

Canada Agricultural  
Review Tribunal



Commission de révision  
agricole du Canada

Citation : *Seyfollah v Minister of Public Safety and Emergency Preparedness*, 2021 CART  
28

**Docket: CART-2134**

**BETWEEN:**

**ZIA SEYFOLLAH**

**APPLICANT**

**- AND -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENT**

**BEFORE: Marthanne Robson, Member**

**WITH: Mr. Zia Seyfollah, representing himself, and  
Ms. Stephanie Belanger, representing the Respondent**

**DECISION DATE: November 1, 2021**

**WRITTEN SUBMISSIONS ONLY**

## **1. OVERVIEW**

[1] Mr. Zia Seyfollah, the Applicant, returned to Canada by air from Iran, bringing ghee in his luggage. He completed and signed a Declaration Card but did not declare the ghee. Mr. Seyfollah proposed many reasons to relieve him of responsibility for committing the violation and paying the penalty. He claimed his English was not fluent enough to understand certain words in the Declaration Card and he forgot to declare the ghee due to his medical conditions. Additionally, he argued that it was a small amount of ghee, not of great value and was for personal use. The facts in this case did not support any of these arguments as a permissible defence or legal reason to relieve him of responsibility for committing the violation. The Canada Agricultural Review Tribunal (Tribunal) does not have the authority to waive or reduce the penalty.

[2] The Tribunal confirms the Minister's<sup>1</sup> conclusion that Mr. Seyfollah violated section 40 of the [Health of Animals Regulations<sup>2</sup>](#) (*HA Regulations*) by importing an animal by-product without proper documentation, and must pay the penalty of \$800.

## **2. LEGAL FRAMEWORK**

[3] The purpose of the [Health of Animals Act<sup>3</sup>](#) (*HA Act*) and [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.

[4] All animal by-products must be declared before or at the time of importation, whether or not they are allowed entry into Canada.<sup>4</sup> Section 40 of the [HA Regulations](#) states that no person shall import an animal by-product into Canada unless they meet certain requirements.

[5] The Canadian Food Inspection Agency (CFIA) 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)<sup>5</sup> which is available to the public.

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<sup>1</sup> Minister of Public Safety and Emergency Preparedness.

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

<sup>3</sup> [Health of Animal Act, SC 1990, c 21](#) [*HA Act*].

<sup>4</sup> *HA Act*, [supra](#) note 3, s 16(1).

<sup>5</sup> Government of Canada, *Automated Import Reference System (AIRS)* online: Government of Canada [https://airs-sari.inspection.gc.ca/airs\\_external/english/decisions-eng.aspx](https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx).

[6] Mr. Seyfollah first requested a review of the facts of the violation by the Minister. He then requested this further review by the Tribunal. The Tribunal can confirm, vary or set aside the Minister's decision.<sup>6</sup> The Canada Border Services Agency (Agency), representing the Minister in this case, submitted that the Tribunal's role is to review the Minister's decision to see if it was either not reasonable, based on the facts, or incorrect, based on the law. That is not the current understanding of the Tribunal's role. Upon reviewing the Minister's decision, the Tribunal conducts a *de novo* review of the facts of the violation which means that the Tribunal examines all the evidence and draws its own factual and legal conclusions about the validity of the Notice of Violation (Notice).<sup>7</sup>

[7] The agency issuing the Notice must prove all the essential elements of the violation on the balance of probabilities. If all the elements are proven, the Tribunal considers whether the applicant has established a permissible defence or legal reason to relieve the applicant of responsibility for committing the violation. If the applicant does not, the Tribunal considers whether the penalty was imposed in accordance with the law.

### **3. ISSUES**

[8] Given the legal framework outlined, the Tribunal must consider the following issues:

1. Which essential elements of the violation of section 40 of the [HA Regulations](#) are in dispute?
2. Is ghee from Iran, whether from sheep or goat, an animal by-product subject to the [HA Regulations](#)?
3. Did Mr. Seyfollah establish an exception in the [HA Regulations](#) that would allow the importation of ghee from Iran?
4. Did the Applicant establish a permissible defence or legal reason to relieve him of responsibility for committing the violation?
  - a. Can Mr. Seyfollah rely on Internet searches that suggest ghee could be imported, with or without declaration?
  - b. Did Mr. Seyfollah's medical conditions relieve him of responsibility for committing the violation?
  - c. Did Mr. Seyfollah have a language impairment that would relieve him of responsibility for committing the violation?
5. Was the \$800 penalty assessed according to the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)<sup>8</sup> (AAAMP Regulations)?

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<sup>6</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40](#), s 14(1) [AAAMP Act].

<sup>7</sup> [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\)](#), 2015 CART 19.

<sup>8</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR 2000-187](#) [AAAMP Regulations].

## **4. ANALYSIS**

### **I. Issue 1: Which essential elements of the violation of section 40 of the [HA Regulations](#) are in dispute?**

[9] The essential elements of a violation of section 40 of the [HA Regulations](#) are<sup>9</sup>:

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.

[10] Mr. Seyfollah does not dispute that he is the person identified in the Notice (element 1). Element 4 is not in dispute. Mr. Seyfollah completed and signed a Declaration Card checking “no” to the question about importing food, plant, and animal products. A detector dog handler referred Mr. Seyfollah to secondary examination on suspicion that an undeclared product was present in his luggage. Upon examination, a Border Services Officer (Officer) found two containers of what they suspected was ghee, along with some admissible baked bread and processed pistachio cookies. There is no dispute that Mr. Seyfollah did not declare the ghee at first contact with Agency officers and therefore did not make it available for inspection. He does not deny failing to declare the ghee and submitted several reasons for that. Those are discussed below.

### **II. Issue 2: Is ghee from Iran, whether from sheep or goat, an animal by-product subject to the [HA Regulations](#)?**

[11] Mr. Seyfollah admitted he imported ghee into Canada. According to the Officer’s notes (Narrative Report), Mr. Seyfollah identified the product found in his luggage as sheep oil. In his written submissions, Mr. Seyfollah referred to the product as goat ghee, and admitted that he had identified it incorrectly by mistake. The Notice identifies “sheep oil ghee” as the product imported without meeting the prescribed conditions. The Agency seized and disposed of the product. Mr. Seyfollah claimed that goat ghee was not in the AIRS database. The AIRS Report submitted by the Agency specifies that butter and milk products from Iran, specifically ghee, should be refused entry<sup>10</sup>. The AIRS Report defines ghee or butter oil as a milk product from any ruminant animal, which includes sheep and goat. Ghee from either sheep or goat is from a ruminant and is an animal by-product. Mr. Seyfollah cannot rely on his own admitted misidentification of a product to avoid responsibility. This proves element 2, Mr. Seyfollah imported an animal by-product into Canada.

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<sup>9</sup> see *Santos v Minister of Public Safety and Emergency Preparedness*, 2021 CART 17.

<sup>10</sup> AIRS report, Import Details for Requirement: 45522 Version: 5, printed 2019-02-08.

**III. Issue 3: Did Mr. Seyfollah establish an exception in the [HA Regulations](#) that would allow the importation of ghee from Iran?**

[12] Element 3 notes there are exceptions described in Section 40 Part IV of the [HA Regulations](#) which allow the importation of an animal by-product if:

- a. the country of origin has been designated free of relevant disease;
- b. the animal by-product has been prepared in a manner that would prevent disease entering Canada; and
- c. the person produces an official certificate from the country of origin confirming this.

[13] Subsection 41(1) of the [HA Regulations](#) allows importation of an animal by-product if an inspector has reasonable grounds to believe product will not introduce disease into Canada. The CFIA has determined that ghee from Iran should be refused entry.<sup>11</sup> Mr. Seyfollah claimed that the ghee he imported could not cause even minor harm to others but did not offer any evidence in support of this assertion.

[14] Mr. Seyfollah submitted that the ghee was for personal use and there was only a small amount which was not of great value. Mr. Seyfollah confirmed that he imported approximately 1 kg of ghee for personal use, with a value of \$9 if purchased in Iran or \$15 in Canada. The AIRS Report notes that imported dairy products from the United States of America, which do not exceed \$20 in value and 20 kg in weight and are for personal use, can be imported without documentation. The exceptions noted in the AIRS Report do not apply to products imported from Iran.

[15] There is no evidence that Mr. Seyfollah had documentation permitting the importation of ghee. The Narrative Report notes that Mr. Seyfollah denied having any permits or documentation. Mr. Seyfollah did not establish any exception that would allow the importation of ghee into Canada (element 3).

[16] The Agency proved all the essential elements of the violation. Mr. Seyfollah committed the violation.

**IV. Issue 4: Did the Applicant establish a permissible defence or legal reason to relieve him of responsibility for committing the violation?**

[17] Mr. Seyfollah submitted several reasons why he should be relieved of responsibility for committing the violation, in addition to those previously discussed:

- a. he acted without intent or negligence;
- b. he did not know he had to declare ghee;
- c. he forgot that he had the ghee in his luggage;
- d. he suffered from medical conditions which prevented him from concentrating;
- e. his Internet research indicated that ghee could be imported;

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<sup>11</sup> AIRS report, *ibid.*

- f. his English was not fluent enough to understand some of the words in the Declaration Card;

[18] A violation under the [HA Regulations](#) is an absolute liability offence. This means that if you have carried out the prohibited act, in this case, importing an animal by-product and not declaring it, there are very few permissible defences. Subsection 18(1) of the [AAAMP Act](#) expressly excludes certain defences to a violation of the [HA Regulations](#). The defences of due diligence, which includes lack of negligence or intent, and mistake of fact (I did not know I had to declare sheep ghee) are expressly excluded by legislation. Forgetfulness is a mistake of fact, therefore is also excluded as a defence.<sup>12</sup>

[19] The common law historically allows certain justifications or legal excuses<sup>13</sup> such as officially induced error and automatism.<sup>14</sup> These are examined below.

#### **4.1 Can Mr. Seyfollah rely on Internet searches that suggest ghee could be imported, with or without declaration?**

[20] Mr. Seyfollah submitted results of Internet searches suggesting ghee could be imported and may or may not require declaration at customs. The documentation appears to be questions and answers from discussion boards, with no indication of either the passenger or product, the country of origin or destination. To establish the defence of officially induced error, the advice would have to come from an appropriate official, such as a Border Services Officer. For example, when the Officer found bread and pistachio cookies in Mr. Seyfollah's luggage, the Narrative Report noted that these were admissible products. Mr. Seyfollah is entitled to rely on that statement. The Internet searches he submitted are not authoritative and cannot be relied on to relieve him of responsibility for committing the violation.

#### **4.2 Did Mr. Seyfollah's medical conditions relieve him of responsibility for committing the violation?**

[21] Mr. Seyfollah submitted medical evidence to support his claim that his medical conditions made him tired, dizzy, and left him without the capacity to concentrate. The Minister's decision did not consider whether Mr. Seyfollah's medical condition amounted to a defence of automatism. The Agency did not dispute any of the medical evidence submitted by Mr. Seyfollah. The Tribunal will examine Mr. Seyfollah's submissions and consider whether his claimed impaired mental state due to his pain and fatigue could form part of a permissible defence of automatism to excuse his actions.

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<sup>12</sup> [Canada \(AG\) v. Klevtsov, 2018 FCA 196](#) at para 11 [*Klevtsov*].

<sup>13</sup> *AAAMP Act*, *supra* note 6, s 18(2).

<sup>14</sup> [Doyon v. Canada \(AG\), 2009 FCA 152](#) at para 11.

[22] In the [Stone](#) decision, the Supreme Court of Canada defined automatism as “a state of impaired consciousness, rather than unconsciousness, in which an individual, though capable of action, has no voluntary control over that action”.<sup>15</sup> The Federal Court of Appeal in [Klevtsov](#)<sup>16</sup> recognized automatism as a defence to a violation for importing fruit into Canada without declaring it, though the facts in that case did not support the defence. The Court noted there were two criteria to establish the defence: first there must be an assertion of involuntariness, and second, confirming psychiatric evidence.<sup>17</sup>

[23] Mr. Seyfollah did not claim involuntariness, rather, that he was tired, in pain and could not concentrate. To establish the defence of automatism, there must be some evidence of factors such as the severity of triggering stimulus, corroborating evidence of bystanders and a medical history of dissociative states. No one factor is determinative. While Mr. Seyfollah did submit some psychiatric evidence, it did not identify a history of dissociative states. As to evidence of bystanders, the Officer noted that Mr. Seyfollah was able to conduct a conversation identifying the product, its purpose (for health) and its value, as well as answering standard questions about packing his luggage. This falls very short of the requirements to establish a defence of automatism.

[24] Mr. Seyfollah’s medical conditions do not relieve him of responsibility for committing the violation.

#### **4.3 Did Mr. Seyfollah have a language impairment that would relieve him of responsibility for committing the violation?**

[25] Mr. Seyfollah claimed that his English was not fluent enough to understand some of the words in the Declaration Card. In previous decisions, the Tribunal concluded that language barriers do not constitute a common law defence.<sup>18</sup> To excuse a person from an absolute liability violation, the language impairment or complete lack of understanding of either English or French would have to amount to a complete inability to appreciate the nature and consequences of their actions.

[26] The Narrative Report notes that Mr. Seyfollah was able to answer questions identifying the luggage as his, as well as identifying the product as ghee, that it was for his son and that he wished to keep it. The Narrative Report also notes that Mr. Seyfollah travelled in and out of Canada six times and had filled out various Declaration Cards previously, though there were no documents filed to substantiate this. In several letters of submission Mr. Seyfollah admitted that during the luggage inspection he understood when the Officer told him that ghee was not permitted.

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<sup>15</sup> [R. v. Stone, 1999 2 SCR 290](#) at para 156.

<sup>16</sup> [Klevtsov, supra](#) note 12.

<sup>17</sup> [Ibid](#) at para 9.

<sup>18</sup> See [Abou-Latif v. Canada \(Canada Border Services Agency\), 2013 CART 35](#); [Gavryushenko v. Canada \(Canada Border Services Agency\), 2016 CART 33](#); [Fatehibanafshevaragh v. Canada \(Canada Border Services Agency\), 2018CART 6](#).

[27] An applicant must raise the language issue at the first opportunity.<sup>19</sup> Mr. Seyfollah first raised the language issue only after the Minister issued the decision, four months after the incident. Mr. Seyfollah did not ask for an interpreter when sent for luggage inspection. He asked to sit and read the Notice following the inspection, explaining he was experiencing some dizziness and pain and was unable to concentrate to read. He did not state that he was unable to understand that document due to a language barrier or complete lack of understanding of the English language.

[28] Mr. Seyfollah did not raise the language issue at the first opportunity. His various submissions indicate it was pain and fatigue causing lack of concentration, rather than an inability to read or understand English that was the problem. Mr. Seyfollah is not relieved of responsibility for committing the violation because of a language impairment.

[29] Mr. Seyfollah did not establish a permissible defence or other legal reason to relieve him of responsibility for committing the violation.

#### **V. Issue 5: Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?**

[30] The [AAAMP Act](#) and [AAAMP Regulations](#) establish a system of administrative monetary penalties (fines) or warnings as a fair and efficient alternative to criminal charges to enforce agri- food legislation, such as the [HA Act](#) and [HA Regulations](#). The [AAAMP Act](#) grants Border Services Officers the discretion to issue a Notice with penalty or with warning.<sup>20</sup>

[31] Section 40 of the [HA Regulations](#) is classified a “serious” violation.<sup>21</sup> The penalty for a serious violation committed by an individual not in the course of a business or to obtain a financial benefit is fixed at \$800.<sup>22</sup> There is no provision that authorizes the Tribunal to adjust this amount.

[32] Mr. Seyfollah requested that the Tribunal, as well as the Minister, waive the penalty. He submitted that he had no prior conviction, the penalty was out of proportion to the value of the product, and he had no income.

[33] 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. Mr. Seyfollah did not submit any legal reasons explaining how the Tribunal might have the authority to vary or waive the penalty. The Tribunal has concluded that it cannot vary or waive the penalty based on circumstantial, humanitarian or financial grounds.<sup>23</sup> The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

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<sup>19</sup> [Mohammadian v. Canada \(Minister of Citizenship and Immigration\)](#), 2001 FCA 191, [2001] 4 FC 85.

<sup>20</sup> [AAAMP Act](#), *supra* note 6, s 7(2).

<sup>21</sup> [AAAMP Regulations](#), *supra* note 8, schedule 1.

<sup>22</sup> [HA Regulations](#), *supra* note 2, s 5(1)(c).

<sup>23</sup> [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 11.



## **5. CONCLUSION**

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

[35] Mr. Seyfollah failed to declare ghee in violation of section 40 of the [HA Regulations](#). He did not establish a permissible defence or legal reason to relieve him of responsibility for committing the violation. The \$800 penalty was imposed in accordance with the [AAAMP Act](#) and [AAAMP Regulations](#). He must pay the penalty.

## **6. ORDER**

[36] The Tribunal confirms the Minister's finding in decision #19-00696 that Zia Seyfollah committed the violation in Notice # 4971-19-0280 dated February 8, 2019. Mr. Seyfollah must pay the penalty of \$800 to the Canada Border Services Agency within thirty days of notification of this decision.

[37] The Tribunal wishes to inform Mr. Seyfollah that this violation is not a criminal offence. After five years, he 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 1<sup>st</sup> day of November, 2021

Original signed

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Marthanne Robson  
Member  
Canada Agricultural Review Tribunal