



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Volgyi v Minister of Public Safety and Emergency Preparedness*, 2022 CART 13

Docket: CART-2021-BMR-040

**BETWEEN:**

**EDITH VOLGYI**

**APPLICANT**

**- AND -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENT**

**BEFORE:** Patricia L. Farnese, Member

**WITH:** Ms. Edith Volgyi, representing herself; and  
Ms. Gaynor Holden, representing the Respondent

**DECISION DATE:** May 19, 2022

**HEARING BY WRITTEN SUBMISSIONS ONLY**

## 1. INTRODUCTION

[1] Ms. Volgyi requests that the Canada Agricultural Review Tribunal (Tribunal) set aside or vary the Minister's decision to uphold a Notice of Violation (Notice) and the accompanying \$1300 penalty she received for failing to declare sausages when she entered Canada on a flight from Hungary. I find that Ms. Volgyi failed to declare an animal by-product contrary to subsection 16(1) of the [Health of Animals Act](#) (HA Act). The Notice with \$1300 penalty is upheld.

[2] This decision arises from my review of the Minister's decision #2105296-1 confirming Notice #4971-21-1003. As directed by paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), I have completed a *de novo* examination of the facts, meaning I have drawn my own factual and legal conclusions about the validity of the Notice following a review of the parties' written submissions.

## 2. LEGAL FRAMEWORK

[3] Subsection 12(1) of the [Customs Act](#) requires that travellers declare to an authorized customs officer all goods they are bringing into Canada. The customs declaration must be made at the first opportunity after arriving in Canada. For those entering the country by air, this declaration typically occurs on the Canada Border Services Agency (Agency) E311 Declaration Card or at the Primary Inspection Kiosk (PIK). The declaration's timing is important because those entering Canada are not permitted to take a chance and see if they are sent to secondary screening with a Border Services Officer before declaring.<sup>1</sup>

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<sup>1</sup> See [Canada \(AG\) v Savoie-Forgeot, 2014 FCA 26](#) at para 25.

[4] While failing to declare is an offence under the [Customs Act](#), a person who fails to accurately declare animal by-products may receive a Notice for violating the [HA Act](#) or the [Health of Animals Regulations](#) (*HA Regulations*). The [HA Act](#) and [HA Regulations](#) work together to prevent the introduction of animal diseases into Canada.

[5] The [HA Act](#) and the [HA Regulations](#) are enforced through the uniform enforcement process contained in the [AAAMP Act](#) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (*AAAMP Regulations*). The Agency must prove the essential elements of the violation. The [AAAMP Act](#) is an absolute liability regime. There are almost no defences or legal reasons to excuse someone of liability once the violation has been proven.

[6] The essential elements of subsection 16(1) of the [HA Act](#) that must be proven, on a balance of probabilities, by the Agency are:<sup>2</sup>

1. Ms. Volgyi is the person identified in the Notice;
2. Ms. Volgyi imported an animal, animal product or animal by-product, or animal food into Canada;
3. none of the exceptions listed in Part IV of the [HA Regulations](#) applied; and,
4. Ms. Volgyi did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

[7] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. The Minister's decision can be subsequently reviewed by the Tribunal. Subsection 14(1) of the [AAAMP Act](#) authorizes the Tribunal to confirm, vary, or set aside the Minister's decision after reviewing the facts and deciding whether the applicant committed the violation. In cases where the violation is confirmed, the Tribunal will also consider whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). The Tribunal has not been given the authority to reduce the amount of the penalty where the process has been followed.

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<sup>2</sup> See [Santos v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2021 CART 17.

### 3. ISSUES

[8] To determine whether the Minister's decision to confirm the Notice was correct, the following issues will be considered:

Issue #1: Did Ms. Volgyi import pork into Canada without declaring it?

Issue #2: Are being tired and overwhelmed when arriving at the border or the Officer's demeanor permissible defences?

Issue #3: Was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?

### 4. ANALYSIS

#### **Issue #1: Did Ms. Volgyi import pork into Canada without declaring it?**

[9] The Agency has proven the first element of the violation. Ms. Volgyi does not dispute that she is the person who was sent to secondary inspection upon her arrival at the Pearson International Airport in Toronto, Ontario. She also does not contest that she received the Notice for having not declared sausages. She told the Border Services Officer that she packed her bags and was aware of their contents. The Officer also made photocopies of Ms. Volgyi's passport and Ontario driver's license that confirm Ms. Volgyi's identity.

[10] The Agency has provided sufficient evidence to prove the second element of the violation – that Ms. Volgyi imported an animal by-product into Canada. Ms. Volgyi was selected for secondary inspection after her luggage was identified as containing food products by a detector dog. The Officer's handwritten notes taken while she was inspecting Ms. Volgyi's luggage as well as the report the Officer prepared shortly thereafter indicate that pork sausage was found in a plastic bag when the luggage was opened. Four cans of pork were also discovered when the contents of Ms. Volgyi's luggage were searched. The Officer took photographs of the products and they have been submitted to the Tribunal.

[11] How the Officer determined the unwrapped sausage contained pork and not another meat product or a meat alternative is not explained in any of the materials submitted by the Agency. The photographs clearly show that the product appears to be meat and is sausage. The missing explanation for how the Officer determined the sausage was pork is not fatal to the Agency's case in these circumstances because Ms. Volgyi has not challenged the Officer's assessment that the products were pork. In addition, the Officer's search of the Automated Import Reference System (AIRS) revealed that all preparations of meat and sausages are to be refused entry from Hungary. The Agency has proven on a balance of probabilities that an animal by-product was imported into Canada.

[12] The Agency has also established the third element of the violation by demonstrating that no exceptions were applicable to the sausages that would have permitted Ms. Volgyi to import meat into Canada from Hungary. Section 52 of the [HA Regulations](#) allows a person to import an animal by-product in two circumstances. The animal by-product can be imported if the person receives a permit from the Minister authorizing the import. A person is also able to provide documentation to the border official that explains the details of the by-product's treatment. The official has the discretion to permit the by-product's entry if the documentation provides reasonable assurances that the by-product does not pose a risk of introducing or spreading a vector, disease, or toxic substance into Canada. There is no record in the Officer's notes that Ms. Volgyi produced a permit from the Minister that would allow the sausages' import. Likewise, Ms. Volgyi's letter requesting a review of the Minister's decision does not indicate she had such a permit. The Agency has proven the third essential element of the violation.

[13] The Agency has also proven the final element of the violation by demonstrating that Ms. Volgyi did not declare the sausage at her first opportunity. A copy of the PIK receipt Ms. Volgyi completed when she arrived in Toronto was provided by the Agency. The receipt indicates that Ms. Volgyi did not declare she brought meat into Canada. She was given a further opportunity to declare the sausages when she first met the Officer in secondary inspection and was asked whether she had anything to declare. She again did not declare the sausages. It was only when the Officer found the sausages did Ms. Volgyi admit to having knowledge of the meat products in her luggage.

**Issue #2: Are being tired and overwhelmed when arriving at the border or the Officer's demeanor permissible defences?**

[14] Ms. Volgyi did not raise a permissible defence that would excuse her from being responsible for committing the violation outlined in the Notice. In her submissions to the Tribunal, Ms. Volgyi asserts that she did not see the relevant declaration question. She asks that I consider that this is her first violation despite frequent travel, that she was tired and overwhelmed at the border after a long trip, and that the Officer was disrespectful and rude. The [AAAMP Act](#) does not allow me to consider any of these factors when reviewing the Minister's decision to uphold the Notice.

[15] Section 18 of the [AAAMP Act](#) explicitly excludes defences of due diligence and mistake of fact. But even if these defences were available, Ms. Volgyi has not convinced me that they should apply in this case. Her frequent travel experiences make it difficult to believe that Ms. Volgyi was not aware that animal and animal by-products need to be declared upon entry into Canada. I can accept that one may become tired and overwhelmed at the border after a long, stressful journey and incorrectly complete the declaration form. Fatigue and overwhelm, however, is an unconvincing explanation for why a frequent traveller who deliberately packed multiple meat products made another false declaration after they have been selected for secondary screening and directly asked the question.

[16] The Tribunal has likewise not been granted the authority to review the conduct of Border Services Officers provided they are lawfully exercising the powers granted to them. Subsection 14(1) of the [AAAMP Act](#) is clear, unambiguous, precise, and narrow. The Tribunal must determine whether the facts of the violation have been proven and whether the penalty imposed complies with the requirements outlined in the [AAAMP Regulations](#). A separate complaints process exists within the Canada Border Services Agency to address Officer conduct. Even if I had the authority to consider conduct, the record does not support a finding that the Officer's conduct was unreasonable in the circumstances. The Officer's notes indicate that Ms. Volgyi was given a second opportunity to correct the declaration she made using the automated system, but she declined to do so. Given the fact that Ms. Volgyi did not admit to having any food products until they were discovered, the Officer's reported disbelief that the violation was due to Ms. Volgyi not understanding how to accurately complete the declaration is not unreasonable. No explanation was provided for the false declaration when Ms. Volgyi was directly asked if she has anything to declare by the Officer.

**Issue #3: Was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?**

[17] I find that the \$1300 penalty issued to Ms. Volgyi was imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). Subsection 5(1) of the [AAAMP Regulations](#) mandates a \$1300 penalty for violations which are categorized by the [AAAMP Regulations](#) as very serious. Violations of subsection 16(1) of the [HA Act](#) are categorized as very serious in Schedule 1 of the [HA Regulations](#).

[18] Having determined that the essential elements of a violation of subsection 16(1) of the [HA Act](#) have been established and that the penalty imposed complied with the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#), I find that the Notice issued to Ms. Volgyi with the \$1300 penalty is lawful and justified. The amount, while significant, has purposely been selected by Parliament to act as a deterrent. I have no discretion to alter the amount.

## 5. ORDER

[19] I confirm the Minister's finding that Ms. Edith Volgyi committed the violation in the Notice and must pay the penalty of \$1300 to the Agency.

[20] I order that payment will be made within 90 days of the release of this decision.

[21] I wish to inform Ms. Volgyi that this violation is not a criminal offence. Five years after the date on which the penalty is paid, she is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from their records, in accordance with section 23 of the [AAAMP Act](#).



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Patricia L. Farnese  
Member  
Canada Agricultural Review Tribunal