



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Zahonyi v Minister of Public Safety and Emergency Preparedness*, 2022 CART 27

Docket: CART-2022-BMR-006

BETWEEN:

LASZLO ZAHONYI

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

BEFORE: Patricia L. Farnese, member

WITH : Mr. Laszlo Zahonyi, representing himself; and
Ms. Cassandra Ianni-Lucio, representing the Respondent

DECISION DATE: September 23, 2022

HEARING BY WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION

[1] Mr. Zahonyi 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 duck fat when he entered Canada on a flight from Hungary contrary to subsection 16(1) of the [Health of Animals Act](#) (HA Act). Because the duck fat was packaged in leaky plastic containers rather than in hermetically sealed, shelf-stable, glass jars or tins as required by the regulations, I decline to grant Mr. Zahonyi's request. Section 18 of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), does not recognize the fact that Mr. Zahonyi believed the duck fat did not pose a risk or that this was his first violation as defences to the Notice. Mr. Zahonyi must pay the penalty of \$1300.

2. LEGAL FRAMEWORK

[2] Subsection 12(1) of the [Customs Act](#) requires that travellers declare to an authorized Border Security Officer (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 Primary Inspection Kiosk (PI Kiosk). The timing of declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening before deciding to declare. Anyone bringing goods into Canada has a duty to fully declare what they are bringing into the country.¹

[3] 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.

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

[4] Subsection 16(1) of the [HA Act](#) requires that any person who imports an animal, animal product or animal by-product into Canada present the item to an Officer for inspection either before or at the time of importation. Answering 'yes' to the question at the PI Kiosk that asks whether you are bringing any meat or animal products into Canada meets the subsection 16(1) requirement.

[5] Section 40 of the [HA Regulations](#) prohibits the import of all animal by-products into Canada except as permitted by Part IV. Part IV allows a person to import some agricultural products, including animal by-products, under certain conditions. The Canadian Food Inspection Agency (CFIA) decides the conditions that allow agricultural products to be imported into Canada. Officers rely on the [Automated Import Reference System](#) (AIRS),² which is also available to the public, to identify these import requirements when they encounter an animal product during an inspection.

[6] Where a person does not declare an animal product, the Officer may issue a Notice for violations of the [HA Act](#) and the [HA Regulations](#). 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 [AAAMP Act](#) and [AAAMP Regulations](#) categorize each violation as either minor, serious, or very serious and impose mandatory penalties based on the category of violation. The [AAAMP Act](#) is an absolute liability regime. There are almost no defences allowed that will excuse someone of liability once the Agency has proven violation.

² Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

[7] The Canada Border Services Agency (Agency) must prove the following essential elements of subsection 16(1) of the [HA Act](#), on a balance of probabilities:³

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

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

[9] This decision arises from my review of the Minister's decision #2106574-1 confirming Notice #4974-21-0577. As mandated in subsection 14(1)(b) of the [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 after a review of written submissions provided by the parties.⁴

³ [Santos v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2021 CART 17.

⁴ [Seyfollah v Minister of Public Safety and Emergency Preparedness](#), 2021 CART 28 at para 6.

3. ISSUES

[10] There are two core issues in this case:

Issue #1: Were Mr. Zahonyi's containers of duck fat allowed into Canada without proper documentation?

Issue #2: Are Mr. Zahonyi's perception of the risk the duck fat poses and the fact that this is his first Notice permissible defences?

4. ANALYSIS

[11] The Agency has proven elements 1, 2 and 4.

[12] The Agency has established the first element by including, within their report, images of photocopies of Mr. Zahonyi's passport and Ontario driver's license made by the Officer on the day the violation occurred. Mr. Zahonyi also does not dispute that he is the person who received the Notice for failing to declare that he had imported duck fat.

[13] Element 2 is established by Mr. Zahonyi's admission in his submission to the Tribunal that he imported duck fat into Canada from Hungary without declaring it prior to it being found by the Officer. He also told the Officer what the product was when it was found in his luggage during the secondary search.

[14] Finally, Mr. Zahonyi admits in his request for review that he only declared cheese and candy to the first Officer he encountered. The record of Mr. Zahonyi's declaration at the PI Kiosk also indicates that 'no' was his response to the question about importing meat and animal products. The Agency established element 4 by also providing the Officer's notes and report that proved Mr. Zahonyi identified the bag where the duck fat was found as his own.

Issue #1: Were Mr. Zahonyi's containers of duck fat allowed into Canada without a permit?

[15] AIRS indicates that up to 20kg of shelf stable meat is allowed to be imported into Canada without a permit from Hungary if it has been commercially prepared in sealed tin cans or glass jars. AIRS also gives Officers discretion to allow homemade meat products from Hungary if they are hermetically sealed and in impermeable packaging. Mr. Zahonyi asserts that the 4 containers of duck fat were commercially prepared despite the lack of a label. Even if I were to find that the duck fat was commercially prepared, the duck fat does not satisfy the requirements for import as a commercial product because it was not stored in tins or glass containers. The duck fat was stored in plastic. The duck fat also does not meet the requirements to be allowed entry as a homemade product because it was not hermetically sealed and may not have been impermeable. The Officer noted that the containers were unsealed and leaking when they were removed from Mr. Zahonyi's luggage. Mr. Zahonyi does not dispute the condition of the duck fat when it was found.

[16] Mr. Zahonyi has not presented any other evidence that would have allowed him to bring duck fat into Canada. 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 authorizing the import. A person is also able to provide documentation to an Officer that explains the details of the by-product's treatment. The Officer 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. The Officer did not record in his notes that Mr. Zahonyi produced a permit from the Minister that would allow the duck fat's import. Likewise, Mr. Zahonyi's letter requesting a review of the Minister's decision does not indicate he had such a permit.

Issue #2: Are Mr. Zahonyi's perception of the risk the duck fat poses and the fact that this is his first Notice permissible defences?

[17] Mr. Zahonyi did not raise a permissible defence that would excuse him from liability for failing to declare the duck fat. In his submissions to the Tribunal, Mr. Zahonyi asks that I consider that this is his first violation and that the duck fat was not a serious risk. The [AAAMP Act](#) does not allow me to consider either factor when reviewing the Minister's decision to uphold the Notice. I would also note that subsection 16(1) of the [HA Act](#) is a violation for failing to declare an animal product. Even if I were to agree with Mr. Zahonyi's perception of the risk the duck fat posed, the violation would still have occurred where the duck fat was found to pose no risk. Subsection 14(1) of the [AAAMP Act](#) is clear, unambiguous, precise, and narrow. The Tribunal must determine whether the Agency has proven the facts of the violation and whether the penalty imposed complies with the requirements outlined in the [AAAMP Regulations](#).

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

[19] The Officer's notes indicate that he considered Mr. Zahonyi's failure to make an honest declaration despite his extensive travel history and Mr. Zahonyi's attitude about the seriousness of the violation. Mr. Zahonyi continued to argue that the violation was not very serious in his submission to this Tribunal. He is mistaken. Food products can introduce invasive species, foreign animal diseases, and plant pests that can cause irreparable harm to Canada's crops, livestock, environment, and threaten Canada's economy.

[20] Having determined that the Agency has established the essential elements of a violation of section 16(1) of the [HA Act](#) and that the penalty imposed complied with the process outlined in

the [AAAMP Regulations](#), I find that the Notice issued to Mr. Zahonyi with the \$1300 penalty is lawful and justified.

5. ORDER

[21] I confirm the Minister's finding that Mr. Zahonyi committed the violation in the Notice and must pay the penalty of \$1300 to the Agency within 60 days of this decision.

[22] I wish to inform Mr. Zahonyi that this violation is not a criminal offence. Five years after the date on which the penalty is paid, he 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](#).



Patricia L. Farnese
Member
Canada Agricultural Review Tribunal