



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Ben Amor v Minister of Public Safety and Emergency Preparedness*, 2022 CART 25

Docket: CART-2021-BMR-033

BETWEEN:

AHMED BEN AMOR

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Mr. Ahmed Ben Amor, representing himself; and  
Mr. Kristian Turenne, representing the Respondent

DECISION DATE: August 22, 2022

VIRTUAL HEARING DATE: March 29, 2022

## 1. OVERVIEW

[1] Mr. Amor 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 he received for failing to declare "canned food, printed as olive oil, but containing meat balls made of ground beef" when he entered Canada on a flight from Tunisia.

[2] This decision arises from my review of the Minister's decision #2103691-1 confirming Notice #3961-21-0133. As mandated by subsection 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 an oral hearing held on March 29, 2022.

[3] I find that Mr. Amor did fail to declare the "canned food, printed as olive oil, but containing meat balls made of ground beef" contrary to section 16(1) of the [Health of Animals Act](#) (HA Act). The Notice with a \$1300 penalty is upheld.

## 2. LEGAL FRAMEWORK

[4] 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 CBSA E311 Declaration Card or kiosk. The timing of the declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening with an officer before choosing to declare.<sup>1</sup>

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

[5] 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 [Health of Animals Act](#) (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.

[6] The [HA Act](#) and the [HA Regulations](#) are enforced through the uniform enforcement process prescribed by 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 on a balance of probabilities. 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.

[7] The essential elements of a violation of subsection 16(1) of the [HA Act](#) are:

1. Mr. Ben Amor is the person identified in the Notice;
2. Mr. Ben Amor 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. Mr. Ben Amor did not declare the product in question at first contact with Agency officers and therefore did not make it available for inspection.

[8] If all the elements are proven, the Tribunal considers whether the applicant has raised an allowable defence. Violations under this system are absolute liability offences, meaning there are very few allowable defences. The Federal Court of Appeal in the [Doyon](#)<sup>2</sup> decision described this system of violations and penalties as draconian and highly punitive.

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<sup>2</sup> [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 at para 21 [Doyon].

[9] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)<sup>3</sup> (AAAMP Act) and [Regulations](#)<sup>4</sup> (AAAMP Regulations) establish a system of administrative monetary penalties (warnings and fines) as a fair and efficient alternative to criminal charges to enforce agri-food legislation, such as the [HA Act](#) and [HA Regulations](#). Subsection 16(1) of the [HA Act](#) is classified as a “very serious” violation; the penalty is set at \$1300.<sup>5</sup>

[10] A person can contest a Notice by requesting a review of the facts of the violation by the Minister. If they are not satisfied with the decision, they can request a further review by the Tribunal. The Tribunal can confirm, vary or set aside the Minister’s decision.<sup>6</sup> The Tribunal conducts a *de novo* review of the Minister’s decision which means that the Tribunal examines all the evidence and draws its own factual and legal conclusions about the validity of the Notice.<sup>7</sup> The Tribunal will typically conduct its review based on the documents submitted to the Minister. The Tribunal may also hear oral testimony and receive new evidence at the review hearing under certain conditions.<sup>8</sup> The Canada Border Services Agency (Agency) represented the Minister at this Tribunal hearing.

[11] The agency issuing the Notice must prove on the balance of probabilities all the essential elements of the violation. Due diligence (I did my best) and mistake of fact (I did not know) are not allowable defences.<sup>9</sup> If the applicant does not establish an allowable defence, the Tribunal considers whether the penalty was imposed in accordance with the law.

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<sup>3</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Act \(S.C. 1995, c. 40\)](#) [AAAMP Act].

<sup>4</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Regulations \(SOR/2000-187\)](#) [AAAMP Regulations].

<sup>5</sup> *Ibid.*, Schedule 1, item 11.

<sup>6</sup> AAAMP Act, *supra* note 3, s 14(1).

<sup>7</sup> [Hachey Livestock Transport Ltd. v. Canada \(Minister of Agriculture and Agri-Food\)](#), 2015 CART 19.

<sup>8</sup> See [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#), SOR/2015-103, rule 10 and 44.

<sup>9</sup> AAAMP Act, *supra* note 3, s 18(1).

### 3. ISSUES

[12] Given the legal framework outlined, in this case I must consider the following issues:

1. Did the Agency prove all the essential elements of a violation of subsection 16(1) of the [HA Act](#)?
2. Did M. Ben Amor establish an allowable defence to the violation?
3. Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

### 4. ANALYSIS

**Issue 1: Did the Agency prove all the essential elements of a violation of subsection 16(1) of the [HA Act](#)?**

[13] The Agency has proven the **first element of the violation**. Mr. Ben Amor's identity was validated by his passport and his driver's licence as a second piece of identification. He does not dispute that he is the person who was sent to secondary inspection by the Border Services Officer (Officer). Mr. Ben Amor also does not contest that he received Notice #3961-21-0133 for importing into Canada and failing to declare "canned food, printed as olive oil, but containing meat balls made of ground beef" without a permit number or without documentation permitting the importation of the beef. Mr. Ben Amor's initial request for review to the Minister also makes it clear that he was the person who received the Notice.

[14] The Agency has provided sufficient evidence to prove **the second element of the violation** that Mr. Ben Amor imported "canned food, printed as olive oil, but containing ground beef meat balls" from Tunisia into Canada. Mr. Ben Amor was referred for secondary examination, which amounts to a verification of one's declaration, based on his interactions with an Officer during the primary process. Mr. Ben Amor confirmed to the Officer that it was his luggage, and the Officer took photographs of the food products, two of these cans were found to contain a quantity of

ground beef balls. These pictures have been submitted to the Tribunal and they show meat balls made of ground beef. I am convinced, on a balance of probabilities, that the Agency's evidence, on record before the Minister's delegate, established that Mr. Ben Amor imported an animal product, namely ground beef meat balls. Mr. Ben Amor has also submitted a brief video clip to the Tribunal taken during his interaction with the Officer that day. The research the Officer conducted in the Agency's Automated Import Reference System (AIRS database) specified that the "beef" from Tunisia was to be refused entry into Canada.

[15] The Agency has established **the third element of the violation** by outlining that no exceptions were applicable to ground beef meat balls that would have permitted Mr. Ben Amor to import the meat. The Officer searched the AIRS database after he found the meat. AIRS database states that all meat, unless it is from the United State and is being imported for personal consumption, is to be refused entry into Canada. This beef was from Tunisia.

[16] 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 evidence that Mr. Ben Amor had a permit. The Officer did not record in his notes that Mr. Ben Amor produced a permit from the Minister that would allow the import of ground beef meat balls from Tunisia. Likewise, Mr. Ben Amor's letter requesting a review of the Minister's decision does not indicate he had such a permit.

[17] Finally, the Agency established **the fourth element of the violation** as Mr. Ben Amor did not present and declare any animal products or by-products to an officer of the Agency for inspection as required by the [HA Act](#). As a component of the Agency's reporting and declaration process, Mr. Ben Amor was required to complete an electronic declaration via a self-serve PIK machine. A

record of the answers provided by Mr. Ben Amor demonstrates that during the passage in question, Mr. Ben Amor answered “No” when asked whether he was importing, or in possession of raw or cooked meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts, flowers, insects, bulbs, plants, wood, live animals or any other animal or plant parts or their derivatives. A copy of the PIK receipt that Mr. Ben Amor completed was provided by the Agency. The receipt indicates that Mr. Ben Amor did not declare he brought food products, notably meat balls containing beef into Canada. He was given further opportunity to declare the ground beef meat balls at the secondary inspection.

[18] 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 M. Ben Amor establish an allowable defence to the violation?**

[19] Mr. Ben Amor does not contest that he did not declare the meat balls containing beef and other food products to an Officer upon arrival to Canada. On the contrary, he argues that he failed to do so notably because he was tired from long flight, that the Officer’s Narrative Report is erroneous because he was in possession of three (3) cans of olive oil not two (2), that ingredients are available on Olive oil cans, that he did not intentionally import an animal or animal by-product, that the Agency did not prove that he imported an animal or animal by-product, that the Agency does not have the right to make him pay a hefty fine and finally that there was a language barrier and transition from English to French caused a misunderstanding.

[20] Mr. Ben Amor did not raise a permissible defence that would excuse him from liability for failing to declare the meat balls made of ground beef. In his submissions to the Tribunal, and during his testimony before the Tribunal, Mr. Ben Amor explained that he had instead possessed vegetarian falafel, but that during the examination he had stated to the Officer that the falafel may have included beef lard as an ingredient. Mr. Ben Amor contended that the Officer was not able to recognize the “difference between lard and beef.”

[21] Mr. Ben Amor submits that once he left the airport, he learned that his falafel contained only vegetable-based lard. I would like to explain to Mr. Ben Amor that beef lard is also an animal product/by-product that is inadmissible to Canada. The Officer is entitled to rely on a product's label to identify its content where there is no evidence that the label is false, inaccurate, or misleading. Paragraph 18(1)(b) of the [AAAMP Act](#) explicitly excludes the defence of mistake of fact (I was mistaken). I find that this explanation by Mr. Ben Amor is not credible.

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

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

[23] Having determined that the essential elements of a violation of section 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 Mr. Ben Amor with the \$1300 penalty is lawful and justified.

## 5. CONCLUSION

[24] I confirm the Minister's finding in decision #2103691-1 that Ahmed Ben Amor committed the violation in Notice #3961-21-0133 dated January 12, 2021. Mr. Ben Amor must pay the penalty of \$1300 to the Canada Border Services Agency within 30 days of the notification of this decision as required by paragraph 15(3) of the [AAAMP Act](#).

[25] I wish to inform Mr. Ben Amor 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](#).



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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal