



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Kankam v Canada Border Services Agency*, 2022 CART 16

Docket: CART-2067

**BETWEEN:**

**ANTHONY KANKAM**

**APPLICANT**

**- AND -**

**CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**BEFORE:** Marthanne Robson, Member

**WITH:** Mr. Anthony Kankam, representing himself, and  
Ms. Gaynor Holden and Ms. Cassandra Ianni-Lucio, representing the  
Respondent

**DECISION DATE:** June 8, 2022

## 1. OVERVIEW

[1] On January 22, 2019, the Canada Border Services Agency (Agency) issued Notice of Violation # 4971-19-0152 (Notice) with a penalty of \$800 to Mr. Anthony Kankam alleging that he failed to declare goat meat, contrary to section 40 of the [Health of Animals Regulations](#)<sup>1</sup> (*HA Regulations*).

[2] Mr. Kankam arrived in Canada from Ghana on February 19, 2019, following the death of his wife. He completed a Declaration Card on which he answered “no” to importing any food plant or animal (FPA) products. A Border services officer (Officer) examined his luggage and found a package of food that Mr. Kankam said he had been eating on his journey. The Officer testified that Mr. Kankam identified the product in his luggage as goat meat, an animal by-product. The Officer observed the fatty smell of meat and its sinewy texture. Mr. Kankam said he was grieving and confused and not himself that day. He requested that the Tribunal review the facts of the violation, claiming that the product was tuna.

[3] The Tribunal concludes that the product in Mr. Kankam’s luggage was goat meat which he did not declare for inspection. Passengers must declare all food, plant and animal products at the first opportunity, usually by completing a Declaration Card, whether the food is cooked or raw, and whether it is permitted entry into the country with or without documentation. Mr. Kankam’s grief and confusion following the death of his wife do not relieve him from responsibility for committing the violation. He must pay the penalty. The Tribunal has the authority to set the time and manner of payment of the penalty and grants Mr. Kankam 8 months to do so.

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<sup>1</sup> [Health of Animals Regulations, CRC, c 296](#) [*HA Regulations*].

## 2. LEGAL FRAMEWORK

[4] The purpose of the [Health of Animals Act](#)<sup>2</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.

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

[6] 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. Goat meat from Ghana may be imported 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>3</sup> which is available to the public.

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<sup>2</sup> [Health of Animals Act](#), S.C. 1990, c. 21.

<sup>3</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).

[7] The essential elements of a violation of section 40 of the [HA Regulations](#) are<sup>4</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.

[8] The agency issuing the Notice must prove on the balance of probabilities all the essential elements of the violation. If all the elements are proven, the Tribunal considers whether the applicant has established a permissible defence or legal reason to relieve 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

[9] The only essential element of the violation in dispute is whether the product in Mr. Kankam's luggage was goat meat or tuna (element 2). Mr. Kankam does not dispute that he is the person identified in the Notice (element 1). Mr. Kankam did not have documentation that would allow importation of goat meat from Ghana under part IV of the [HA Regulations](#) (element 3). Mr. Kankam did not declare any food product (element 4).

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<sup>4</sup> See [Seyfollah v Minister of Public Safety and Emergency Preparedness, 2021 CART 28](#) and [Santos v Minister of Public Safety and Emergency Preparedness, 2021 CART 17](#).

[10] The Agency submitted a completed Declaration Card, with Mr. Kankam's name, address and a signature. He did not deny that he completed this Declaration Card. The card is annotated in writing with #57 and a line through the answers "no" to all the questions following "I am/we are bringing into Canada:" specifically "Meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts, plants, flowers, wood, animals, birds, insects, and any parts, products or by-products of any of the foregoing." While the Agency and the Officer referred to this as the "food, plant and animal (FPA)" question, the word "food" does not appear in the wording. Whether Mr. Kankam was importing tuna or goat meat, he must declare it. He did not.

[11] Issue 1: Was the product found in Mr. Kankam's luggage goat or tuna?

[12] Issue 2: The core issue in this case is whether Mr. Kankam raised a permissible defence or other legal reason to relieve him of responsibility for committing the violation.

- a) Is not knowing that cooked goat meat must be declared a permissible defence?
- b) Is failing to declare a food product because of grief or confusion a permissible defence?
- c) Does Mr. Kankam's claim that he was "not of himself that day" due to grief and confusion amount to a common law defence of automatism?

#### 4. ANALYSIS

##### Issue 1: Was the product found in Mr. Kankam's luggage goat or tuna?

[13] The Officer's handwritten notes indicate that *"exam found 1.5 K goat meat"*. Part of the photocopy of the notes is not legible and continue *"sub had some goat in his carry-on and state [sic] he thought it didn't need to declared [sic] because it was cooked."* The Narrative Report, which is a typed version of the Officer's notes, states *"Subject had a bag of goat meat in his carry-on and mentioned that he had been eating it on the plane and while in the airport. Subject stated he had not declared it because it was cooked."* Mr. Kankam testified that he told the Officer he had food in his luggage, and the Officer asked him if it was goat meat. He testified that he did not identify the product as goat meat.

[14] The Officer testified that he identified the product as meat, but he was not sure what type. He asked Mr. Kankam what type of meat it was. Mr. Kankam said it was goat meat. The Officer testified that he can't stand the smell of fish, so that if it was tuna, he would have known it was a fish, which is admissible according to AIRS<sup>5</sup>. He described the product as very fatty, with a savoury smell of onions and garlic, and a meat smell. He described the product as very red, sinewy meat. The Officer could not tell what the type of meat it was: pork, goat or beef. He testified that Mr. Kankam told him it was goat. The photo of the product taken by the Officer and submitted in evidence shows cut portions of bone that resemble bones found in meat and do not resemble fish bones.

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<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).

[15] I accept the evidence of the Officer that Mr. Kankam identified the product as goat meat. Mr. Kankam did not offer any evidence in support of his claim that the product found in his luggage was tuna. I find that on the balance of probabilities the photograph in evidence depicts a meat product not tuna fish and that the product found in Mr. Kankam's luggage was goat meat.

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

[16] A violation under the [HA Regulations](#) is an absolute liability offence. This means that if a person committed 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 [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)<sup>6</sup> (AAAMP Act) explicitly excludes the defences of due diligence (I did my best) and mistake of fact (I was mistaken) to a violation of the [HA Regulations](#). The common law historically allows certain justifications or legal excuses<sup>7</sup> such as officially induced error and automatism.

### **1.1. Is not knowing that cooked goat meat must be declared a permissible defence?**

[17] Mr. Kankam's belief that he did not have to declare the goat meat because it was cooked and that he was eating it as a snack on the plane is not a permissible defense. Paragraph 18(1)(b) of the [AAAMP Act](#) explicitly excludes the defense of mistake of fact (I was mistaken).

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

<sup>7</sup> *Ibid*, s 18(2).

## 1.2. Is failing to declare a food product because of grief or confusion a permissible defence?

[18] Mr. Kankam explained that he returned from Ghana because his wife had died. He explained that because he was confused and grieving, he was unable to exercise due diligence in declaring the products he imported. Paragraph 18(1)(a) of the [AAAMP Act](#) explicitly excludes the defence of due diligence.

## 1.3. Does Mr. Kankam's claim that he was "not of himself that day" due to grief and confusion amount to a common law defence of automatism?

[19] In the [Stone](#)<sup>8</sup> 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". The Federal Court of Appeal in [Klevtsov](#)<sup>9</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>10</sup>

[20] Mr. Kankam did not claim involuntariness, rather, that he was grieving and confused. 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. Mr. Kankam did not submit any medical evidence. The Officer noted that Mr. Kankam was able to conduct a conversation identifying the product, explain the purpose for his trip, as well as answering standard questions about packing his luggage. This falls very short of the requirements to establish a defence of automatism. Mr. Kankam's claim that he was "not of himself that day" because of grief and confusion following the death of his wife does excuse him from responsibility for committing the violation.

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<sup>8</sup> [R. v. Stone, 1999 2 SCR 290](#) at para 156.

<sup>9</sup> [Canada \(Attorney General\) v. Klevtsov, 2018 FCA 196](#).

<sup>10</sup> [Ibid](#) at para 9.



[21] At the hearing, Mr. Kankam raised other concerns about the experience with the Agency after arriving at the airport in Toronto. Mr. Kankam testified that he lost his passport at some point before or after leaving the plane. In his recollection, he did not follow the “normal procedure” for primary and secondary inspection. He recalled completing a Declaration Card but did not recall what answers he completed. He recalled that when he arrived at secondary inspection, the Officer already had his passport. The Officer did not recall whether he had Mr. Kankam’s passport when he arrived at secondary inspection. By his own admission, Mr. Kankam was confused that day. The Officer testified that the handwritten code “57” on Mr. Kankam’s Declaration Card signified referral to secondary/luggage inspection. Whatever the sequence of events that brought him to the secondary inspection location, there was no evidence that anything improper or unfair occurred.

## 5. PENALTY

[22] The [AAAMP Act](#)<sup>11</sup> and [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)<sup>12</sup> establish a system of administrative monetary penalties (fines) 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>13</sup>

[23] Section 40 of the [HA Regulations](#) is classified a “serious” violation.<sup>14</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>15</sup>

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<sup>11</sup> AAAMP Act, [supra](#) note 6.

<sup>12</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187](#) [AAAMP Regulations].

<sup>13</sup> AAAMP Act, [supra](#) note 6, s7(2).

<sup>14</sup> AAAMP Regulations, [supra](#) note 8, schedule 1.

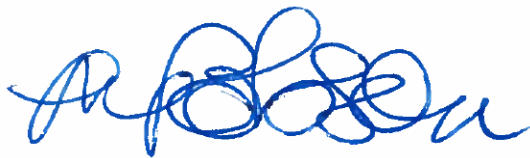
<sup>15</sup> HA Regulations, [supra](#) note 2, s 5(1)(c).

[24] 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.<sup>16</sup> The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

## 6. CONCLUSION/ORDER

[25] Mr. Kankam failed to declare goat meat 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](#). The Tribunal does have the authority to set the time and manner of payment of the penalty<sup>17</sup>. Mr. Kankam must pay the penalty to the Canada Border Services Agency within eight (8) months of notification of this decision. He may make partial payment to the Agency within the 8-month period.

[26] This violation is not a criminal offence. Five years after the date on which Mr. Kankam fully pays the penalty, he 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](#).



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Marthanne Robson  
Member  
Canada Agricultural Review Tribunal

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<sup>16</sup> [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 11.

<sup>17</sup> Subsection 14(2) of the [AAAMP Act](#).