



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Mohamed v Minister of Public Safety and Emergency Preparedness*, 2022 CART 18

Docket: CART-2021-BMR-006

BETWEEN:

EFFAT MOHAMED

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Geneviève Parent, Member

WITH : Mr. Effat Mohamed, representing himself; and  
Ms. Kristen Smyth, representing the Respondent

DECISION DATE: July 4, 2022

WRITTEN SUBMISSIONS ONLY

## 1. INTRODUCTION

[1] Mr. Mohamed requests that the Canada Agricultural Review Tribunal (Tribunal) set aside or vary the Minister's decision to uphold Notice of Violation #7011-20-0046 (Notice) and the accompanying \$800 penalty he received for importing two bags of garlic bulbs (34 bulbs), without a permit or without a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export. This is classified as a serious violation.

[2] This decision arises from my review of the Minister's decision #20-00402 confirming Notice #7011-20-0046. After my own factual and legal analysis of the facts and the parties' written submissions on a balance of probabilities, I find that Mr. Mohamed imported to Canada and failed to declare two bags of garlic bulbs contrary to subsection 29 (1) of the [Plant Protection Regulations](#)<sup>1</sup> (*PP Regulations*). The Notice with \$800 penalty is upheld.

## 2. BACKGROUND

[3] On January 15, 2020, Mr. Mohamed entered Canada at the Calgary International Airport after travelling from Egypt with his wife and nine-year-old daughter. His wife has important health issues, notably vision problems and spinal cord disease. His daughter is partially disabled.

[4] Upon arrival, Mr. Mohamed completed a declaration card on a PIK machine, on which he declared he was not bringing any food, plant or animal products.

[5] Mr. Mohamed's luggage was intercepted by a detector dog unit and was sent to secondary examination by Border Services Officer Pease (BSO Pease).

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

[6] At the secondary examination, Mr. Mohamed confirmed to BSO Pease that the luggage belonged to him, that he packed it himself and that he was aware of its content.

[7] In Mr. Mohamed's luggage, BSO Pease found bananas, lemons, oranges, two eggs, beef wrap from the aircraft, dates, three bags of barley, two shoots of sugarcane, one with possible signs of infestation, 19 sticks of bark, and 2 bags of garlic (containing 34 bulbs).

[8] Mr. Mohamed was served with Notice of Violation # 7011-20-0046 with a penalty of \$800 for importing garlic bulbs from Egypt without a permit number or without Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export, contrary to subsection 29(1) of the [Plant Protection Regulations](#) (*PP Regulations*).

[9] On January 27, 2020, Mr. Mohamed requested a review of the facts by the Minister. The Minister's decision #20-00402 confirmed Notice #7011-20-0046. On January 28, 2021, Mr. Mohamed requested that the Tribunal review the Minister's decision.

### 3. LEGAL FRAMEWORK

[10] The [Plant Protection Act](#)<sup>2</sup> (*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.

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

[11] 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. Subsection 29(1) of the [PP Regulations](#) state 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.

[12] 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 subsections 38 to 44 of the [PP Regulations](#). Details can be found in the Automated Import Reference System (AIRS)<sup>3</sup> which is available to the public.

[13] Pursuant to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)<sup>4</sup> (AAAMP Act), the Canada Agricultural Review Tribunal (Tribunal) is the competent authority to review the Minister's decision. Upon 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.<sup>5</sup>

[14] The *Plant Protection Regulations* is enforced through the [AAAMP Act](#) and the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)<sup>6</sup> (AAAMP Regulations). The Agency must prove the essential elements of the violation on a balance of probabilities.

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<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).

<sup>4</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40](#) [AAAMP Act].

<sup>5</sup> [Seyfollah v Minister of Public Safety and Emergency Preparedness, 2021 CART 28](#) at para 6.

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

[15] The essential elements of subsection 29(1) of the [PP Regulations](#), that must be proven on a balance of probabilities by the Agency are:

1. Mr. Mohamed is the person identified in the Notice;
2. Mr. Mohamed imported garlic bulbs that are a pest, or could be infested or constitutes or could constitute a biological obstacle to the control of a pest;
3. Mr. Mohamed failed to declare this product to a customs officer upon arrival to Canada and therefore did not make it available for inspection; and
4. Mr. Mohamed failed to present a valid importation permit, a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export for the plant product.

[16] The [AAAMP Act](#) is an absolute liability regime. There are almost no defences or legal reasons to excuse someone's liability once the violation has been proven, as provided in section 18 of the [AAAMP Act](#).

[17] 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](#).

[18] The Tribunal has not been given the authority to reduce the amount of the penalty.

#### 4. ISSUES

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

Issue #1: Has the Agency proven the violation on a balance of probabilities ?

Issue #2: Did Mr. Mohamed raise a permissible defence?

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

#### 5. ANALYSIS

**Issue #1: Has the Agency met the burden of proof?**

[20] The Agency has proven the **first element of the violation**. Mr. Mohamed's identity was validated by his passport and his Alberta Health Care card as a second piece of identification. He does not dispute that he is the person who was sent to secondary inspection by BSO Pease. He also does not contest that he received Notice #7011-20-0046 for importing into Canada and failing to declare 2 bags of garlic (34 bulbs) without a permit number or without a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export.

[21] The Agency has provided sufficient evidence to prove **the second element of the violation** that Mr. Mohamed imported 2 bags of garlic (34 bulbs) from Egypt into Canada which could be a pest or pest infested or constitutes or could constitute a biological obstacle to the control of a pest. Mr. Mohamed was selected for secondary inspection after his luggage was identified as containing food products by a detector dog unit Officer, BSO Pease. Mr. Mohamed confirmed to BSO Pease that it was his luggage and BSO Pease took photographs of the food products, including the garlic bulbs. These pictures have been submitted to the Tribunal. They show garlic bulbs with what appears to be traces of soil on them and they convinced me, on a balance of probabilities,

that they could be a pest or pest infested or constitutes or could constitute a biological obstacle to the control of a pest.

[22] The Agency has also established **the third element of the violation** by relying on Mr. Mohamed's PIK and corresponding declaration. A copy of the PIK receipt that Mr. Mohamed completed was provided by the Agency. The receipt indicates that Mr. Mohamed did not declare he brought food products, notably garlic bulbs into Canada. He was given further opportunity to declare the garlic bulbs at the secondary inspection. Mr. Mohamed does not contest that he did not declare the two bags of garlic bulbs and other food products to a customs officer upon arrival to Canada. On the contrary, he argues that he failed to do so notably because he was tired after a 72 hours trip, assisting his wife and daughter, both dealing with important health problems. Therefore, he did not make the garlic bulbs and other food products available for inspection by BSO Pease.

[23] Finally, the Agency established **the fourth element of the violation** as Mr. Mohamed did not present a valid importation permit, a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export for the garlic bulbs. The research BSO Pease did in the Agency's AIRS database which is submitted in evidence to the Tribunal, specified that in order to be allowed to import garlic bulbs from Egypt into Canada, Mr. Mohamed should provide a Phytosanitary Certificate. Mr. Mohamed does not contest that he does not hold such authorizations.

[24] In view of the foregoing, it is my opinion that the Agency has met its burden of establishing all the essential elements of the violation on a balance of probabilities.

## **Issue #2: Did Mr. Mohamed raise a permissible defence?**

[25] Mr. Mohamed did not raise a permissible defence that would excuse him from being responsible for committing the violation outlined in the Notice #7011-20-0046. In his submissions

to the Tribunal, Mr. Mohamed asserts that he was carrying a very small amount of food products notably garlic bulbs, for personal use and health issues. He says he was responsible for his wife and partially disabled nine-year-old daughter, both dealing with serious health problems and that it was difficult for him to focus on such a “small detail” after a 72-hour trip. Mr. Mohamed did not have his reading glasses and someone helped him at the PIK machine. Mr. Mohamed highlighted that in his 30 years’ stay in Canada, he has never violated the regulations enforced by the Canada Border Agency. He also asks that the Tribunal considers his age, his health, his wife and daughter’s health and the fact that his pension amounts to \$1300 a month.

[26] Although the Tribunal understands the arduous conditions of Mr. Mohamed's journey, the [AAAMP Act](#) does not allow any of these factors as a permissible defence when reviewing the Minister’s decision to uphold the Notice. Section 18 of the [AAAMP Act](#) explicitly excludes defences of due diligence and mistake of fact.

[27] The Tribunal does not have the authority to reduce the amount of the penalty. 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](#).

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

[28] I find that the 800\$ penalty issued to Mr. Mohamed was imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). Section 5(1) of the [AAAMP Regulations](#) states that the amount of the penalty in respect of a violation that is committed by an individual otherwise than in the course of a business and that is not committed to obtain a financial benefit is 800\$ for a serious violation. Violations of subsection 29(1) of the [Plant Protection Regulations](#) are categorized as serious by Schedule 1 of the [AAMP Regulations](#).



[29] Having determined that the essential elements of a violation of subsection 29(1) of the [Plant Protection Regulations](#) 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 Mr. Mohamed with the 800\$ penalty is lawful and justified.

## 6. ORDER

[30] I confirm the Minister's finding that Mr. Effat Mohamed committed the violation in the Notice #7011-20-0046 and that he must pay the penalty of \$800 to the Agency.

[31] This violation is not a criminal offence. Five years after the date on which the penalty is paid, Mr. Mohamed 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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Geneviève Parent  
Member  
Canada Agricultural Review Tribunal