



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Dehghani Ashkezari v Canada Border Services Agency*, 2022 CART 04

Docket: CART-2065

BETWEEN:

MANSOUR DEGHANI ASHKEZARI

APPLICANT

-AND-

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEEFORE: Luc Bélanger, Chairperson

WITH: Mr. Mansour Dehghani Ashkezari, representing himself, and
Ms. Kristen Smyth, representing the Respondent

DECISION DATE: February 25, 2022

HEARING DATE: August 19, 2021

1. OVERVIEW

[1] Mr. Mansour Dehghani Ashkezari returned to Canada at the Toronto Pearson International Airport travelling from Iran via Germany, bringing apples in his luggage. Mr. Dehghani Ashkezari completed and signed a E311 Declaration Card but failed to declare the apples found in his luggage.

[2] Mr. Dehghani Ashkezari asked the Canada Agricultural Review Tribunal (Tribunal) to excuse him from paying the penalty because he was unaware his mother put apples in his luggage. Additionally, he only had 4 or 5 apples for his personal consumption and not for commercial reasons or re-export.

[3] The facts in this case, the admissions of Mr. Dehghani Ashkezari and the evidence does not support any of these arguments as a permissible defence or legal reason to relieve him from his responsibility for committing the alleged violation.

[4] The Tribunal concludes that Mr. Dehghani Ashkezari violated section 29 of the [Plant Protection Regulations](#)¹ (*PP Regulations*) by importing into Canada a plant product that could be infested with a pest, or constitutes or could constitute a biological obstacle to the control of a pest without a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export and must pay the administrative monetary penalty of \$800 issued by the Canada Border Services Agency (Agency).

¹ [Plant Protection Regulations, SOR/95-212](#) [*PP Regulations*].

2. LEGAL FRAMEWORK

[5] The purpose of the [Plant Protection Act](#)² (*PP Act*) and the [PP Regulations](#) were enacted to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada. The introduction of unreported or undocumented plants and plant products into Canada has the potential of endangering the quality of life of Canadians. One incident alone can pose a serious risk to our plant and animal health and can endanger our food supply, agriculture, economy, environment and even our own wellbeing. Control measures have therefore been put into place as they are required.

[6] All plants, animal products, animal by-products must be declared before or at the time of importation, whether or not they are allowed entry into Canada. Section 29 of the [PP Regulations](#) states that no person shall import into Canada anything that is a pest or could be infested or constitutes or could constitute a biological obstacle to the control of a pest unless the person has obtained and furnished to an inspector a valid permit number and, as applicable, a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export.

[7] 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 sections 38 to 44 of the [PP Regulations](#).³ Details can be found in the Automated Import Reference System (AIRS)⁴ which is available to the public.

² [Plant Protection Act, S.C. 1990, c. 22](#) [*PP Act*].

³ [PP Regulations](#), *supra* note 1, s 38 to 44.

⁴ Government of Canada, *Automated Import Reference System* (AIRS) online: https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

3. ISSUES

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

1. Which essential elements of the violation of section 29 of the [PP Regulations](#) are in dispute?
2. Did Mr. Dehghani Ashkezari establish a permissible defence or legal reason to relieve him of responsibility for committing the violation?
3. Was the \$800 penalty assessed according to the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)⁵ (AAAMP Act) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)⁶ (AAAMP Regulations)?

4. ANALYSIS

Issue 1: Which essential elements of the violation of section 29 of the [PP Regulations](#) are in dispute?

[9] When the Tribunal is called upon to review the facts of a violation of section 29 of the [PP Regulations](#), the Agency must prove, on a balance of probabilities, that:

- Mr. Dehghani Ashkezari is the person who committed the violation; and
- Mr. Dehghani Ashkezari imported into Canada a plant product that was or could be infested and constitute a biological obstacle to the control of a pest; and
- Mr. Dehghani Ashkezari failed to declare the plant product he imported into Canada to a customs officer upon arrival to Canada; and
- Mr. Dehghani Ashkezari failed to present an importation permit or certificate for the plant.

⁵ [Agriculture and Agri-Food Administrative Monetary Penalties Act, S.C. 1995, c. 40](#) [AAAMP Act].

⁶ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR 2000-187](#) [AAAMP Regulations].

[10] During his testimony, and cross-examination by the Agency representative, Mr. Dehghani Ashkezari conceded to all the essentials elements for this violation.

[11] Mr. Dehghani Ashkezari does not dispute that he is the person identified in the Notice of violation (element 1). Mr. Dehghani Ashkezari admitted during his testimony that he imported the apples into Canada and element 2 is not in dispute. Mr. Dehghani Ashkezari completed and signed a Declaration Card checking “no” to the question about importing food, plant, and animal products. There is no dispute that Mr. Dehghani Ashkezari did not declare the apples first contact with Agency officers and therefore did not make it available for inspection and element 3 is established. Mr. Dehghani Ashkezari failed to present an importation permit or certificate for the apples, and they were discovered only after a search of his luggage (Element 4).

Issue 2: Did Mr. Dehghani Ashkezari establish a permissible defence or legal reason to relieve him of responsibility for committing the violation?

[12] Mr. Dehghani Ashkezari submitted one reason why he should be relieved of responsibility for committing the violation. Mr. Dehghani Ashkezari argued that he was unaware that his mother put the apples in his luggage. This amount to a defence of mistake of facts which is not a permissible defence under subsection 18(1) of the [AAAMP Act](#).

[13] Subsection 18(1) of the [AAAMP Act](#) expressly excludes certain defences to a violation of the [PP Regulations](#). The defences of due diligence, which includes lack of negligence or intent, and mistake of fact (I did not know the apples were in my luggage) are expressly excluded by legislation. A violation under the [PP Regulations](#) is an absolute liability offence. This means that if you have carried out the prohibited act, in this case, importing a plant product t and not declaring it, there are very few permissible defences. Not knowing what was in your luggage is a mistake of fact, therefore is also excluded as a defence.⁷

⁷ [Canada \(AG\) v. Klevtsov, 2018 FCA 196](#) at para 11.

Issue 3: Was the \$800 penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

[14] The [AAAMP Act](#) and [AAAMP Regulations](#) establish a system of administrative monetary penalties (fines) or warnings as a fair and efficient alternative to penal sanctions to enforce agri-food legislation, such as the [PP Act](#) and [PP Regulations](#). The [AAAMP Act](#) grants Border Services Officers the discretion to issue a Notice with penalty or with warning.⁸

[15] Section 29 of the [PP Regulations](#) is classified a “serious” violation.⁹ 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 \$800.¹⁰ There is no provision that authorizes the Tribunal to adjust this amount.

[16] The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

5. CONCLUSION

[17] Mr. Dehghani Ashkezari failed to declare the apples in violation of section 29 of the [PP 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.

⁸ [AAAMP Act](#), *supra* note 5, s 7(2).

⁹ [Health of Animals Regulations, C.R.C., c. 296](#), schedule 1.

¹⁰ [AAAMP Regulations](#), *supra* note 6, at para 5(1)(c).

6. ORDER

[18] I find that Mr. Dehghani Ashkezari has committed the violation in Notice # 4971-18-1955, dated November 30, 2018, and must pay the penalty of \$800 to the Canada Border Service Agency within thirty (30) days after the day on which Mr. Dehghani Ashkezari receives this decision.

[19] The Tribunal wishes to inform Mr. Dehghani Ashkezari 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 25 day of February 2022.



Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal