



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *9331-2569 Québec Inc. v Minister of Agriculture and Agri-Food Canada*,
2022 CART 09

Docket: CART - 1985

BETWEEN:

9331-2569 QUÉBEC INC.

APPLICANT

- AND -

MINISTER OF AGRICULTURE AND AGRI-FOOD CANADA

RESPONDENT

[Translation of the original version in French]

BEFORE: Geneviève Parent, Member

WITH: Mr. Gaétan Bergeron, representing the Applicant; and
Marieke Bouchard, counsel for the Respondent

ORDER DATE: April 6, 2022

In the matter of an application to the Canada Agricultural Review Tribunal pursuant to subsection 13(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) by 9331-2569 Québec Inc. The application seeks a review of the decision concerning Notice of Violation No. 1617QC0015, in which the delegate of the Minister of Agriculture and Agri-Food Canada found that 9331-2569 Québec Inc. had contravened section 51 of the [Plant Protection Regulations](#) (PP Regulations).

BY WRITTEN SUBMISSIONS

1. INTRODUCTION

[1] This matter involves an application to the Canada Agricultural Review Tribunal (Tribunal) for a review to set aside the decision of the Minister of Agriculture and Agri-Food Canada (Minister) with respect to Notice of Violation No. 1617QC0015 issued by the Canadian Food Inspection Agency (Agency). The Minister's decision concludes that 9331-2569 Québec Inc., as owner and agent, contravened section 51 of the [PP Regulations](#) by conveying ash logs without complying with the regulatory requirements.

[2] For the reasons that follow, and having examined all the evidence, the Tribunal is of the opinion that the Agency has failed, on a balance of probabilities, to establish that 9331-2569 Québec Inc. committed the alleged violation. The Tribunal sets aside the Minister's decision.

2. JUDICIAL HISTORY

[3] The facts alleged in Notice of Violation No. 1617QC0015 date back to the spring of 2016.

[4] Mr. Bergeron is the principal shareholder, director and senior officer of 9331-2569 Québec Inc. He represented 9331-2569 Québec Inc. alone.

[5] When filing his application for review, Mr. Bergeron told the Tribunal that he wished to proceed by way of an in-person hearing.

[6] Four case management conferences (CMC) were held in this matter, and the hearing was postponed several times.

[7] The hearing, which was scheduled for November 28 and 29, 2019, was first postponed because of Mr. Bergeron having to undergo surgery on November 7, 2019, and his condition requiring a period of recovery.

[8] Subsequent hearing dates were also continually pushed back: Mr. Bergeron left the country between January 10, 2020, and March 15, 2020, and Véronique Dumontier, who is the lead witness for the Agency, was on leave for one year beginning February 20, 2020.

[9] At the end of the CMC held on July 6, 2021, and because of the fact that the Applicant's witnesses and one of the Agency's witnesses were still unavailable until November 2021, it was agreed that the hearing would be held in person in Mont-Tremblant on November 8 and 9, 2021.

[10] The Tribunal made it clear to the parties that the proper administration of administrative justice required that it grant no further postponements and that this case—which involves facts dating back to 2016—be heard on November 8 and 9, 2021.

[11] At the same case management conference, Mr. Bergeron raised the possibility that he might ultimately decide to hire a lawyer to represent 9331-2569 Québec Inc. at the hearing.

[12] The Tribunal has, on several occasions since the first CMC, reminded Mr. Bergeron that he may be advised and represented by counsel.

[13] The order issued on July 13, 2021, stated that if the Applicant wished to be represented, he had to ensure that his representative was available to attend the hearing on November 8 and 9, 2021.

[14] On or about October 14, 2021, Mr. Bergeron requested a postponement of the hearing scheduled for November 8 and 9, 2021, for health reasons.

[15] Another CMC was therefore set for October 26, 2021. As Mr. Bergeron still wished to obtain a review of the Minister's decision, the Board reiterated that the proper administration of administrative justice required a prompt decision in this matter and presented Mr. Bergeron with the various options available to him. He could continue with his decision to have a hearing or opt for a decision be rendered on the basis of the record. The Board raised the possibility that the hearing be conducted by telephone, as provided for in the [*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)*](#).

[16] After some consideration, Mr. Bergeron finally decided to proceed on the basis of the record, and the Respondent agreed that the Tribunal would consider the various handwritten letters and faxes sent by Mr. Bergeron in the course of the proceeding as the arguments he would have made orally during an in-person hearing.

3. LEGAL FRAMEWORK

[17] Pursuant to subsection 14(1) of the [*AAAMP Act*](#) in response to an application for review of a Minister's decision, the Tribunal shall confirm, vary or set aside the Minister's decision. In 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.¹ It must also, where appropriate, assess whether the amount of the penalty was established in accordance with the regulations and, if not, substitute the amount it considers to be appropriate.

¹ [*Seyfollah v Minister of Public Safety and Emergency Preparedness, 2021 CART 28*](#), para. 6.

[18] As agreed by the parties, the Tribunal shall issue a decision on the basis of the record, while considering the various handwritten letters and faxes sent by Mr. Bergeron in the course of the proceeding, including the handwritten letter sent by him on June 25, 2019, as the arguments he would have made orally during an in-person hearing.

[19] Notice of Violation No. 1617QC0015 charges 9331-2569 Quebec Inc. with violating section 51 of the [PP Regulations](#) on or about March 14, 2016. This provision reads as follows:

With respect to each item in Schedule II, where a thing listed in column I is to be conveyed from a place in Canada described in column II to a place in Canada described in column III, and the thing

(a) is a pest named in column V of that item;

(b) is or could be infested with a pest named in column V of that item; or

(c) is or could be a biological obstacle to the control of a pest named in column V of that item,

no person shall move that thing unless the requirements set out in column IV are met.

[20] In other words, the regulations in effect in 2016 prohibited the conveyance of ash logs (an item listed in Column I of Schedule II) from Notre-Dame-du-Laus (a place in Canada described in Column II) to Notre-Dame de la Merci (a place in Canada described in Column III), unless the regulatory requirements were met, if those things were or could be infested with the Emerald Ash Borer (a pest named in Column V).

[21] The Emerald Ash Borer is considered to be an extremely destructive plant pest, and the [Plant Protection Act](#) (PP Act) and the [PP Regulations](#) are some of the ways in which it is being controlled.

[22] The elements of the violation the respondent must prove on a balance of probabilities are as follows:

- 1- 9331-2569 Québec Inc. is the person who conveyed the ash logs, either personally or as an employee or agent.
- 2- Ash logs, which are listed in Column I of Schedule II to the [PP Regulations](#), were conveyed from a place described in Column II to a destination described in Column III of Schedule II to the [PP Regulations](#).
- 3- Ash logs were or could be infested with the Emerald Ash Borer.
- 4- 9331-2569 Québec Inc. did not meet the regulatory requirements for this shipment as set out in Column IV of Schedule II to the [PP Regulations](#).

4. FACTS AND PARTIES' SUBMISSIONS

[23] On or about March 14, 2016, ash logs from Ferme Neuve (Luc Piché) were conveyed from Notre-Dame-du-Laus (regulated area for Emerald Ash Borer) to Stéphane Richer's lumber yard in Notre-Dame de la Merci (then unregulated area for Emerald Ash Borer), without the regulatory requirements prescribed by the regulations being complied with.

[24] This transport was done by Transport GB, owned by Serge Richer.

[25] At the time, Serge Richer was working for Ferme Neuve, owned by Luc Piché.

[26] Several loads of wood arrived at Stéphane Richer's lumber yard during the week of March 14, 2016. Two loads reportedly arrived on March 14, 2016, and four more between March 15 and 21, 2016. All were from areas regulated for Emerald Ash Borer.

[27] 9331-2569 Québec Inc., through its principal shareholder, Mr. Bergeron, bought firewood directly from Serge Richer and Luc Piché of Ferme Neuve from among the wood shipments that ended up in Stéphane Richer's yard.

[28] On or about March 14, 2016, Inspector Mestari received a call from an informant reporting that Stéphane Richer was receiving a load of ash logs in his lumber yard.

[29] On or about March 15, 2016, Inspector Mestari and Ms. Bourbeau (Plant Protection Inspector) went to Stéphane Richer's lumber yard and identified ash logs. They stapled a Notice of Detention to the attention of Stéphane Richer on the logs. The discussions that followed with Stéphane Richer confirmed that these ash logs came from areas regulated for the Emerald Ash Borer.

[30] On March 21, 2016, Inspector Mestari and Ms. Bourbeau returned to the yard and met with Stéphane Richer and Mr. Bergeron. As it appears in particular from Mr. Mestari's report, Mr. Bergeron is described as [translation] "the one who paid for the wood for/instead of Stéphane Richer".

[31] Mr. Bergeron's arguments in his various handwritten letters on the record are consistent in this regard: he agreed to buy firewood as a favour to Serge Richer and Stéphane Richer to avoid having the truck come back empty and to preserve his important business relationship with Ferme Neuve and Luc Piché.

[32] Following the visit to the yard on March 21, 2016, the Notice of Detention issued on March 15, 2016, to the attention of Serge Richer was amended to state that nine (9) ash logs would be destroyed under the supervision of the Agency. This amendment was again issued to the attention of Stéphane Richer.

[33] The detained ash was destroyed on March 29, 2016, by JPB Industries under Agency supervision.

[34] Stéphane Richer paid for the destruction of the nine ash logs.

[35] Inspector Mestari stated in his non-compliance report that he had told Stéphane Richer that his file would be analyzed by an Agency investigator.

[36] As the end of his non-compliance report, Mr. Mestari suggested to the Agency that a Notice of Violation with a monetary penalty be issued to Stephane Richer as this was his second non-compliance regarding the transportation of ash from a regulated area to a non-regulated area, and [translation] “he had been negligent and failed in his duty to contact the [Agency] to inform it of the presence of ash logs of non-compliant origin in his yard. His intent [was] questionable”.

[37] On April 19, 2017, following an investigation by Ms. Dumontier (an Agency investigator), a Notice of Violation with a monetary penalty of \$7,000 was instead issued to 9331-2569 Québec Inc.

[38] The Agency concluded that [translation] “9331-2569 Québec Inc., as owner and agent, conveyed ash trees from Notre-Dame-du-Laus, an infested area, to Notre-Dame-de-la-Merci Québec, a non-infested area, without obtaining a Movement Certificate or undergoing a treatment or process to eliminate the pest even though the things could be infested with the emerald ash borer”.² According to the Agency, [translation] “in so doing, 9331-2569 Québec Inc. contravened section 51 of the [PP Regulations](#)”.³

² Agency Report, p. 11.

³ Agency Report, p. 11.

[39] Mr. Bergeron defends himself by saying that he made two purchases of firewood as a favour to Serge Richer, one from Serge Richer and the other from Ferme Neuve (Luc Piché). He claims that he never normally buys firewood and that he had done so in this case at the request of Serge Richer so that his truck would not return empty from Ferme Neuve. He also states that he never paid Serge Richer for this wood.

5. ISSUE

[40] Mr. Bergeron does not dispute that on or about March 14, 2016, ash logs (a thing listed in Column I of Schedule II to the [PP Regulations](#)) that were or could be infested with the Emerald Ash Borer (a pest named in Column V) were conveyed from Notre-Dame-du-Laus (a place in Canada described in Column II) to Notre-Dame de la Merci to the lumber yard of Stéphane Richer (a place in Canada described in column III), without the regulatory requirements set out in column IV being complied with.

[41] This wood was transported by Transport GB, owned by Serge Richer.

[42] Subsection 20(2) of the [AAAMP Act](#) describes 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”.

[43] The evidence shows that 9331-2569 Québec Inc. is not the employer of Serge Richer (Transport GB).

[44] However, Mr. Bergeron admits having, via 9331-2569 Québec Inc., purchased firewood from Serge Richer and Ferme Neuve (Luc Piché).

[45] In this context, the Tribunal need only determine whether the respondent has shown, on a balance of probabilities, that 9331-2569 Québec Inc. is the person who, as agent, committed the alleged violation.

[46] If this is the case, the Tribunal must then assess whether the amount of the administrative monetary penalty of \$7,000 was established in accordance with the regulations and, if not, substitute the amount it considers to be appropriate.

6. ANALYSIS

[47] As noted in [Les Élevages J. Fortin](#), subsection 20(2) of the [AAAMP Act](#), which allows engaging the vicarious liability of employers or agents, is one of the most important legal avenues in the AAMP Act to encourage regulatory compliance in the agri-food sector as a whole.

[48] This is particularly relevant in the context of the [PP Act](#) and its regulations, the purpose of which is 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.

[49] As stated in [Shan](#), “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”.⁴

⁴ Note in particular the recognition by the civil law doctrine that [translation] “[c]ontract of mandate has a narrower meaning than a mandate in the ordinary sense” (see Frédéric LÉVESQUE, *Précis de droit québécois des obligations: contrat, responsabilité, exécution et extinction*, Cowansville, Éditions Yvon Blais, 2014, p. 171).

[50] In this context, Canadian jurisprudence has recognized the principle of complementarity whereby “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”.⁵ This principle is now codified in sections 8.1 and 8.2 of the [Interpretation Act](#).⁶

[51] Since the facts of this case took place in the province of Quebec, the concepts of “employer” and “agent” in subsection 20(2) of the [AAAMP Act](#) must therefore be interpreted in light of the relevant provisions of the [Civil Code of Quebec](#) (CCQ) [NB: the English version of the relevant CCQ provisions uses the terms mandator and mandatary, respectively].

[52] The Minister’s decision concludes that 9331-2569 Québec Inc. should be considered to be the person responsible for the violation in this case rather than Transport GB (Serge Richer), which merely acted as agent on behalf of 9331-2569 Québec Inc. because it was hired by 9331-2569 Québec Inc. to convey the wood that 9331-2569 Québec Inc. had purchased.⁷

[53] Under article 2130 of the [CCQ](#), “[m]andate 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”.

⁵ See in particular [Canada v. Raposo, 2019 FCA 208](#) at para 24; [Salaberry-de-Valleyfield \(Ville de\) v. 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.

⁶ [Interpretation Act, R.S.C. 1985, c. I-21](#); [Grimard v. Canada, 2009 FCA 47, \[2009\] 4 FCR 592](#).

⁷ Minister’s decision, para 35.

[54] As noted in [Shan](#), under the [CCQ](#), a 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 concluded with a third person,⁸ as opposed to a mere material act.⁹

[55] We are of the opinion that the facts in this case do not support the existence of a mandate between 9331-2569 Québec Inc. and Serge Richer.

[56] A mandate in the sense of the [CCQ](#) underlies representation in the performance of a juridical act with a third person. However, Mr. Bergeron purchased firewood directly from Serge Richer and Mr. Piché on behalf of 9331-2569 Québec Inc. (sales contract). The purchase of firewood by 9331-2569 Québec Inc. from Serge Richer does not have the legal effect of making Serge Richer an agent of 9331-2569 Québec Inc. to transport the purchased item to its purchaser. In this case, Mr. Bergeron did not grant a power of representation to Serge Richer allowing him to perform a juridical act with a third person in the name and on behalf of 9331-2569 Québec Inc.

[57] What's more, Inspector Mestari's non-compliance report reveals that several loads of wood arrived at Stéphane Richer's lumber yard during the week of March 14, 2016.

⁸ See Jean-Claude ROYER and Sophie LAVALLÉE, *La preuve civile*, 4th edition, Cowansville, Éditions Yvon Blais, 2008, paras 1317–24; [International Air Transport Association v. Instrubel, N.V., 2019 SCC 61, \[2019\] 4 SCR 469](#) at paras 41 *et seq*; 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 change the legal situation of his *principal*: see Gerald FRIDMAN, *Canadian Agency Law*, 3rd edition, LexisNexis, Toronto, 2017 at pp. 4–5; [Kinkuk Trawl Inc. v. Canada, 2003 FCA 85](#) at paras. 35–36.

⁹ Denis LAMONTAGNE and Bernard LAROCHELLE, *Droit spécialisé des contrats. Les principaux contrats : la vente, le louage, la société et le mandat*, Vol. 1, Cowansville, Éditions Yvon Blais, 2000, at pp. 602–3; Jean-Claude ROYER and Sophie LAVALLÉE, *La preuve civile*, 4th edition, Cowansville, Éditions Yvon Blais, 2008, at paras 1317–24.

[58] To support its case that 9331-2569 Québec Inc. was the owner of the nine ash logs that arrived at Stéphane Richer's wood yard on March 14, 2016, the Agency has submitted a copy of a purchase order that was allegedly made by 9331-2569 Québec Inc. to Aménagement forestier Luc Piché for two loads of wood. However, this order is dated March 19, 2016, that is, five days after the receipt on March 14, 2016, of the ash logs infested with Emerald Ash Borer.

[59] The Agency has also submitted a copy of an invoice that appears to have been issued by Serge Richer's company to 9331-2569 Québec Inc. for three loads of firewood and two trips, dated March 18, 2016, four days after the receipt on March 14, 2016, of the ash logs infested with Emerald Ash Borer.

[60] The Tribunal is of the opinion that these documents do not establish on a balance of probabilities that 9331-2569 Québec Inc. was the owner of the nine ash logs infested with Emerald Ash Borer that arrived at Stéphane Richer's wood yard on March 14, 2016.

[61] Thus, after analyzing all the evidence on file, the Tribunal is of the opinion that the Agency has not established, on a balance of probabilities, that 9331-2569 Québec Inc. (of which Mr. Bergeron is the principal shareholder) is the person who committed the violation alleged in Notice of Violation No. 1617QC0015 as owner and agent.

7. CONCLUSION

[62] Having considered all of the evidence, the Tribunal is of the opinion that the Agency has not established, on a balance of probabilities, that 9331-2569 Québec Inc. committed the alleged violation of section 51 of the [PP Regulations](#) as owner of the ash logs and as agent.

[63] The Tribunal, by **order**, sets aside the Minister's decision regarding Notice of Violation No. 1617QC0015.

Dated at Québec, Québec, on this 6th day of April 2022.

[Signed in original]

Geneviève Parent
Member
Canada Agricultural Review Tribunal