



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Acheampong v. Canada Border Services Agency*, 2022 CART 06

Docket: CART-2021-BNOV-016

BETWEEN:

LYDIA ACHEAMPONG

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Marthanne Robson, Member

**WITH: Ms. Vanessa Otuo-Acheampong, representing the Applicant, and
Ms. Cassandra Ianni-Lucio and Mr. Kristian Turenne,
representing the Respondent**

DECISION DATE: March 23, 2022

WRITTEN SUBMISSIONS ONLY

1. OVERVIEW

[1] On March 8, 2021, Ms. Lydia Acheampong arrived in Canada by air from Ghana. She made a customs declaration at an automatic kiosk that she was not bringing any food, plant or animal products or by-products into the country. During a search of her luggage by a Border Services Officer (Officer), Ms. Acheampong stated that all she had in her possession was fish. The Officer uncovered 6 kg of dried cow meat with bones and 2 kg of taro root with soil residue.

[2] The Canada Border Services Agency (Agency) issued a Notice of Violation (Notice) to Ms. Acheampong with a penalty of \$1300 for failing to present for inspection dried cow meat with bones contrary to section 16(1) of the [Health of Animals Act](#)¹ (*HA Act*).

[3] Ms. Acheampong did not request an interpreter during the luggage search (secondary inspection). In her Request for Review to the Canada Agricultural Review Tribunal (Tribunal) she claimed that she is not fluent in English and as a result, did not understand what transpired during the search. She claimed that she did not know she had to declare “cow foot” as it was her first time bringing it into the country. She also claimed that it had been a difficult journey to Canada following a family funeral and that she did not mean to break the law. None of those reasons are a permissible defence or legal reason to relieve her of responsibility for committing the violation. Ms. Acheampong must pay the fine.

2. LEGAL FRAMEWORK

[4] The purpose of the [HA Act](#) and the [Health of Animals 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. The [Customs Act](#)³ requires that travellers entering Canada declare all goods they import to an authorized customs officer. The customs declaration must be made at the first opportunity after arriving in Canada.⁴ Those arriving by air may make this declaration at a Primary Inspection Kiosk (PIK) where they scan travel documents and answer questions about the goods in their possession. Upon completion of the PIK process, travellers are issued a receipt, which serves as a record of the declaration made to the Agency.

¹ [Health of Animals Act, S.C. 1990, c. 21](#) [*HA Act*].

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

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

⁴ [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#).

[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)⁵ which is available to the public.

[6] A person who fails to declare accurately an animal product or animal by-product may receive a Notice for violating subsection 16(1) of the [HA Act](#) or section 40 of the [HA Regulations](#).

[7] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)⁶ (AAAMP Act) and [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)⁷ (AAAMP Regulations) set out an enforcement process for issuing Notices and penalties. The [AAAMP Act](#) is an absolute liability regime. That means, if the Agency proves that the person committed the prohibited act, in this case, failing to present cow meat with bones for inspection, there are very few defences or legal reasons to relieve that person of responsibility for committing the violation. The [AAAMP Act](#) explicitly excludes the defences of due diligence (I did my best) and mistake of fact (I was mistaken). The Federal Court of Appeal in the [Doyon](#)⁸ decision described this system of violations and penalties as draconian and highly punitive.

[8] A person can contest a notice by requesting a review of the facts of the violation by the Tribunal to determine if they committed the prohibited act. If the Agency proves all the essential elements of the violation on the balance of probabilities, the Tribunal considers whether the applicant raised a permissible defence or legal reason to relieve them of responsibility for committing the violation, and whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

[9] The essential elements of a violation of subsection 16(1) of the [HA Act](#) are:⁹

1. Ms. Acheampong is the person identified in the Notice;
2. Ms. Acheampong 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 at the time the Notice was issued; and
4. Ms. Acheampong did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

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

⁶ [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), SC 1995, c 40 [AAAMP Act].

⁷ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#), SOR/2000-187 [AAAMP Regulations].

⁸ [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 at para 21.

⁹ [Santos v. Minister of Public Safety and Emergency Preparedness](#), 2021 CART 17.

3. ISSUES

[10] None of the essential elements of the violation are in dispute. Ms. Acheampong is the person identified in the Notice (element 1). She admitted that she imported “cow foot” into Canada (element 2). There is no evidence there were any exceptions under part IV of the [HA Regulations](#) that would allow importation of “dried cow meat with bones” (element 3). Ms. Acheampong did not declare the product at any time. She answered “no” on the declaration to the question about importing food, plant, or animal products, and did not declare the product to the Officer (element 4). The Agency proved all the essential elements.

[11] The only issue in this case is whether Ms. Acheampong raised a permissible defence or other legal reason to relieve her of responsibility for committing the violation.

[12] Issue 1: Did Ms. Acheampong have a language impairment that would relieve her of responsibility for committing the violation?

[13] Issue 2: Did Ms. Acheampong establish a permissible defence?

- a. Is not knowing that cow feet with bones must be declared a permissible defence?
- b. Is lack of intent to commit a violation or fatigue from travelling a permissible defence?

4. ANALYSIS

I. Issue 1: Did Ms. Acheampong have a language impairment that would relieve her of responsibility for committing the violation?

[14] In Ms. Acheampong’s Request for Review, she claimed that she is not fluent in English. The Officer interviewed her in English without an interpreter and she claimed that she did not understand what transpired between her and the Officer. The Agency argued that if Ms. Acheampong’s lack of understanding of English was a genuine issue, it should have been raised at the first opportunity, which in their submission, was when she interacted with the Officer during the luggage search (secondary inspection).

[15] Subsection 18(2) of the [AAAMP Act](#) allows certain common law defences to notices of violation. In [Abou-Latif](#),¹⁰ the Tribunal suggested that a complete lack of understanding of either English or French could be viewed as an “impairment of volition” amounting to “a complete inability to appreciate the nature and consequences of [one’s] actions”. In [Fatehibanafshevaragh](#),¹¹ the Tribunal confirmed that language impediments do not constitute a recognizable common-law defence. In both cases, the Tribunal concluded that the applicants’ lack of understanding of English was not significant enough to excuse their actions.

¹⁰ [Abou-Latif v. Canada \(Canada Border Services Agency\)](#), 2013 CART 35 at paras 34-37.

¹¹ [Fatehibanafshevaragh v. Canada \(Canada Border Services Agency\)](#), 2018 CART 6 at para 42.

[16] The Agency cited the Federal Court of Appeal decision in [Mohammadian](#)¹² as guidance for the proposition that “parties involved in an administrative process” (emphasis added) should raise a complaint about interpretation at the first opportunity. Mr. Mohammadian complained about the quality of interpretation at an administrative hearing. However, it was only later, during the appeal process, that he first raised the issue that he had great difficulty understanding the interpreter and being understood by him. The Court concluded that complaints about the quality of interpretation must be made at the first opportunity, and that it is a question of fact in each case whether it is reasonable to expect the complaint to be made.¹³

[17] The [Mohammadian](#) case applies to complaints about interpretation in “administrative proceedings” (emphasis added) not an administrative process, based on the right to interpretation under section 14 of the [Charter](#).¹⁴ The interaction between a Border Services Officer and a traveller is not an administrative proceeding, though it might be characterized as an administrative process. The first and only administrative proceeding in this matter is the Request for Review to the Tribunal by Ms. Acheampong.

[18] The Agency argued that the Tribunal decision in [Aobuli](#),¹⁵ referring to [Mohammadian](#), confirmed the proposition that a traveller should ask the Agency for language assistance immediately during primary and secondary inspection. The Tribunal disagrees with that submission. In [Aobuli](#) the Tribunal concluded that the applicant’s language proficiency in English was “not so inadequate” to establish a common law defence to the violation. Mr. Aobuli first claimed he required an interpreter in his request for review by the Minister.¹⁶ That was the first opportunity to raise a complaint about interpretation in an “administrative proceeding”. The principal established in [Mohammadian](#) to raise a complaint at the first opportunity in an administrative proceeding was met in that case.

[19] The Tribunal rejects the Agency’s submission that the [Mohammadian](#) case supports the proposition that the first opportunity when a traveller must make a complaint about the quality of interpretation is during the interaction with Agency officers at primary or secondary inspection. Ms. Acheampong complained about lack of interpretation in her submissions for this Request for Review, though not in her initial letter. Nonetheless, it was the first opportunity to make a complaint within an administrative proceeding.

¹² [Mohammadian v. Canada \(Minister of Citizenship and Immigration\)](#), 2001 FCA 191.

¹³ [Ibid](#) at para 13.

¹⁴ [Canadian Charter of Rights and Freedoms](#), s 14, Part I of the [Constitution Act, 1982](#), being [Schedule B to the Canada Act 1982 \(UK\)](#), 1982, c 11: “A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.”

¹⁵ [Aobuli v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 9 at para 23.

¹⁶ [AAAMP Act](#), [supra](#) note 6, s 12(2), 13(2)(b).

[20] This is different than the case of Mr. Seyfollah who requested a review by the Minister, then requested a further review by the Tribunal.¹⁷ He first raised the language issue before the Tribunal only after the Minister issued their decision. The review by the Minister was the first opportunity to raise the language issue in an administrative proceeding, not at the review by the Tribunal.

[21] However, the evidence does not support a finding that Ms. Acheampong's lack of understanding of English amounted to a complete inability to appreciate the nature and consequences of her actions. During the search of her luggage, according to the Officer's handwritten notes, Ms. Acheampong communicated to the Officer that she had travelled to Ghana for her father-in-law's funeral. In her Request for Review she stated that she "had gone back home to bury [her] father-in-law", confirming the Officer's notes, indicating that she was able to understand and communicate in English. At no point during the examination did she indicate that she needed the help of an interpreter. She is not excused of responsibility for committing the violation.

II. Issue 2. Did Ms. Acheampong establish a permissible defence?

2.1 Is not knowing that cow feet with bones must be declared a permissible defence?

[22] Ms. Acheampong's claim that she was unaware she had to declare the dried cow meat with bones is not a permissible defense. Paragraph 18(1)(b) of the [AAAMP Act](#) explicitly excludes the defense of mistake of fact (I was mistaken).

2.2 Is lack of intent to commit a violation or fatigue from travelling a permissible defence?

[23] Ms. Acheampong claimed that she travelled to Ghana for a funeral and "it was a rough journey from the funeral upon arrival." She seems to suggest that because she was tired, she was unable to exercise due diligence in declaring the products she imported. The defence of due diligence includes lack of intent to commit the violation. Paragraph 18(1)(a) of the [AAAMP Act](#) explicitly excludes the defence of due diligence.

III. Penalty

[24] Subsection 16(1) of the [HA Act](#) is classified as a "very serious" violation;¹⁸ the penalty is set at \$1300.¹⁹ The [AAAMP Act](#) does not expressly grant the Tribunal the authority to change a Notice with penalty to one with warning, to reduce or waive the penalty or to forgive the violation. The Tribunal has concluded that it cannot vary or waive the penalty based on circumstantial, humanitarian or financial grounds.²⁰ The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

¹⁷ [Seyfollah v. Minister of Public Safety and Emergency Preparedness, 2021 CART 28](#).

¹⁸ [HA Regulations](#), [supra](#) note 2, schedule 1, part 1, division 1, item 11.

¹⁹ [AAAMP Regulations](#), [supra](#) note 7, para 5(1)(c).

²⁰ [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\), 2016 CART 11](#).

5. CONCLUSION

[25] Ms. Acheampong failed to present for inspection the dried cow meat with bones in violation of subsection 16(1) of the [HA Act](#) as set out in Notice #4974-21-0138. She did not establish a permissible defence or legal reason to relieve her of responsibility for committing the violation. She must pay the \$1300 penalty to the Canada Border Services Agency within sixty days of notification of this decision.

[26] This violation is not a criminal offence. Five years after the date on which Ms. Acheampong pays the penalty, she has the right 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 23rd day of March 2022.

[Original signed]

Marthanne Robson
Member
Canada Agricultural Review Tribunal