. Santos thought the Declaration Form was an all-encompassing document if the passenger brought food mentioned there.

[28] The Minister's review decision stated that "answering "yes" to the agricultural question on the Declaration Card is an alert for both officer and traveller that further clarifying questions are required to be asked in order to determine what specific food, plant or animal products are being imported." In this case, Ms. Santos was given two opportunities to specify the type of food she imported.

[29] In [*Johnson*](#)²⁰, the Tribunal concluded that checking "yes" on the Declaration Card created a rebuttable presumption that all agricultural and food items were properly declared. But a simple "yes" may not be sufficient if a traveller is asked about the exact nature of the agricultural products imported. They have an obligation to be more exact than simply answering "yes".

²⁰ *Johnson*, [*supra*](#) note 7.

[30] *Savoie-Forgeot*²¹ dealt with a similar violation under section 40 of the [HA Regulations](#). The court noted the applicant had an obligation to present products for inspection under subsection 16 (1) [HA Act](#). The applicant answered “yes” on the Declaration Card. When asked about what specific food they were importing, they provided an itemized receipt, thus voluntarily making the products available for inspection. The court noted in its conclusion that an individual has a duty to fully declare agricultural products they bring into Canada.

[31] Customs officials may need to ask clarifying questions to determine whether the specific product imported is allowed or may be imported with proper documentation, to prevent animal disease entering Canada. Travellers must truthfully answer any questions asked by a customs officer. It is not enough to simply answer “yes” on the Declaration Card and fail to provide specifics when asked.

[32] Ms. Santos answered “yes” on the Declaration Card but when asked, did not specify all the agricultural products she imported. By not declaring specifically, Ms. Santos did not truthfully answer questions asked by the Officers about what food she brought into the country. A truthful answer would specify all agricultural products imported. Ms. Santos did not specify the canned corned beef, therefore she failed to present it for inspection.

[33] The Agency proved all four essential elements of the violation. Ms. Santos is the person identified on the Notice. Ms. Santos imported agricultural products into Canada. No exceptions available under the [HA Regulations](#) applied. Ms. Santos did not declare canned corned beef at first contact with Agency Officers, and therefore did not make the product available for inspection.

IV. Issue 4: Did the Applicant establish an allowable defence?

[34] Ms. Santos submitted several defences to her actions:

1. She acted in good faith.
2. Her intention was to be honest.
3. She did not intend to hide the cans of corned beef.
4. She did not intend to violate the rules.
5. She believed that by answering “yes” on the Declaration Card she fully declared everything.

²¹ *Savoie-Forgeot*, [supra](#) note 6.

[35] There are very few allowable defences to failing to declare an agricultural product imported into Canada. The law does not allow a reasonable and honest belief as an excuse. For example: “I believed that by marking “yes” on the Declaration Card I fully declared all agricultural products imported into Canada.” Due diligence is not an allowable defence. For example: “I did my best to follow the rules.”²² Acting in good faith is part of due diligence, therefore is also excluded as a defence.²³

[36] The common law historically allows certain justifications or legal excuses²⁴ such as mistake of law induced by a person in authority, automatism and necessity.²⁵ Ms. Santos did not raise any of these as a defence, and none apply in this case. Ms. Santos did not establish an allowable defence.

V. Issue 5: Was the penalty assessed according to the AAAMP Act and Regulations?

[37] The [AAAMP Act](#) grants Border Services Officers the discretion to issue a Notice with penalty or with warning.²⁶ The [AAAMP Regulations](#) classify violations as minor, serious or very serious. Subsection 16 (1) of the [HA Act](#) is a “very serious” violation. The penalty for a very serious violation committed by an individual not in the course of a business or to obtain a financial benefit is fixed at \$1300.²⁷ There is no provision to adjust this amount.

[38] According to the Secondary Officer’s Narrative Report as well as Ms. Santos’ submissions, they discussed which agricultural product would be the basis for the Notice. According to Ms. Santos, after discovering the canned corned beef and pork sausages, the Secondary Officer initially advised that they would issue a Notice with a penalty of \$800. A similar violation under subsection 40 of the [HA Regulations](#) carries a penalty of \$800. The Officer’s notes record they advised Ms. Santos they needed to complete inspecting all the luggage before issuing a Notice. Both parties confirmed that the Secondary Officer advised that importing duck eggs was a very serious violation and the penalty would be more expensive. Ms. Santos imported and failed to declare six different animal products, each of which was subject to a separate Notice, each with a penalty of \$1300.

[39] There is no specific evidence to indicate why the Agency chose to issue the Notice based on canned corned beef rather than any other agricultural product found in Ms. Santos’ luggage. Nor why they chose to issue a Notice based on a violation of subsection 16 (1) of the [HA Act](#) with a fixed penalty of \$1300 rather than a warning, or proceed under subsection 40 of the [HA Regulations](#).

²² [AAAMP Act](#), [supra](#) note 10, s 18(1).

²³ See [Les fermes G. Godbout & fils inc. v. Canada \(Canadian Food Inspection Agency\), 2006 FCA 408](#) at para 9.

²⁴ [AAAMP Act](#), [supra](#) note 10, s 18(2).

²⁵ [Doyon](#), [supra](#) note 17.

²⁶ [AAAMP Act](#), [supra](#) note 10, s 7(2).

²⁷ [AAAMP Regulations](#), [supra](#) note 11, s 5(1)(c).

[40] Ms. Santos submitted she was strongly opposed to the penalty and requested that the Tribunal, as well as the Minister, waive the penalty. She submitted that the Secondary Officer advised her that the penalty would be reduced by 50% if she paid the penalty upfront but was not advised that she could have fifteen days to pay the discounted penalty. The Secondary Officer's Narrative Report notes that they explained the reduced fine could be paid that day or in the next fifteen days.

[41] The Notice has a section at the bottom entitled "for CBSA use if payment is made at point of entry". There is a statement acknowledging that the person named in the Notice chooses to pay the penalty (reduced by 50%) within fifteen days of the date of service and thereby acknowledge they committed the violation. The amount of the reduced penalty (\$650) is specified and there is a line for the violator to sign. Ms. Santos had adequate notice that she had 15 days to pay a reduced penalty.

[42] The Minister's decision concluded that the Minister has no ability to change a Notice with penalty to one with warning, to reduce the penalty or to forgive the violation. The [AAAMP Act](#) does not expressly grant the Tribunal the authority to vary or waive the amount of penalty.

[43] Ms. Santos did not submit any legal reasons explaining how the Tribunal might have authority to vary or waive the penalty. She requested that the Tribunal waive the penalty because she believed she did not violate the rules. I have found that she did violate subsection 16 (1) of the [HA Act](#) and that by not specifically declaring all agricultural products she imported, she did not truthfully answer questions asked by the Officers. The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

5. CONCLUSION

[44] Ms. Santos knew that she had canned corned beef as well as other agricultural products in her luggage. She knew or believed that some of the items that she was bringing were "not allowed" and should be declared. Officers at both primary and secondary inspection asked Ms. Santos what kind of food she was bringing into the country. She declared only bulk of fish/dried fish. Ms. Santos maintained throughout the review processes that answering "yes" on the Declaration Card was all that was required to declare an agricultural product for inspection.

[45] Answering "yes" on the Declaration Card is the first step. However, a traveller must also truthfully answer questions asked by Officers. Ms. Santos did not. The truthful answer to the question "What kind of food are you bringing into the country?", was to itemize all agricultural products imported: canned corned beef, duck eggs, fresh pork sausage, beef and chicken broth, as well as dried fish. Because she did not fully declare all agricultural products she imported, Ms. Santos failed to present them for inspection.

[46] The Minister's decision noted that if Ms. Santos' luggage had not been inspected, the animal products would have unlawfully entered Canada posing a potential risk to crops, livestock or the environment.

[47] Ms. Santos failed to present the canned corned beef in violation of subsection 16 (1) of the [HA Act](#). She did not establish an allowable defence. The \$1300 penalty was imposed in accordance with the [AAAMP Act](#) and Regulations. She must pay the penalty.

6. ORDER

[48] I confirm the Minister's finding in decision #18-01422 that Liza Santos committed the violation in Notice #4971-18-0628 dated May 16, 2018. Ms. Santos must pay the penalty of \$1300 to the Canada Border Services Agency within thirty days of notification of this decision.

[49] I wish to inform Ms. Santos that this violation is not a criminal offence. After five years, she may 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 6th day of July 2021.

(Original signed)

Marthanne Robson
Member
Canada Agricultural Review Tribunal