

Citation: *Bodrug v Canada Border Services Agency*, 2022 CART 32

Docket: CART-2021-BNOV-027

VITALIE BODRUG

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

[Translation of the official French version]

BEFORE: Geneviève Parent, Member

WITH: Mr. Vitalie Bodrug, representing himself; and
Mr. Kristian Turenne, representing the Respondent

DECISION DATE: December 14, 2022

In the matter of a request to the Canada Agricultural Review Tribunal under paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) for a review of Notice of Violation No. 3961-21-0624 alleging that the Applicant violated subsection 16(1) of the [Health of Animals Act](#) (HA Act).

DECIDED ON THE BASIS OF THE WRITTEN RECORD

1. BACKGROUND

[1] This decision was made on the basis of the written record in the matter of a request to the Canada Agricultural Review Tribunal (Tribunal) under paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act) for a review of Notice of Violation No. 3961-21-0624.

[2] Notice of Violation No. 3961-21-0624 was issued by the Canada Border Services Agency (Agency), alleging that the Mr. Bodrug had failed to present an animal product or by-product (dried sausages and quail pâté) on entering Canada at the Pierre Elliot Trudeau International Airport in Montréal on May 16, 2021, after a stay in Moldova, contrary to subsection 16(1) of the [Health of Animals Act](#) (HA Act).

[3] Having reviewed the facts, and on a balance of probabilities, I find that Mr. Bodrug committed the alleged violation and that the \$1,300 administrative monetary penalty imposed was established in accordance with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).

2. PROCEDURAL HISTORY

[4] An initial mandatory case management conference (CMC) was held on February 8, 2022, at 10:00 a.m., during which it was agreed that a two-hour in-person hearing would be held.

[5] However, it was difficult to set a hearing date, as Mr. Bodrug stated that he had to check his calendar, pointing out that he was a student. As the Tribunal and the Agency were available at various times, an order was made that Mr. Bodrug should inform the Tribunal's registry of his preferred time no later than 5:00 p.m. on February 15, 2022.

[6] The parties ultimately agreed that the hearing would be held on March 18, 2022.

[7] On the morning of March 18, Mr. Bodrug requested that the hearing be postponed for health reasons, also mentioning that he was considering having someone represent him.

[8] The Agency stated that it did not object to a postponement despite being ready to proceed.

[9] On March 18, 2022, the Tribunal made an order. The Tribunal allowed the postponement and ordered that the Applicant provide the Tribunal's registry with the contact information of the counsel who would be representing him in the case no later than 5:00 p.m. on April 8, 2022.

[10] The March 18, 2022, order made it clear that if Mr. Bodrug failed to provide this information within the time limit, the Tribunal would consider him to be representing himself.

[11] Mr. Bodrug never provided the name or contact information of a counsel or representative.

[12] A number of hearing dates were then proposed to the parties, but Mr. Bodrug did not respond to the Tribunal to indicate his availability. In the circumstances and on the basis of the Agency's availability, the Tribunal scheduled the hearing for September 13, 2022, at 9:30 a.m.

[13] On the morning of September 13, with the hearing scheduled to begin at 9:30 a.m., the Tribunal's registry received a document from Mr. Bodrug, signed by a doctor and a psychologist, attesting to his state of health.

[14] In particular, Mr. Bodrug stated that he had difficulty concentrating and was unable to sit for more than 30 minutes because of herniated cervical discs. He attended the hearing from his car using a mobile phone, with his computer on his lap. Mr. Bodrug requested a postponement and read sections 1, 4, 10 and 34 of the Quebec [Charter of Human Rights and Freedoms](#) (Quebec Charter).

[15] Mr. Bodrug argued that if the hearing were held and he were found to have committed the alleged violation, it would be an attack on his honour and reputation in that it would be very damaging to his record at the Barreau, as he was studying law but was currently on leave.

[16] Lastly, Mr. Bodrug cited section 34 of the *Quebec Charter*, which provides that every person has a right to be represented by an advocate or to be assisted by one before any tribunal. He stated that he was considering being represented by counsel and that holding the hearing would infringe on this right.

[17] The Agency was sympathetic about Mr. Bodrug's medical condition but objected to a postponement.

[18] After hearing the parties, the Tribunal denied the request for postponement, particularly in light of the delays since the request for review was filed on June 14, 2021, and the history of the case. The Tribunal denied the request to postpone the hearing, finding that the medical documents filed that morning did not indicate that Mr. Bodrug was unable to attend a two-hour virtual hearing with breaks to accommodate the Applicant, and explaining that the hearing did not infringe on the rights and freedoms that Mr. Bodrug had listed (including those set out in sections 1, 4, 10 and 34 of the *Quebec Charter*).

[19] In particular, the Tribunal found that Mr. Bodrug's right to be represented by counsel (section 34 of the *Quebec Charter*) was not infringed in this case. Indeed, subsection 18(1) of the [*Rules of the Canada Agricultural Review Tribunal*](#) states that "[a]n individual may act in person or be represented by legal counsel or by another duly authorized representative". The procedures and documents for submitting a request for review to the Tribunal also refer to this option. When he submitted his request, Mr. Bodrug had decided to represent himself. Mr. Bodrug was granted a postponement of the hearing scheduled for March 18, 2022, on the basis of his desire to be represented by counsel. Mr. Bodrug never provided the contact information of a counsel or

representative. The Tribunal considered Mr. Bodrug to have made a free and informed decision to represent himself.

[20] After some discussion, and given that Mr. Bodrug's telephone was "almost out of battery power", a decision was made in agreement with the parties that they would file written submissions.

[21] The Agency informed the Tribunal that it was relying on the information in the report that was already in the record. No written submissions were made by Mr. Bodrug within the time limit set by the Tribunal.

[22] Therefore, the Tribunal will decide this case on the basis of the written record.

3. APPLICABLE LAW AND ISSUES

[23] The Tribunal has jurisdiction to hear the request for review pursuant to paragraph 9(2)(c) of the [AAAMP Act](#).

[24] Subsection 12(1) of the [Customs Act](#) requires that travellers report all the goods they are bringing into Canada. Travellers have an obligation, either before or upon their arrival in Canada, to declare any animal by-products (such as pork and/or beef sausages, or quail pâté) and to present them to an inspector, officer, or customs officer for inspection in accordance with subsection 16(1) of the [HA Act](#).¹

[25] The disclosure of goods and making them available for inspection should occur at the first contact with customs officials.² As stated in [Savoie-Forgeot](#), the timing of declaration is important

¹ [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#) at para 17.

² [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#) at para 25.

because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening with a border services officer before choosing to declare.

[26] For travellers entering the country by air, this declaration is usually made on an E311 advance declaration card, at a primary inspection kiosk (PIK) or at the Canada Border Services Agency (Agency) counter during the primary inspection by a Canada Border Services Officer (BSO).

[27] Those who fail to declare animal by-products in their possession and make them available for inspection are in violation of the [HA Act](#) and the [Health of Animals Regulations](#) (HA Regulations).

[28] The Tribunal must address the following issues:

Issue 1: Has the Agency established, on a balance of probabilities, the essential elements of a violation of subsection 16(1) of the [HA Act](#)?

1. Mr. Bodrug is the person named in the notice of violation.
2. Mr. Bodrug imported an animal product or by-product into Canada.
3. Mr. Bodrug failed to declare the animal product or by-product at the first opportunity to a border services officer and therefore did not make it available for inspection.

Issue 2: If so, has Mr. Bodrug raised an allowable defence in respect of the violation?

Issue 3: If it is determined that no allowable defence has been raised, has the \$1,300 administrative monetary penalty been assessed in accordance with the [AAAMP Act](#) and the [AAAMP Regulations](#)?

4. ANALYSIS

Issue 1: Has the Agency established, on a balance of probabilities, the essential elements of a violation of subsection 16(1) of the [HA Act](#)?

1. Mr. Bodrug is the person named in the notice of violation.

[29] Mr. Bodrug does not dispute that he is the person named in Notice of Violation No. 3961-21-0624. Mr. Bodrug's identity is also confirmed by his responses during the primary inspection: his name, date of birth and passport number can be found in the Integrated Customs System (ICS). His identity was also verified and confirmed by Detection Dog Handler (DDH) Provencher at the baggage carousel and by BSO Sarasin during the secondary inspection. The Agency has therefore established the first element of the violation, namely that Mr. Bodrug is the named person in the notice of violation.

2. Mr. Bodrug imported an animal product or by-product into Canada.

[30] While examining Mr. Bodrug's suitcases, BSO Sarasin found an assortment of dried pork and/or beef sausages from Moldova and a glass jar whose contents were identified by Mr. Bodrug as quail pâté. The Agency has therefore established the second element of the violation, namely that Mr. Bodrug imported an animal product or by-product into Canada.

3. Mr. Bodrug failed to declare the animal product or by-product and did not make it available for inspection

[31] Under existing law, Mr. Bodrug was required to declare the animal product or by-product (pork and beef jerky and quail pâté) at the first opportunity upon entry into Canada and to make it available for inspection by a border services officer (BSO).³

³ [Canada \(Attorney General\) v. Savoie-Forgeot, 2014 FCA 26](#) at para 25.

[32] However, upon arrival in Canada, Mr. Bodrug submitted his travel documents, confirmed his identity and made his declaration through a PIK, as shown by the receipt that was issued at the end of this process. The evidence shows that Mr. Bodrug responded “No” to the question as to 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” (“FPA products”). Indeed, Mr. Bodrug’s responses on May 16, 2021, were recorded in the Integrated Customs System (ICS) and have been filed in evidence.

[33] Subsequently, in a discussion with BSO Décary-Chaussé about measures in relation to his quarantine plan, which was required at the time because of the pandemic, Mr. Bodrug was again asked whether he was importing or in possession of FPA products. He again responded no, except for chocolate.

[34] After DDH Provencher identified Mr. Bodrug’s suitcase and asked him for his passport and the receipt from his declaration at the primary inspection kiosk, she asked him again if he was importing or in possession of FPA products. He again responded no, except for [TRANSLATION] “chocolate, candy and wine from the duty-free shop”.

[35] At the secondary inspection, BSO Sarrasin asked Mr. Bodrug if the baggage was his, if he was aware of its contents and if he had packed it himself. Mr. Bodrug responded “Yes” to all three questions. Mr. Bodrug did not declare any animal product or by-product. While examining Mr. Bodrug’s suitcases, the BSO found an assortment of dried pork and/or beef sausages from Moldova and a glass jar whose contents were identified by Mr. Bodrug as quail pâté.

[36] Mr. Bodrug did not declare the FPA products in his baggage and therefore did not present them and make them available for inspection, as required by law. The Agency has therefore established the third element of the violation, on a balance of probabilities.

[37] In light of the foregoing, the Tribunal is of the opinion that the Agency has established, on a balance of probabilities, the essential elements of a violation by Mr. Bodrug of subsection 16(1) of the [HA Act](#).

Issue 2: Has Mr. Bodrug raised an allowable defence in respect of the violation?

[38] The regime established by the [AAAMP Act](#) is one of absolute liability. Under this regime, guilt follows on the proof by the Agency, on a balance of probabilities, of the essential elements of a violation ([Doyon](#) at para 25; [Mario Côté FCA](#) at para 40).

[39] The regime allows few defences and expressly provides that “[a] person named in a notice of violation does not have a defence by reason that the person (a) exercised due diligence to prevent the violation; or (b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person” (subsection 18(1) of the [AAAMP Act](#)).

[40] Apart from deploring the severity of the regime, Mr. Bodrug failed to raise an allowable defence to absolve him from liability for failing to declare the sausages and quail pâté upon entering Canada.

[41] Indeed, in the request for review he filed with the Tribunal on or about June 14, 2021, Mr. Bodrug merely alleged that the decision “is too severe and needs to be reviewed”. In support of the request, Mr. Bodrug cited only decisions that confirm agreements between the parties, including [Radu](#),⁴ which is not relevant in this case.

[42] Despite numerous opportunities to do so, Mr. Bodrug has failed to make any further submissions raising any of the allowable defences under subsection 18(1) of the [AAAMP Act](#).

⁴ [Radu v. Minister of Public Safety and Emergency Preparedness, 2021 CART 07](#).

Issue 3: Has the administrative monetary penalty been assessed in accordance with the applicable regulations?

[43] Administrative monetary penalty amounts for violations of subsection 16(1) of the [HA Act](#) are set out in the [AAAMP Regulations](#). Violations of section 16(1) of the [HA Act](#) are classified as “very serious” in Schedule 1 of the [HA Regulations](#). Paragraph 5(1)(c) of the [AAAMP Regulations](#) states that the monetary penalty for a “very serious” violation is \$1,300.

[44] In this case, the penalty of \$1,300 has been assessed in accordance with current regulations.

5. ORDER

[45] The Tribunal hereby **ORDERS** Mr. Bodrug to pay the administrative monetary penalty of \$1,300 to the Agency within 60 days of the date of this decision.

[46] The Tribunal reiterates to Mr. Bodrug that this violation is not a criminal offence. Five years after the date of payment of the penalty, he may apply to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).



Geneviève Parent
Member
Canadian Agricultural Review Tribunal