



Citation: *Shan v Minister of Health*, 2021 CART 18

Docket: CART – 2153

BETWEEN:

GUOJI SHAN

APPLICANT

-AND-

MINISTER OF HEALTH

RESPONDENT

[Translation of the official version in French]

BEFORE: Geneviève Parent, Member

WITH: Yuan Zhan Gao for the Applicant

DECISION DATE: July 13, 2021

WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION

[1] This matter concerns a request for review of the decision of the Minister of Health (Minister) to uphold the issuance of Notice of Violation 17QC-013AMP01P and the administrative monetary penalty issued to Mr. Shan. The Pest Management Regulatory Agency (Agency) alleges that Mr. Shan violated paragraph 6(5)(b) of the [Pest Control Products Act](#)¹ (*PCP Act*) by using a pest control product in a way that was inconsistent with the directions on the label recorded in the *Register of Pest Control Products* (Register). This violation was allegedly committed on or about April 28, 2017, in apartment no. 23 of 1150 Ranger, which was inhabited by Ms. Gordon and owned by Mr. Shan. Mr. Shan elected to proceed by written submissions.

[2] Mr. Shan did not handle or use the pest control product in Ms. Gordon's unit. Rather, the review of the facts indicates that he instructed another tenant to apply a pest control treatment.

[3] However, subsection 20(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)² (*AAAMP Act*) provides for vicarious liability in the following terms: "A person is liable for a violation that is committed by any employee or agent of the person acting in the course of the employee's employment or the scope of the agent's authority, whether or not the employee or agent who actually committed the violation is identified or proceeded against in accordance with this Act."

[4] The Canada Agricultural Review Tribunal (Tribunal) must therefore decide whether the Agency has demonstrated, on a balance of probabilities, the essential elements of an indirect violation of paragraph 6(5)(b) of the [PCP Act](#):

Element 1 – The person named in the Notice of Violation is the person who personally, or as agent or employer, committed the violation.

Element 2 - A pest control product was handled and used in a way that was inconsistent with the directions on the label recorded in the *Register*.

[5] In this case, the fact that a tenant applied a pest control treatment in a way that was inconsistent with the directions on the label recorded in the *Register*, thereby contravening paragraph 6(5)(b) of the *PCP Act*, is not in dispute. Furthermore, the Tribunal is of the opinion that this conclusion is supported by the evidence as a whole, and in particular by the labels in the *Register*, the laboratory analyses conducted, the photographs of the residue in the apartment and the testimony of Mr. Shan and Ms. Gordon.

¹ [Pest Control Products Act, SC 2002, c 28.](#)

² [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40.](#)

[6] The Tribunal need therefore only determine whether the Agency has demonstrated, on a balance of probabilities, the first essential element, to the effect that Mr. Shan, as employer or agent, is liable for the violation committed by this tenant.

[7] It should be noted that the tenant who carried out the pest control operation in Ms. Gordon's unit refused to be interviewed by Inspector Sauvé, notably, because of his status under federal immigration law.

[8] The Tribunal will also respond to Mr. Shan who, in his request for review, challenges the Agency's introduction of exhibits 34 and 35, which were considered by the Minister in making his decision, and accuses the Agency of bias by suggesting that it relied solely on the testimony of Ms. Gordon.

[9] For the reasons that follow, and having considered all the evidence, the Tribunal is of the opinion that the Agency has established, on a balance of probabilities, that the Applicant committed the alleged violation, and confirms the Minister's decision.

2. BACKGROUND

[10] After receiving reports regarding the potentially improper use of pesticides, on May 12, 2017, Inspector Sauvé went to Ms. Gordon's dwelling to conduct the necessary checks. He found substantial amounts of [TRANSLATION] "chalky" looking, whitish spray residue on several surfaces in the dwelling, including the floor, furniture and inside drawers. Analysis of the three samples taken by Inspector Sauvé revealed that the pest control product used was Tempo 20 WP®. This product is approved for the control of bed bugs in spot treatments only.

[11] Mr. Shan did not handle or use the pest control product in Ms. Gordon's unit. Rather, a review of the facts indicates that he instructed another tenant to apply a pest control treatment.

[12] In that respect, Mr. Shan's version of these events changed more than once during the course of the proceedings.

[13] On October 23, 2017, Mr. Shan confirmed to Inspector Sauvé that he had asked the tenant who applied the pest control treatment to check the infested unit and treat it with *The Exterminator P-42* if necessary.

[14] On April 8, 2018, Mr. Shan [TRANSLATION] "solemnly" stated in writing to Inspector Sauvé that he [TRANSLATION] "never instructed anyone to apply any pest control product in apartment 23 of 1150 Ranger," other than an exterminator called ASTRO Extermination.

[15] On June 2, 2019, in his request to the Minister for a review of the Notice of Violation, Mr. Shan claimed that he had suggested the use of this product directly to Ms. Gordon, who had then asked the tenant to perform the pest control treatment. In this version, he specified that the latter is not his employee and that he probably obtained the Tempo 20 WP® himself to help his friend, Ms. Gordon.

[16] On September 18, 2019, as part of a document provided in support of his request for review by the Minister of the Notice of Violation, Mr. Shan partially reverted to his original version of events, contradicting an important element of his statements of April 8, 2018, and June 2, 2019. Indeed, in the September 18, 2019, document, Mr. Shan stated that out of kindness, he promised the tenant that he would send someone to check for bedbugs and treat her unit. In this version of events, he added that it was his idea to send the very tenant who performed the pest control treatment and that he called him to give him instructions to do so. According to this version of events, the tenant himself went to Mr. Shan's office for the steam generator and *The Exterminator P-42* product that Mr. Shan asked him to use. That tenant then called Ms. Gordon to make an appointment with her. Finally, after carrying out the pest control treatment in Mrs. Gordon's home, the tenant contacted Mr. Shan to report on the situation.

[17] In light of these general contradictions regarding Mr. Shan's exact involvement in the application of the pest control treatment in Ms. Gordon's home, the Tribunal is of the view that more weight must be given to the version of facts offered by Ms. Gordon. It should be noted that this version is broadly consistent with the version of facts provided by Mr. Shan in the September 18, 2019, document.

[18] Ms. Gordon indicated to Inspector Sauvé and consistently throughout the proceedings that Mr. Shan asked a tenant, whom she considers to be Mr. Shan's handyman, to perform the pest control treatment in her unit. She further stated that this tenant returned to do work in her apartment after the April 28, 2017, pest control treatment, including painting her bathroom.

[19] While he denies that said tenant was his employee at the time of the pest control treatment in Ms. Gordon's unit on April 28, 2017, Mr. Shan does admit that the same tenant was once his employee and that he performs various jobs in the units, including pest control treatments.

[20] Furthermore, Mr. Shan argues that he never provided the tenant with any product other than *The Exterminator P-42* and that he never purchased the actual pest control product found in Ms. Gordon's apartment (Tempo 20 WP®). This evidence is not contradicted by any other evidence from the Agency.

3. ISSUES

[21] The Tribunal will answer the following four questions in order:

1. Should the Tribunal reject exhibits 34 and 35 submitted to the Minister?
2. Did the Agency show bias by giving more credibility to Ms. Gordon's testimony?
3. Has the Agency established, on a balance of probabilities, the first essential element, to the effect that Mr. Shan, as an employer or agent, is liable for the violation committed by this tenant?
4. Was the amount of the administrative monetary penalty of \$3,200 established in accordance with the [*Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations*](#)?

4. ANALYSIS

I. 4.1 Should the Tribunal reject exhibits 34 and 35 submitted to the Minister?

[22] Section 14 of the [*AAAMP Act*](#) clearly explains the Tribunal's role in a request for review of a decision made by the Minister. The Tribunal "shall, by order, as the case may be, (a) confirm, vary or set aside any decision of the Minister under section 12 or 13, or (b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty".

[23] In so doing, the Tribunal must review all the evidence presented before the Minister to assess its relevance in determining whether the Minister's decision should be confirmed, varied or set aside.³

[24] On November 6, 2020, the Tribunal requested that the Agency send all the exhibits listed in its report, as well as any other documents that had been submitted to the Minister as part of the request for review. In an email received on November 13, 2020, the Agency sent the Tribunal all the exhibits submitted to the Minister, including exhibits 34 and 35.

[25] As such, exhibits 34 and 35, which were submitted to the Minister, will be considered by the Tribunal, which will assess their relevance and give them the evidentiary weight it deems appropriate, particularly in light of the fact that they were collected in the context of events that are distinct from those which concern us here.

II. 4.2 Did the Agency show bias?

[26] In his request for review, Mr. Shan alleges that the Agency showed bias in, according to him, little credibility and giving considerable weight to the testimony of the tenant, Ms. Gordon, with whom he is allegedly involved in disputes on other matters.

³ Canada Agricultural Review Tribunal, "Practice Note #13 – Presenting New Evidence for a Review of a Minister's Decision," (September 28, 2020) online: <https://cart-crac.gc.ca/cases/documents/practice-notes/practice-notes-nb-13-october-2020.pdf>.

[27] As set out in the second part of this Order, the analysis of the record shows that Mr. Shan switched between different versions of the facts over the course of the proceedings.

[28] In the landmark [Doyon](#)⁴ decision, the Federal Court of Appeal found that under the system created by the [AAAMP Act](#), a decision maker must “be circumspect in managing and analyzing the evidence and in analyzing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision maker’s reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.”

[29] In this context, a decision maker “may reject relevant evidence, but it cannot disregard it, especially if it contradicts other evidence of an essential element of the case”.⁵

[30] The Tribunal must necessarily analyze the evidence as a whole, however, and in particular, consider the impact of contradictions on the credibility of the parties and the veracity of the alleged facts, on a balance of probabilities.⁶

[31] After a full analysis of the evidence, the Tribunal is of the opinion that the applicant’s credibility and the credibility of the facts he has put forward are strongly affected by the contradictory statements he made throughout this matter.

[32] The Tribunal also notes that the factual framework presented by Ms. Gordon has remained consistent and unchanged since the beginning of the proceedings, and this lends her a high degree of credibility.

[33] As a result of this analysis, the Tribunal is therefore of the opinion that the Agency did not show bias.

III. 4.3 Is Mr. Shan vicariously liable pursuant to subsection 20(2) of the [AAAMP Act](#)?

[34] Subsection 20(2) of the [AAAMP Act](#) provides for vicarious liability in the following terms: “A person is liable for a violation that is committed by any employee or agent of the person acting in the course of the employee’s employment or the scope of the agent’s authority, whether or not the employee or agent who actually committed the violation is identified or proceeded against in accordance with this Act.”

[35] As noted in [Les Élevages J. Fortin](#)⁷, subsection 20(2), which provides for the vicarious liability of the employer or agent, is one of the most important legal instruments in the [AAAMP Act](#) for encouraging regulatory compliance by the agri-food sector.

⁴ [Doyon v Canada \(Attorney General\), 2009 FCA 152](#) at para 28.

⁵ [Doyon v Canada \(Attorney General\), 2009 FCA 152](#) at para 54.

⁶ See [F.H. v McDougall, 2008 SCC 53](#) at paras 58–59 & 86; In the context of the [AAAMP Act](#), see [Canada \(Attorney General\) v Fauteux, 2020 FCA 165](#) at para 16.

⁷ [Les Élevages J. Fortin v Canadian Food Inspection Agency, 2019 CART 13](#).

[36] This is particularly relevant in the context of the [PCP Act](#), the primary objective of which is to prevent significant risks to individuals and the environment from the use of these products.

[37] However, subsection 20(2) of the [AAAMP Act](#) does not specify how the terms “employee,” and “agent,” and in the French version of the Act, “employeur,” “mandant” and “mandataire,” are to be interpreted. These terms have a specific and distinct legal scope in the common law and the civil law. For example, a contract of mandate may have a narrower meaning in the [Civil Code of Québec](#) (CCQ) than in the common law.⁸

[38] This issue of interpretation has been the subject of significant litigation in Canada, particularly in tax matters. Canadian case law has recognized the complementarity principle, pursuant to which “to interpret a concept of private law not defined in a federal statute, we must turn to the private law of the province where the federal law applies.”⁹ This principle is codified in sections 8.1 and 8.2 of the [Interpretation Act](#).¹⁰

[39] Given that the facts of this case took place in the province of Quebec, the concepts of “employee” and “agent” in subsection 20(2) of the [AAAMP Act](#) must be interpreted in light of the relevant provisions of the [CCQ](#).

[40] In Quebec, contracts of employment and mandate are considered to be nominate contracts and are precisely defined by the [CCQ](#). It is therefore on this legal basis that we will assess whether the Minister’s decision confirming Mr. Shan’s vicarious liability should be set aside, varied or confirmed.

Can Mr. Shan be considered to be the agent of the tenant he asked to perform the pest control treatment in Ms. Gordon’s home?

[41] According to article 2130 of the [CCQ](#), a mandate is “a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.”

⁸ Civil law doctrine recognizes, for example, that [TRANSLATION] “a contract of mandate has a narrower meaning than the ordinary meaning of mandate.” See Frédéric LÉVESQUE, *Précis de droit québécois des obligations*, Yvon Blais, Cowansville, 2014, p 171.

⁹ See in particular [Canada v Raposo, 2019 FCA 208](#) at para 24; [Salaberry-de-Valleyfield \(Ville de\) c Lavigne, 2014 QCCA 937](#) at paras 21–41; [Canada v 9101-2310 Québec Inc., 2013 FCA 241](#) at paras 44 and 54; [9041-6868 Québec Inc. v Canada \(Minister of National Revenue\), 2005 FCA 334](#) at paras 2–7.

¹⁰ [Interpretation Act, R.S.C. 1985, c. I-21](#); [Grimard v Canada, 2009 FCA 47, \[2009\] 4 FCR 592](#).

[42] The case law on this provision teaches us that the mandate requires two essential elements: (1) a power of representation conferred by the mandator on the mandatary; and (2) the performance of a juridical act with a third person,¹¹ as opposed to a mere material act.¹² In the absence of this limitation to a juridical act concluded with a third person, the more general understanding of mandate as the [TRANSLATION] “ [p]ower that one person gives to another to act on his behalf”¹³ is not sufficient to reflect the notion of mandate in the [CCQ](#).

[43] We are therefore of the opinion that the evidence presented to the Minister in this case cannot support the existence of a mandate between Mr. Shan and the tenant who carried out the pest control treatment, in that the application of a pest control product does not constitute a juridical act within the meaning of article 2130 of the [CCQ](#).

Can Mr. Shan be considered to be the employer of the tenant he asked to perform the pest control treatment in Ms. Gordon’s home?

[44] Labour law is clear to the effect that the presence or absence of an employment contract is determined by the criteria established by the [CCQ](#), by case law and by a factual analysis of each situation.¹⁴

[45] The existence of an employment relationship between individuals is materialized by the conclusion of a contract of employment, defined in article 2085 [CCQ](#) as “a contract by which a person, the employee, undertakes, for a limited time and for remuneration, to do work under the direction or control of another person, the employer.” This contract may be written or verbal.

[46] Although doctrine and case law perceive this wording to be flexible, they nevertheless agree on three essential elements for formation of a contract of employment: (1) the employee’s work; (2) the employee’s subordination to the employer; and (3) the employee’s remuneration.¹⁵

¹¹ See [International Air Transport Association v Instrubel, N.V., 2019 SCC 61](#) at paras 41 and ff.; see also [Resolute FP Canada Inc. v Hydro-Québec, 2020 SCC 43](#) at para 62. It should be added that the notion of *agency* in common law also implies the power of the *agent* to affect the legal position of the *principal*, see Gerald FRIDMAN, *Canadian Agency Law*, 3rd ed., LexisNexis, Toronto, 2017, pp 4–5; [Kinguk Trawl Inc. v Canada, 2003 FCA 85](#) at paras 35–36.

¹² Denis LAMONTAGNE and Bernard LAROCHELLE, *Droit spécialisé des contrats. Les principaux contrats : la vente, le louage, la société et le mandat*, Vol. 1, Cowansville, Yvon Blais, 2000, pp 602–603.

¹³ Isabelle JEUGE-MAYNART, ed., *Le Grand Larousse illustré 2021*, Paris, Larousse, *sub verbo* “mandat.”

¹⁴ [Ricard c Melillo](#), 2013 QCCQ 11755.

¹⁵ Fernand MORIN, Jean-Yves BRIÈRE and Dominic ROUX, *Le droit de l’emploi au Québec*, 3rd ed., Wilson & Lafleur, Montréal, 2006, pp 232, 238 and 266 [Le *droit de l’emploi*]; See also Yann BERNARD, André SASSEVILLE, Bernard CLICHE and Jean-Guy VILLENEUVE, eds., *Le droit du travail du Québec*, 7th ed., Yvon Blais, Cowansville, 2013, at pp 88–96; [Dionne v Commission scolaire des Patriotes, 2014 SCC 33](#) at para 34; [Cabiakman v Industrial Alliance Life Insurance Company, 2004 SCC 55](#) at para 27; [9041-6868 Québec Inc. v Canada \(Minister of National Revenue\), 2005 FCA 334](#) at para 11.

[47] Unless there are provisions in a particular statute to the contrary, which is not the case here, the absence of one of these criteria must necessarily lead to a different legal status, which would preclude application of subsection 20(2) of the [AAAMP Act](#) to Mr. Shan's situation and thus exclude his vicarious liability.¹⁶

[48] On the other hand, the doctrine also indicates that the wording of article 2085 of the [CCQ](#) [TRANSLATION] "should allow for an evolving and dynamic approach to legal status, so as to capture under this title diverse situations that nevertheless include the three essential elements, but in widely varying proportions."¹⁷ Furthermore, the intensity of each of the three criteria may vary significantly from one case to another, sometimes requiring a more in-depth analysis in order to arrive at an appropriate characterization.¹⁸

[49] In this case, careful analysis of the evidence, on a balance of probabilities, supports the existence of an employment contract between Mr. Shan and the tenant who performed the pest control treatment.

[50] The evidence presented by the Agency, coupled with that presented by the Applicant, satisfies us, on a balance of probabilities, that the three elements of an employment contract are present in this case.

[51] First of all, we are dealing with the performance of work. According to doctrine and case law, the nature of the work performed is not important and [TRANSLATION] "its performance may be regular or intermittent, full time or part time."¹⁹ Therefore, the tenant's service in this case, namely that of applying a pest control treatment as per Mr. Shan's instructions and using the instruments and the product provided by Mr. Shan in a dwelling that does not belong to him, most certainly meets this requirement.

[52] Furthermore, the notion of legal subordination is a question of fact, assuming that the employer has the ability to determine, supervise and control the work to be performed by the employee.²⁰ The courts have gradually come to appreciate this reality, moving away from the [TRANSLATION] "classic" view involving immediate supervision and control over the manner in which the work is performed to a [TRANSLATION] "broad" or "realistic" view of subordination, in which the employer primarily determines the framework within which the work is performed.²¹

¹⁶ *Le droit de l'emploi*, *supra* note 15, at p 238.

¹⁷ *Ibid* at p 263.

¹⁸ *Ibid* at p 238.

¹⁹ BERNARD, SASSEVILLE, CLICHÉ and VILLENEUVE, *supra* note 15, at pp 88–89.

²⁰ *Ibid* at pp 90–93.

²¹ Dominic Roux, Jean-Pierre Villaggi, Fernand Morin, Jean-Yves Brière, *Le droit de l'emploi au Québec*, 4th ed., Montréal, Éditions Wilson et Lafleur, 2010, II-55; [Bermex International inc. c Agence du revenu du Québec, 2013 QCCA 1379](#).

[53] Case law and doctrine consider subordination to be the most important of the three requirements for an employment contract.²²

[54] In this case, the evidence supports our view that the tenant was acting on the instructions of Mr. Shan. He carried out the pest control treatment in Ms. Gordon's home at Mr. Shan's request. He was to use the pest control devices and products provided by Mr. Shan. Mr. Shan maintains in his evidence that the Tempo 20 WP® found by Inspector Sauvé in Ms. Gordon's home is not the product that he provided to the tenant to apply the pest control treatment in Ms. Gordon's home. The evidence also shows that the tenant reported back to Mr. Shan when his work was completed. It appears from the evidence, including that of Mr. Shan that Mr. Shan clearly determined the scope of the tenant's work in applying a pest control treatment in Ms. Gordon's home.

[55] While the notion of remuneration in its form and origin must be interpreted broadly²³, no employment contract was submitted into evidence and the tenant who carried out the treatment refused to speak with Inspector Sauvé because of his irregular immigration status.

[56] A decision maker may, however, consider circumstantial and indirect evidence if it is not possible to obtain written evidence to confirm the existence of a contract.²⁴ This is particularly relevant in the case of the employment of persons in an irregular immigration situation who do not have papers or work permits.

[57] An examination of these general principles of the law of evidence encourages us not to examine the criteria of employee work, remuneration and legal subordination in a void.

[58] Indeed, the Agency's evidence shows that Ms. Gordon, to whom the Tribunal accords a great deal of credibility, considers the tenant who performed the pest control treatment at her home to be Mr. Shan's employee and handyman.

[59] The evidence also shows that after the pest control treatment, this same tenant returned to do further work in Mrs. Gordon's home, again at the request of Mr. Shan. Among other things, he painted her bathroom.

[60] Although Mr. Shan now denies that the tenant was his employee at the relevant time, he told Inspector Sauvé that this same tenant did various jobs for him, including applying pest control treatments in the units owned by Mr. Shan.

²² Marie-Franche Bich, "Le contrat de travail," in *La réforme du Code civil*, Vol. 2, Barreau du Québec and Chambre des notaires du Québec, Sainte-Foy, P.U.L., 1993, at p 752; [Murat c Construction DJL inc., 2015 QCCS 3242](#); [article 2085-18](#), [Bureau d'études Archer inc. c Dessureault, 2006 QCCA 1556](#).

²³ [Ricard c Melillo, 2013 QCCQ 11755](#).

²⁴ Sydney N. LEDERMAN, Alan W. BRYANT and Michelle K. FUERST, *The Law of Evidence in Canada*, 5th ed., LexisNexis, Toronto, §2.84-§2.85.

[61] Finally, with regard to the review of the evidence, it seems unlikely to us that the tenant would, without any remuneration, agree to apply a pest control treatment in a dwelling that does not belong to him, out of sheer goodwill and without any protection or training for doing so, and to then return to the same dwelling and carry out other work, always at the request and under the supervision of Mr. Shan.

[62] We conclude from a review of all the evidence, on a balance of probabilities, that an employment contract bound Mr. Shan to the tenant who performed the pest control treatment at Ms. Gordon's home on or about April 28, 2017.

[63] It should be noted that the case law is evolving towards recognizing, in certain circumstances, the existence of an employment contract in cases involving irregular work permits or non-status workers.²⁵ Certain regulatory reforms are also moving in the direction of protecting workers without permits or status, notably if they are victims of violence, threats, intimidation or financial exploitation.²⁶

[64] It seems obvious that the intention of the legislator behind subsection 20(2) of the [AAAMP Act](#) is not to allow an employer to avoid vicarious liability by retaining the services of an immigrant with irregular status or by encouraging undeclared work.

IV. 4.4- Was the amount of the administrative monetary penalty of \$3,200 established in accordance with the regulations?

[65] The amount of the administrative monetary penalty imposed on Mr. Shan was determined in accordance with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations](#).

[66] We believe that the Agency properly assessed the total gravity value given the facts of the case, including recognizing that Mr. Shan has not committed or been convicted of a similar violation in the past five years, thereby reducing the administrative monetary penalty from \$4,000 to \$3,200.

5. CONCLUSION

²⁵ Driven by [Still v M.N.R., 1997 CanLII 6379, \[1998\] 1 FC 549](#).

²⁶ R.A. Laniel and G. Lavoie, "La validité du contrat de travail et l'absence de permis de travail régulier : vers une protection élargie pour les travailleurs migrants?" in *Développements récents en droit du travail* (220).

[67] Through subsection 20(2) of the [AAAMP Act](#), Mr. Shan is vicariously liable for the violation of paragraph 6(5)(b) of the [PCP Act](#), because his employee used a pest control product in a way that was inconsistent with the directions on the label recorded in the *Register of Pest Control Products*, and he committed this violation in the course of his duties, since he was acting on behalf and in the interest of Mr. Shan, the owner of Ms. Gordon's dwelling. It is therefore irrelevant how the tenant obtained the pest control product found in Ms. Gordon's home.

6. ORDER

[68] Having considered the parties' written submissions and all the evidence on the record, the Tribunal, **BY ORDER**, confirms the Minister's decision.

[69] The amount of the Administrative Monetary Penalty payable by Mr. Shan is \$3,200.

[70] The Tribunal wishes to inform Mr. Shan that this violation is not a criminal offence. In five years, he may apply to have the violation removed from his record, pursuant to section 23 of the [AAAMP Act](#).

Dated at Québec, Quebec, on this 13th day of July 2021.

(Original signed)

Geneviève Parent
Member
Canada Agricultural Review Tribunal