



Citation: *Alam v Canada Border Services Agency*, 2023 CART 05

**Docket: CART-2021-BNOV-003**

**BETWEEN:**

**MAQSOOD ALAM**

**APPLICANT**

**- AND -**

**CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**BEFORE: Marthanne Robson, Member**

**WITH: Mr. Maqsood Alam, representing himself; and  
Mr. Kristian Turenne, representing the Respondent**

**DECISION DATE: January 25, 2023**

**HEARING BY WRITTEN SUBMISSIONS ONLY**

## **1. OVERVIEW**

[1] Mr. Maqsood Alam returned to Canada from Pakistan on January 4, 2021. At the time, the Government of Canada required travellers from Pakistan to quarantine for 14 days due to the Covid-19 pandemic. He completed a Declaration Card and used an Automated Border Clearance (ABC) kiosk to scan his passport, driver's licence and the Declaration Card. He answered "no" to the statement about bringing meat and other food, plant and animal (FPA) products into the country. A Canada Border Services Agency (Agency) detector dog indicated that Mr. Alam's luggage might contain FPA Products. The Dog Handler at the luggage belt asked Mr. Alam if he had food in his luggage. Mr. Alam responded that he had cooked goat meat to eat during his quarantine. The Dog Handler referred Mr. Alam to secondary (baggage) inspection, where a Border Services Officer (Secondary Officer) examined his baggage and found a bag of cooked goat meat.

[2] The Agency issued a Notice of Violation (Notice) with a penalty of \$1300 alleging failure to present cooked goat meat contrary to subsection 16(1) of the [Health of Animals Act](#)<sup>1</sup> (*HA Act*). Mr. Alam did not declare he had goat meat on the Declaration Card even though he knew he had it in his luggage. It was only after a detector dog indicated his luggage might contain FPA products that he disclosed that he had goat meat to the Dog Handler. Once a detector dog identifies that baggage might contain FPA Products, a reasonable person would know that baggage inspection is imminent. Having failed to accurately declare on the Declaration Card, Mr. Alam failed to voluntarily make the goat meat available for inspection and thus failed to present the goat meat contrary to subsection 16 (1) of the [HA Act](#). It is not a defence that Mr. Alam thought he did not have to declare the goat meat because it was cooked, or that he brought the goat meat to eat during his mandatory Covid 19 quarantine. Mr. Alam committed the violation and must pay the penalty of \$1300.

## **2. LEGAL FRAMEWORK**

[3] The purpose of the [HA Act](#) and [Health of Animals Regulations](#)<sup>2</sup> (*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.

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<sup>1</sup> [Health of Animals Act](#), S.C. 1990, c. 21.

<sup>2</sup> [Health of Animals Regulations](#), C.R.C. c 296 [*HA Regulations*].

[4] The [Customs Act](#)<sup>3</sup> requires that travellers entering Canada report (declare) all goods they import to a customs office. They must also truthfully answer any questions asked by an officer.<sup>4</sup> Travellers arriving by commercial transport must make a declaration in writing.<sup>5</sup> Travellers arriving by air into Canada must make a “yes” or “no” declaration to the statement, referred to as the FPA question: “*I am/we are bringing into Canada: meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts, plants, flowers, wood, animals, birds, insects, and any part, products or by-products of any of the foregoing.*”

[5] Subsection 16 (1) of the [HA Act](#) states that a person shall either before or at the time of importation present an animal, animal product, animal by-product, veterinary biologic or other thing to an inspector, officer or customs officer. Subsection 12 (1) of the [Customs Act](#)<sup>6</sup> states that all goods that are imported shall be reported at the nearest customs office.

[6] The Canadian Food Inspection Agency determines what food, plant and animal products cannot be imported into Canada and what can be brought in under certain conditions. Details can be found in the [Automated Import Reference System](#) (AIRS)<sup>7</sup> which is available to the public. The AIRS database specifies that goat meat from Pakistan should be refused entry.

[7] A person can contest a notice by requesting a review of the facts of the violation by the Tribunal to determine if they committed the violation<sup>8</sup>. The agency issuing the notice must prove all the essential elements of the violation on a balance of probabilities, meaning it is more likely than not the violation occurred<sup>9</sup>.

[8] If the agency proves all the essential elements, the Tribunal considers whether the applicant established a permissible defence or legal reason to relieve responsibility for committing the violation. If the applicant does not establish a defence, the Tribunal considers whether the penalty was imposed in accordance with the law. Subsection 16 (1) of the [HA Act](#) is classified as a “very serious” violation<sup>10</sup>; the penalty is set at \$1300.<sup>11</sup>

### **3. ISSUES**

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<sup>3</sup> [Customs Act](#), RSC 1985, c 1 (2nd Supp), s 12(1).

<sup>4</sup> [Ibid](#) s 13(a).

<sup>5</sup> [Reporting of Imported Goods Regulations](#), s 5(3).

<sup>6</sup> [Customs Act](#), [supra](#) note 3, s 12.

<sup>7</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>8</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (S.C. 1995, c. 40) [[AAAMP Act](#)], ss. 9(2)(c) and 14(1)(b)

<sup>9</sup> [Ibid](#), s.19.

<sup>10</sup> [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) SOR/2000-187 [[AAAMP Regulations](#)], Schedule 1, item 11.

<sup>11</sup> [Ibid](#), s. 5(1)(c).

[9] The Tribunal proposes to review the essential elements of a violation of subsection 16(1) of the [HA Act](#). There is no dispute that Mr. Alam imported goat meat. He admitted it in his written submissions. The core issue in this case is whether Mr. Alam declared the goat meat and made it voluntarily available for inspection. However, prior to addressing that issue, the Tribunal must consider whether the Notice is valid as worded, with errors in Mr. Alam's name.

1. What are the essential elements of a violation of subsection 16 (1) of the [HA Act](#)?
2. Are the errors in the Notice clerical in nature or did they prevent Mr. Alam from knowing the allegations against him?
3. Should the Tribunal allow Mr. Alam to change the answer to the food, plant and animal question on his Declaration Card from "no" to "yes"?
4. Did Mr. Alam declare the goat meat at first contact with Agency officers?
5. Did Mr. Alam voluntarily make the goat meat available for inspection?
6. Did Mr. Alam establish a permissible defence?
7. Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?

#### **4. ANALYSIS**

##### **I. Issue 1: What are the essential elements of a violation of subsection 16 (1) of the [HA Act](#)?**

[10] The Tribunal has the authority under the [AAAMP Act](#) and [AAAMP Regulations](#) to determine the essential elements of violations under the [HA Act](#) and [HA Regulations](#). The Tribunal is not bound by its previous decisions. Each member may independently come to their own conclusions. Nonetheless, the Tribunal strives to decide cases as consistently as possible.

[11] The Federal Court of Appeal in [Savoie-Forgeot](#)<sup>12</sup> dealt with a violation of section 40 of the [HA Regulations](#), which states that no person shall import into Canada an animal by-product, except in accordance with the [HA Regulations](#). The Court determined that "*disclosure of goods and making them available for inspection should occur at the first contact with customs officials and not later, when a search is imminent or underway. A traveller is not allowed to gamble that he or she will not be directed to the secondary search area, and to declare the goods only if it appears they will be discovered as a result of a search.*" The Court also noted that when an individual declares animal by-products, they voluntarily make them available for inspection. Failure to declare removes the possibility of an officer to inspect the items and determine whether they pose a risk of spreading disease<sup>13</sup>.

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<sup>12</sup> [Canada \(Attorney General\) v Savoie-Forgeot, 2014 FCA 26](#) at para 25 [Savoie-Forgeot].

<sup>13</sup> [Savoie-Forgeot, supra](#) note 12 at Paragraphs 18-19.

[12] The Tribunal also dealt with a violation of section 40 of the [HA Regulations](#) in [Campbell](#)<sup>14</sup>. Part IV of the [HA Regulations](#) sets out certain conditions or exceptions under which a person may import an animal by-product. These include importation of certain products from specific countries<sup>15</sup>, importation accompanied by the appropriate permit or certificate<sup>16</sup>, or if an inspector has reasonable grounds to believe that the importation of the product would not result in the introduction of disease into Canada<sup>17</sup>. The Tribunal, after reviewing the Court’s decision in [Savoie-Forgeot](#), determined that there are four essential elements to a violation of section 40 of the [HA Regulations](#)<sup>18</sup>:

- Element 1 – Ms. Campbell is the person who committed the violation;
- Element 2 – Ms. Campbell imported an animal by-product into Canada;
- Element 3 – the animal by-product was not subject to any of the exceptions listed in Part IV of the [HA Regulations](#).; and
- Element 4 – Ms. Campbell failed to declare the animal by-product at first contact with Agency officers and thus did not make it available for inspection.

[13] These essential elements were adopted by the Tribunal with slight modifications in [Santos](#)<sup>19</sup>, which dealt with a violation of subsection 16 (1) of the [HA Act](#). Section 40 [HA Regulations](#) applies to importing “animal by-products” in accordance with the [HA Regulations](#). Subsection 16(1) of the [HA Act](#) applies to importing an “animal, animal product, animal by-product, animal food, veterinary biologic or other thing” and requires every person to present such thing to an inspector, officer or customs officer.

[14] An applicant requesting a review of the violation under subsection 16 (1) of the [HA Act](#) could raise an exception under Part IV of the [HA Regulations](#) as a defence. No exceptions apply in this case, nor did Mr. Alam claim any exception. However, as noted by the Tribunal in [Zahonyi](#)<sup>20</sup>, even if an exception under Part IV of the [HA Regulations](#) could apply, it would not excuse the failure to present the product. Subsection 16 (1) does not place the burden on the Agency to prove that none of the exceptions under Part IV apply.

[15] The Tribunal notes that there is no requirement in subsection 16 (1) of the [HA Act](#), section 40 of the [HA Regulations](#) or the [Customs Act](#) that disclosure of goods and making them available for inspection must be done “at first contact with customs officials” as stated by the Court in [Savoie-Forgeot](#). With increased use of Automated Border Clearance (self-service kiosk) technology, “at first contact with customs officials” may not be the critical point in time to declare products to avoid committing the violation, as will be discussed below. Another case may present an opportunity to review that requirement.

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<sup>14</sup> [Campbell v. Canada \(Canada Border Services Agency\), 2018 CART 4](#) [Campbell].

<sup>15</sup> [HA Regulations, supra](#) note 2, paragraph 41(1)(a).

<sup>16</sup> [Ibid](#) paragraphs 41(1)(b) and (c).

<sup>17</sup> [Ibid](#) s 52(1).

<sup>18</sup> [Campbell, supra](#) note 14 at paragraph 26.

<sup>19</sup> [Santos v Minister of Public Safety and Emergency Preparedness, 2021 CART 17](#) [Santos] at paragraph 11.

<sup>20</sup> [Zahonyi v Canada \(Canada Border Services Agency\), 2022 CART 27](#) [Zahonyi] at paragraph 17.

[16] The Tribunal proposes that there are three essential elements to a violation of 16 (1) of the [HA Act](#), rather than the four outlined in [Santos](#)<sup>21</sup> :

1. The applicant is the person identified in the Notice;
2. the applicant imported an animal, animal product, animal by-product, animal food, veterinary biologic or other thing into Canada; and
3. the applicant did not declare the product in question at first contact with Agency officers and did not voluntarily make it available for inspection.

**II. Issue 2: Are the errors in the Notice clerical in nature or did they prevent Mr. Alam from knowing the allegations against him?**

[17] The Agency issued the Notice to “Masqood (surname), Alam (first name)” for failing to declare cooked goat meat. The order of the first and last names are reversed and there is a spelling error in the name, Masqood (incorrect spelling) instead of Maqsood (correct spelling). The Agency requested that the Tribunal allow the clerical errors in the Notice to be rectified and the document amended. Mr. Alam submitted that if the Tribunal allows the Agency to correct the error in his name, it should allow him to amend his Declaration Card and change his answer from “no” to “yes”.

[18] The [AAAMP Act](#)<sup>22</sup> requires that a notice of violation name the person, identify the violation and indicate whether the sanction is a warning or penalty. The Agency confirmed Mr. Alam’s identity by reviewing both his Canadian passport and his Ontario driver’s licence which have his name and photograph, copies of which were filed with the Tribunal. Mr. Alam’s name, date of birth and address on the ABC kiosk receipt match those on his driver’s licence. The Agency did not submit a copy of a passport page containing an address. The passport number on the Notice matches Mr. Alam’s passport number.

[19] The Agency referred the Tribunal to three previous decisions which considered correcting errors in a notice of violation. In [Espitia](#)<sup>23</sup> the Tribunal decided that the notice of violation contained so many omissions and wrong information that it failed to meet several of the requirements set out in section 7 of the [AAAMP Act](#). In particular, the notice of violation did not specify the date or time of the alleged violation, the amount of penalty, nor the reduced amount of penalty that could be paid within fifteen days of serving the notice. The Tribunal concluded that the Agency did not prove that the person requesting the review committed the violation and that person did not have to pay the penalty.

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<sup>21</sup> [Santos](#), [supra](#) note 19 at paragraph 11.

<sup>22</sup> [AAAMP Act](#), [supra](#) note 8, subsection 7 (2)

<sup>23</sup> [Espitia v. Canada 2015 CART 4](#), at paragraph 58 [[Espitia](#)].

[20] The Tribunal permitted corrections in [Knezevic](#)<sup>24</sup> where the notice of violation referred to the wrong section of the [HA Regulations](#) (section 30 instead of section 39) and in [Dai](#)<sup>25</sup> where the notice of violation referred to the [HA Act](#) rather than section 40 of the [HA Regulations](#). In both cases the Tribunal concluded that neither change prevented the applicant from knowing the case against them.

[21] The misspelling of the name and the reversal of the order of the first and last names were clerical errors which did not prevent Mr. Alam from knowing the allegations against him. The Tribunal grants the Agency's request to correct those errors in the Notice. The Agency proved essential element 1, Mr. Alam is the person identified in the Notice.

### **III. Issue 3: Should the Tribunal allow Mr. Alam to change the answer to the food, plant and animal question on his Declaration Card from "no" to "yes"?**

[22] Mr. Alam asks that if the Tribunal grants the Agency's request to correct clerical errors in the Notice, it allow Mr. Alam the same flexibility to change the "typo error" in his answer to the food, plant and animal (FPA) question on the Declaration Card from "no" to "yes". Selecting "no" rather than "yes" on the Declaration Card is not a mere clerical error. It goes to the substance of the violation under review. Mr. Alam does not say that he ticked the wrong box, intending to choose "yes" rather than "no". In retrospect, he now understands that he should have answered "yes" to the question because he had goat meat in his luggage. Mr. Alam's mistake was not clerical in nature. Even if selecting "no" as the answer to the FPA question was an unintentional error, paragraph 18 (1) (a) of the [AAAMP Act](#) excludes due diligence (I did my best) as a defence to the violation.

### **IV. Issue 4: Did Mr. Alam declare the goat meat at first contact with Agency officers?**

[23] Mr. Alam completed a Declaration Card and answered "no" to the FPA question: "*I am/we are bringing into Canada: meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts, plants, flowers, wood, animals, birds, insects, and any part, products or by-products of any of the foregoing*".

[24] Mr. Alam states in his submissions: "*Of course food was in my luggage, sniffer dogs smelled it, and it was not [a] surprise. When an officer on [the] luggage belt asked me do you have any food item in your baggage, right [a]way I said yes I have goat meat cooked food and it is for my quarantine, never denied about it.*" Mr. Alam claimed he was tired, anxious and did not have his reading glasses when he completed the Declaration Card.

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<sup>24</sup> [Knezevic v. Canada \(Canada Border Services Agency\), 2011 CART 21](#) [Knezevic].

<sup>25</sup> [Dai v. Canada \(Canada Border Services Agency\), 2012 CART 8](#) [Dai].



[25] The Agency Report explains that the Dog Handler selected Mr. Alam for verification of his declaration because the detector dog indicated positively, suggesting Mr. Alam's luggage contained FPA products. The Dog Handler referred Mr. Alam to secondary (baggage) inspection. According to the Agency Report, the Secondary Officer verified Mr. Alam's declaration at secondary inspection. The Agency Report explains that prior to beginning the examination, the Secondary Officer confirmed that the baggage in Mr. Alam's possession was his own, that he was aware of the goods packed inside and that he had packed the bags himself. This was recorded by the shorthand annotation "YYY" on the back of the ABC kiosk receipt. The Secondary Officer noted in the Narrative Report of the incident that the ABC kiosk receipt was coded 56 and K13. The Agency did not explain the meaning of the codes. The Narrative Report states that the Secondary Officer asked Mr. Alam why he did not declare the meat, and that Mr. Alam said he did not declare it because it was cooked. The Narrative Report also notes that Mr. Alam stated that the meat was for his quarantine.

[26] There is no record in the materials submitted by the Agency of anything said by the Dog Handler who interacted with Mr. Alam at the luggage belt. The Agency Report makes no reference to Mr. Alam's statement to the Dog Handler that he had goat meat in his luggage. Mr. Alam included that information in additional submissions filed with the Tribunal by email dated May 24, 2021, in response to the Agency's Report filed April 23, 2021. According to the Tribunal Rules of procedure<sup>26</sup>, there is no automatic right of reply by the Agency to additional submissions by an applicant. The Tribunal has previously exercised its discretion to grant the Agency's request to make further submissions<sup>27</sup>. The Agency did not request permission to make further submissions in this case. Mr. Alam's evidence of his statement to the Dog Handler that he had goat meat in his luggage is uncontested.

[27] After reviewing the materials and submissions of both parties, the Tribunal finds as facts:

- i. Mr. Alam completed a Declaration Card answering "no" to the FPA question.
- ii. Mr. Alam scanned his Declaration Card, his passport and driver's licence at the ABC kiosk and received a receipt as a record of the declaration.
- iii. An Agency detector dog indicated that Mr. Alam's luggage might contain food, plant or animal products.
- iv. The Dog Handler at the luggage belt asked Mr. Alam if he had food in his luggage.
- v. Mr. Alam responded that he had cooked goat meat to eat during his quarantine.
- vi. The Detective Dog Handler referred Mr. Alam to secondary inspection.
- vii. The Secondary Officer found a bag of cooked goat meat in Mr. Alam's luggage.

[28] The Tribunal concludes that Mr. Alam declared he had goat meat at first contact with an Agency officer, the Dog Handler. However, that does not end the analysis. Mr. Alam must also have voluntarily made the goat meat available for inspection.

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<sup>26</sup> See [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#), SOR/2015-103, rule 35.

<sup>27</sup> [Christensen v. Canada \(Canadian Food Inspection Agency\)](#), 2016 CART 23 applied in [Dyck v. Canada \(Canadian Food Inspection Agency\)](#), 2017 CART 3, at paragraph 9.



## V. Issue 5: Did Mr. Alam voluntarily make the goat meat available for inspection?

[29] Applying the Federal Court of Appeal decision in [Savoie-Forgeot](#)<sup>28</sup>, the Tribunal must consider whether a baggage search was imminent when Mr. Alam declared he had goat meat to the Dog Handler. Did Mr. Alam declare the goat meat only when it appeared that it would be discovered as a result of a search?

[30] The Agency Report states: *“Following the issuance of the ABC receipt, travellers are then asked to present their identity documents and receipt to a Border Services Officer (BSO), who will verify the documents and may ask questions to clarify an individual’s declaration.”* The Dog Handler intercepted Mr. Alam following the positive indication by the detector dog for FPA products. The evidence does not specify whether the Dog Handler verified Mr. Alam’s Declaration Card.

[31] The Court stated in [Savoie-Forgeot](#) that *“while the process of importing an animal by-product may begin when an item is brought onto Canadian soil, it is not complete at that point”*. It noted that either before or at the time of importation, individuals have an obligation to present any animal by-products to an inspector, officer or customs officer for inspection in accordance with section 16 of the [HA Act](#)<sup>29</sup>. The Tribunal notes that declaring a product and voluntarily making it available for inspection is a way to “present” a product, as required by subsection 16 (1) of the [HA Act](#).

[32] In coming to its conclusion in [Savoie-Forgeot](#), the Court reviewed its decision in [Westphal-Larson](#)<sup>30</sup>. Mr. Westphal-Larson did not declare he was carrying meat on his declaration card which he submitted to a customs officer upon his arrival in Canada. He only verbally declared that he had salami in his suitcase and allowed it to be inspected once he discovered that all luggage arriving from Holland, as he was, would be subject to an x-ray because of an outbreak of foot-and-mouth disease. The Court concluded that Mr. Westphal-Larsen neglected to declare the item he was carrying and to voluntarily make it available for inspection, such that it might be confiscated if it posed a risk of spreading disease. The Court found he violated section 40 of the [HA Regulations](#).

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<sup>28</sup> *Savoie-Forgeot*, [supra](#) note 12.

<sup>29</sup> *Savoie-Forgeot*, [supra](#) note 12 at paragraph 17.

<sup>30</sup> [Canadian Food Inspection Agency v. Westphal-Larsen, 2003 FCA 383](#) [Westphal-Larsen]

[33] In [Gebreyesus](#)<sup>31</sup> a detector dog identified that Mr. Gebreyesus' bags contained animal products. A dog handler approached Mr. Gebreyesus, asked to see his declaration card, and whether he had any agricultural products. Mr. Gebreyesus did not indicate he had any agricultural products and was directed to secondary inspection. A customs officer found four wooden stools with animal hide coverings in his luggage and served him with a notice of violation under subsection 16 (1) of the [HA Act](#). The Tribunal noted that although the [Savoie-Forgeot](#) case dealt with an alleged violation under section 40 of the [HA Regulations](#), a similar logic applied to an alleged violation under subsection 16 (1) of the [HA Act](#). The Tribunal concluded that "*where an individual fails to declare or present such products before secondary inspection, unless some other circumstances prevail*" (emphasis added), they have committed the violation<sup>32</sup>. The Tribunal found that Mr. Gebreyesus did not make any attempt to declare the wooden stools either on his declaration card or through any statement he made to the detective dog handler after his bags had been identified as containing agricultural products. His first disclosure to agency officials was after the products were discovered during baggage inspection.

[34] In an alleged violation of subsection 16 (1) of the [HA Act](#), at what point is baggage inspection imminent? When the detector dog indicated Mr. Alam's baggage might contain FPA Products, a reasonable person would know that a baggage search was imminent. The Tribunal infers that Mr. Alam declared the goat only when it appeared it would be discovered as a result of a search. Having failed to accurately declare on the Declaration Card, Mr. Alam failed to make the goat meat voluntarily available for inspection and thus failed to present the goat meat contrary to subsection 16 (1) of the [HA Act](#).

## **VI. Issue 6: Did Mr. Alam establish a permissible defence?**

[35] None of the reasons that Mr. Alam offered for incorrectly completing his Declaration Card are permissible defences. Violations under the [HA Act](#) and the [HA Regulations](#) are absolute liability offences meaning there are very few defences available.

[36] In his submissions, Mr. Alam explains that he misunderstood reading and interpreting the declaration form and did not knowingly or intentionally commit the violation. He admitted that he brought cooked goat meat with him to eat during his journey and during the 14-day quarantine. He believed the food was safe because it was cooked and not raw. He explained that he had lost his reading glasses during the journey and could not clearly read and interpret the Declaration Card with blurred sight. He noted that fatigue, jet lag, pandemic emergency stress and anxiety as well as not being a native English speaker contributed to his misunderstanding and misinterpretation.

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<sup>31</sup> [Gebreyesus v. Canada \(Canada Border Services Agency\), 2015 CART 5](#) [Gebreyesus]

<sup>32</sup> [Gebreyesus](#), [supra](#) note 31 at paragraph 32.

[37] It is not a defence that a person reasonably and honestly believed in the existence of facts that, if true, would exonerate them. Mr. Alam's claims that he believed he did not have to declare the goat meat because it was cooked. All food, plant and animal products must be declared. Misunderstanding in reading and interpreting the Declaration Card is not a permissible defence. Paragraph 18(1)(b) of the [AAAMP Act](#) explicitly excludes the defence of mistake of fact (I was mistaken) <sup>33</sup>.

[38] Mr. Alam claims that he did not intend to commit a violation, and that fatigue, stress and anxiety made him confused. He suggests that he was unable to exercise due diligence in declaring the goat meat. The defence of due diligence includes lack of intent to commit the violation<sup>34</sup>. Paragraph 18(1)(a) of the [AAAMP Act](#) explicitly excludes the defence of due diligence.

[39] Subsection 18 (2) of the [AAAMP Act](#) allows certain common law defences to notices of violation. In [Abou-Latif](#)<sup>35</sup>, the Tribunal suggested that a complete lack of understanding of either English or French could be viewed as an "impairment of volition" amounting to "a complete inability to appreciate the nature and consequences of [one's] actions". In [Fatehibanafshevaragh](#)<sup>36</sup>, the Tribunal confirmed that language impediments do not constitute a recognizable common-law defence. In both cases, the Tribunal concluded that the applicants' lack of understanding of English was not significant enough to excuse their actions. Mr. Alam claims his difficulty was that he is not a native English speaker, not that he had a complete lack of understanding of English. That does not relieve Mr. Alam of responsibility for committing the violation.

[40] Importing cooked meat to consume during a legally imposed quarantine does not amount to a common law defence of necessity which would relieve Mr. Alam of responsibility for committing the violation. To successfully raise the defence of necessity, there are three (3) requirements established by the Supreme Court of Canada in [Perka](#)<sup>37</sup> and amplified in [R. v. Latimer](#)<sup>38</sup>. *"First, there is the requirement of imminent peril or danger. Second, the Applicant must have no reasonable legal alternative to the course of action that was undertaken. Third, there must be proportionality between the harm inflicted and the harm avoided."*

[41] Mr. Alam notes in his submissions that according to the Canadian quarantine rules, he was not allowed to go outside of his isolation location even for food. He lives alone in Canada, had no relative, friend or any other arrangement to drop off food. He had limited financial means. He notes that during his quarantine he survived on some cookies, a packet of sugar and water; he lost 7 pounds in 15 days. He states he had no help from anyone to provide food, as the Agency seized the food he had intended eating during his quarantine.

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<sup>33</sup> [Doyon v. Canada \(Attorney General\)](#), 2009 FCA 152 at paragraph 11.

<sup>34</sup> [Canada \(AG\) v. Klevtsov](#), 2018 FCA 196 at paragraph 11.

<sup>35</sup> [Abou-Latif v Canada \(Canada Border Services Agency\)](#), 2013 CART 35, paras 34-37 [*Abou-Latif*]

<sup>36</sup> [Fatehibanafshevaragh v Canada \(Canada Border Services Agency\)](#), 2018 CART 6, para 42

[*Fatehibanafshevaragh*]

<sup>37</sup> [Perka v. The Queen](#), [1984] 2 SCR 232 [Perka].

<sup>38</sup> [R. v. Latimer](#) (2001) 1 SCR 3 [R. v. Latimer].

[42] Mr. Alam did not satisfy the first requirement of a defence of necessity. While difficult and challenging, a legally imposed quarantine was not an urgent situation of clear and imminent peril, such as facing an oncoming train or a bullet from a gun. As for the second requirement, Mr. Alam had another reasonable legal alternative to importing a FPA Product without declaring or presenting it; simply answering “yes” rather than “no” on the Declaration Card. While he was not sure who could supply food during his quarantine, he could have chosen food that is admissible into Canada. For example, the Secondary Officer allowed him to import a guava fruit after removing its leaf, even though Mr. Alam did not declare it. He could have ordered food delivered or contacted local organizations for assistance. The third requirement that there must be proportionality between the harm inflicted and the harm avoided by the unlawful act is assessed using an objective standard. His possible hunger or weight loss may or may not weigh against the potential harm of importing a banned animal product. Regardless, Mr. Alam would have to meet all three requirements for a defence of necessity. He did not.

#### **VII. Issue 7: Was the penalty assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#)?**

[43] The [AAAMP Act](#) and [AAAMP Regulations](#) establish a system of administrative monetary penalties (fines) or warnings 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>39</sup> Subsection 16(1) of the [HA Act](#) is classified a “very serious” violation.<sup>40</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 \$1300.<sup>41</sup>

[44] Mr. Alam requested that the Tribunal convert the penalty into a warning. The [AAAMP Act](#) does not expressly grant the Tribunal the authority to vary or waive the amount of penalty. Mr. Alam did not submit any legal reasons explaining how the Tribunal might have the authority to waive the penalty. The Tribunal has concluded that it cannot vary or waive the penalty based on circumstantial, humanitarian or financial grounds.<sup>42</sup> The penalty was assessed according to the [AAAMP Act](#) and [AAAMP Regulations](#).

#### **4. ORDER**

[45] The Tribunal orders that the Agency correct Notice of Violation #4971-21-0018 so that the surname reads “Alam”, and the first name reads “Maqsood”.

[46] The Tribunal records will reflect the corrected name of the Applicant “Maqsood Alam”.

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<sup>39</sup> [AAAMP Act](#), *supra* note 8, subsection 7(2).

<sup>40</sup> [AAAMP Regulations](#), *supra* note 10, Schedule 1, item 11.

<sup>41</sup> *Ibid* note 10, paragraph 5(1)(c).

<sup>42</sup> [Li v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2016 CART 11.

[47] Mr. Alam failed to present the goat meat contrary to subsection 16(1) of the [HA Act](#). He committed the violation and must pay the penalty of \$1300 within 60 days of this Order.

[48] This violation is not a criminal offence. After five years, Mr. Alam 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](#).

(Original Signed)

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Marthanne Robson  
Member  
Canada Agricultural Review Tribunal