



Citation: *Dao v. Canada (Canada Border Services Agency)*, 2013 CART 31

Date: 20130925
Docket: CART/CRAC-1612

Between:

Quynh Tran Dao, Applicant

- and -

Canada Border Services Agency, Respondent

Before: Chairperson Donald Buckingham

**With: Daniel Dao, representative for Quynh Tran Dao; and
David Davis, representative for the Canada Border Services
Agency**

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts of a violation of section 40 of the *Health of Animals Regulations*, alleged by the respondent.

DECISION

[1] Following an oral hearing and a review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal (Tribunal), by order, determines, on the balance of probabilities, that the applicant committed the violation set out in Notice of Violation YYZ4971-0440, dated January 31, 2012, and must pay to the respondent a monetary penalty of \$ 800 within thirty (30) days after the day on which this decision is served.

The hearing was held in Brampton, ON,
On Thursday, August 29, 2013.

REASONS

Alleged Incident and Issues

[2] A bag of flossy material, several birds' nests and one stuffed rice roll from Vietnam are at the heart of this matter. The respondent, the Canada Border Services Agency (Agency), alleges that, on January 31, 2012, at Lester B. Pearson International Airport in Toronto, Ontario (Pearson Airport), the applicant, Quynh Tran Dao (Dao), imported meat products into Canada contrary to section 40 of the *Health of Animals Regulations*, from Vietnam, a country from which it is unlawful to import meat products without meeting the requirements of "Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things" of the *Health of Animals Regulations*.

[3] The applicable provisions of Part IV of the *Health of Animals Regulations* are reproduced below:

40. *No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.*

41. (1) *A person may import into Canada an animal by-product, manure or a thing containing an animal by-product or manure, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if*

(a) the country of origin is the United States and the by-product, manure or thing is not derived from an animal of the subfamily Bovinae or Caprinae;

(b) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; or

(c) the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in a manner that would prevent the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate signed by an official of the government of the country of origin that

(i) attests that the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in that manner, and

(ii) shows the details of how it was collected, treated, prepared, processed, stored and handled.

(2) Subsection (1) does not apply in respect of manure found in or on a vehicle that is entering Canada from the United States if the manure was produced by animals, other than swine, that are being transported by the vehicle.

41.1 *(1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if an inspector has reasonable grounds to believe that the importation of the by-product or thing, by its nature, end use or the manner in which it has been processed, would not, or would not be likely to, result in the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product was derived is susceptible and that can be transmitted by the by-product, and the by-product or thing is not intended for use as animal food or as an ingredient in animal food.*

(2) No person shall, in respect of any animal by-product or thing containing an animal by-product that has been imported in accordance with subsection (1), use or cause it to be used as animal food or as an ingredient in animal food.

...

43. *A person may import into Canada cooked, boneless beef from a country or a part of a country not referenced to in section 41 if*

(a) it was processed in a place and in a manner approved by the Minister;

(b) it is accompanied by a meat inspection certificate of an official veterinarian of the exporting country in a form approved by the Minister; and

(c) on examination, an inspector is satisfied that it is thoroughly cooked.

...

46. *No person shall import into Canada meat and bone meal, bone meal, blood meal, tankage (meat meal), feather meal, fish meal or any other product of a rendering plant unless, in addition to the requirements of sections 166 to 171,*

(a) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is

susceptible and that can be transmitted by the product, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; and

(b) an inspector has reasonable grounds to believe that the product has been processed in a manner that would prevent the introduction of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product.

...

52. (1) Despite anything in this Part, a person may import into Canada an animal by-product if the person produces a document that shows the details of the treatment of the by-product and an inspector has reasonable grounds to believe—based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, if necessary, on an inspection of the by-product—that the importation of the by-product would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

(2) Notwithstanding anything in this Part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

[Underlining added]

[4] The Tribunal must determine whether the Agency has established all the elements required to support the impugned Notice of Violation and, if Dao did import meat into Canada, whether he met the requirements that would have permitted such importation.

Procedural History

[5] Notice of Violation YYZ4971-0440, signed by Agency Inspector 14984 and dated January 31, 2012, alleges that, at POE 4971 (Pearson Airport), in the province of Ontario, Dao “committed a violation, namely: import an animal by-product, to wit: meat, without meeting the prescribed requirements Contrary to section 40 of the *Health of Animals Regulations*” [sic], which is a violation under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Act) and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (Regulations).

[6] The Agency served Dao personally with the Notice Violation on January 31, 2012. The Notice of Violation indicated to Dao that the alleged violation is a “serious violation” under section 4 of the Regulations, for which a penalty in the amount of \$800.00 is assessed.

[7] By letter faxed to the Tribunal dated February 9, 2012, Dao requested a review by the Tribunal of the facts of the violation (Request for Review), in accordance with paragraph 9(2)(c) of the Act. Tribunal staff spoke with Dao and confirmed that he wished to proceed by way of an oral hearing conducted in English, in accordance with subsection 15(1) of the Regulations.

[8] On February 28, 2012, the Agency sent copies of its report (Agency Report) regarding this matter to Dao and to the Tribunal, the latter receiving it that same day.

[9] By letter dated February 29, 2012, the Tribunal invited Dao and the Agency to file with it any additional submissions in this matter, no later than March 30, 2012. Neither Dao, nor the Agency filed any additional submissions further to this invitation, and no documents were filed by either party at a subsequent time prior to the hearing of the matter.

[10] By letter dated July 24, 2013, the Tribunal notified the parties that the hearing of this matter would take place in Brampton, Ontario, on August 29, 2013.

[11] The oral hearing requested by Dao took place in Brampton, Ontario, on August 29, 2013, with both parties in attendance. Dao was represented by his son, Daniel Dao, while the Agency was represented by Mr. David Davis.

Evidence

[12] The evidence presented to the Tribunal in this case consists of written submissions from the Agency (Notice of Violation and Agency Report) and from Dao (submissions contained in his Request for Review) and oral testimony given by witnesses at the oral hearing. The Agency called one witness, Agency Inspector 14984, while Dao called one witness, himself, at the oral hearing held on August 29, 2013. The Agency also introduced one exhibit entitled "Colour photo of rice roll seized by Agent 14984 on January 31, 2012 (top photo only)".

[13] The Agency provided evidence with respect to the following facts:

- Dao and his wife, Thi Lan Le, landed at Pearson Airport on a voyage from Vietnam, via Paris, on January 31, 2012, (Canada Border Services Agency Declaration Card E311 at Tab 1 of the Report; Notes of Inspector 14984 at Tab 2 of Agency Report; oral testimony of Inspector 14984).
- A Canada Border Services Agency Declaration Card E311 (Declaration Card) was completed by Dao, or by his wife, for the two of them, signed by both and dated January 31, 2012. The Declaration Card was marked, in particular, by ticking the "no" box beside the following statement: "I am/we are bringing into Canada: Meat/meat products; dairy products; fruits; vegetables; seeds; nuts; plants and

animals or their parts/products; cut flowers; soil; wood/wood products; birds; insects" (Tab 1 of the Agency Report, oral testimony of Inspector 14984).

- Dao and his wife were referred to secondary inspection after their Declaration Card was coded by the primary inspection officer for verification that they had no food, two cartons of cigarettes and a value of goods of \$5,000. Inspector 14984 searched the bags of Dao and his wife and found a large bag of pork floss wrapped in packaging identifying it as shrimp, two small boxes of birds' nests wrapped in packaging identifying it as fish; and one large sticky rice roll stuffed with meat. Both travellers spoke English, were returning from Vietnam, had not declared food on their Declaration Card and were specifically asked about food during the examination and said "no". Except for the rice roll, which was in a plastic bag in hand luggage, the other food items and a plant were concealed in mislabelled packaging within clothing in the luggage. (Tabs 2 and 4 of Agency Report, both completed by Inspector 14984).
- In oral testimony, Inspector 14984 told the Tribunal that when Dao and his wife came to the secondary inspection counter, she requested their Declaration Card, passports and drivers licences. After verifying their identification, Inspector 14984 asked Dao if this was his luggage, did he pack it himself, and if he was aware of its contents. Dao answered in the affirmative to the three questions. When Dao then presented his Declaration Card and Inspector 14984 saw there was a "no" in response to the food question, she asked Dao if he had any food products—anything edible—anything he was going to eat—in his luggage? Dao did not give the inspector any indication that there was food or meat in his luggage. Inspector 14984 told the Tribunal that she then searched Dao's luggage and found two packages of birds' nests mislabelled as fish, one large bag of pork floss and one large rice roll, which Dao told her contained only rice but which when cut opened by the inspector, she testified she found chicken. Inspector 14984 stated that when she found the food in Dao's luggage there was no visible reaction from Dao. He was not surprised and seemed to know that the food was there. He offered no explanation as to why he had imported the meat. The inspector then completed her investigation by taking photos of the animal products, one of which is Exhibit 1. Inspector 14984 told the Tribunal that the baggage that she inspected included articles of Dao and of his wife and the inspector considered the hand baggage and the checked baggage as jointly owned. Even though it appeared to the inspector that some of the items might be more likely attributable to his wife, Inspector 14984 testified that Dao argued with her that no items should be considered to be his wife's and that if any official documents were to be issued in this matter, they should be made out in his name alone. Finally, the inspector told the Tribunal that when she asked Dao if he had any permits for the products imported, he said he did not and that he did not know that he needed such permits (oral testimony of Inspector 14984).

- Inspector 14984 acknowledged that, in her experience, and given the direction from the Automated Import Reference System (AIRS) of the Canadian Food Inspection Agency, the meat products she found in Dao's possession were to be refused entry into Canada (oral testimony of Inspector 14984 and AIRS report found at Tab 3 of the Agency Report).

[14] In cross-examination, Inspector 14984 told the Tribunal that she believed that Dao did understand English well enough to understand the questions she was asking him and indicated that she simplified her questions to ensure that he would understand. She added that if she had been convinced that Dao was not understanding her questions she would have called for an interpreter to come and assist them. The fact that Dao argued with her to have all the documentation in his name convinced her that Dao understood and spoke English. Inspector 14984 admitted that the rice roll may have contained pork, although she thought it was chicken. When asked why she confiscated the birds' nests, she told the Tribunal that it was an item of concern because they are made with bird saliva, and therefore, carry a risk for transmission of avian flu.

[15] The written evidence provided by Dao in the Request for Review, forwarded to the Tribunal on February 9, 2012, states in part as follows:

...

I am 60 years old, I have not been working since 1992 because of an accident. I'm relying on my spouse for support and currently have 1 (one) son still in high school.

I have come to realize the violations that happened on Jan. 31, 2012. I am uneducated and don't know the English language much and the law. I am asking for the compassion and sympathy to reduce the fines and have a chance to pay the fine in installments. Because of my knowledge of English is limited which lead to violations of such laws. Now that I have learned and assure you that it will not happen again.

...

[Sic throughout]

[16] In his oral testimony, Dao stated that he had only travelled by air two times in his life and as such he didn't know what he was allowed to bring back into Canada. So, he brought home the gifts he received from his family for Chinese New Year while in Vietnam. Included in these items was a traditional item, which was a sticky rice roll with pork, not chicken, as suggested in evidence by Inspector 14984. Dao told the Tribunal that he did not understand what the questions meant on the Declaration Card, as his wife told him how to fill it out. When he arrived at secondary inspection, he told the inspector that he had packed the luggage by himself and that he had two suitcases—one for clothes and one for food. Dao testified that all of the food items he had in his suitcases were gifts from aunts,

uncles and other family members in Vietnam, and as he did not know that they were not permitted to be imported into Canada, he took them and packed them in his suitcase.

[17] In cross-examination, Dao's evidence indicated that he had filled out the Declaration Card, that he did not speak English very well, that the food that the inspector found in his bags belonged to him and that the rice roll contained pork, not chicken. Dao also testified that he knew he had food in his luggage, but did not think that the inspector asked him if he had permits for the food. Dao added, when asked by the Agency's representative, however, that he did not in fact have any permits that would have permitted the importation of the food in his luggage.

Applicable Law and Analysis

[18] This Tribunal's mandate is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority of the Act. The purpose of the Act is set out in section 3:

3. The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

[19] Section 2 of the Act defines "agri-food Act":

"agri-food Act" means the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act or the Seeds Act.

[20] Pursuant to paragraph 4(1)(a) of the Act, the Minister of Agriculture and Agri-Food, or the Minister of Health, depending on the circumstances, may make regulations:

designating as a violation that may be proceeded with in accordance with this Act

(i) the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act...

[21] The Minister of Agriculture and Agri-Food has made one such regulation, the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* SOR/2000-187 (AMPs Regulations), which designates as a violation several specific provisions of the *Health of Animals Act* and the *Health of Animals Regulations*, the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 of the AMPs Regulations and include a reference to section 40 of the *Health of Animals Regulations*. Moreover, Schedule 1, Part 1, Division 2 of the AMPs Regulations, specifically sets out the

classification, or severity, that must be attributed, by enforcement Agencies and this Tribunal, to a violation of section 40 as follows:

Item	Section HAR	Short-form Description	Classification
79.	40	<i>Import an animal by-product without meeting the prescribed requirements.</i>	Serious

[22] The Act's system of administrative monetary penalties, as set out by Parliament, is very strict in its application. In *Doyon v. Attorney General of Canada (Doyon)*, 2009 FCA 152, the Federal Court of Appeal describes the administrative monetary penalties system as follows, at paragraphs 27 and 28:

[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an actus reus which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.

[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.

[23] Moreover, the Federal Court of Appeal, in *Doyon*, points out that the Act imposes an important burden on the Agency. At paragraph 20, the Court states:

[20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.

[24] Section 19 of the Act reads as follows:

19. *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[25] Therefore, it is incumbent on the Agency to prove, on the balance of probabilities, all the elements of the violation that form the basis of the Notice of Violation. In the case of a

violation of section 40 of the *Health of Animals Regulations*, the Agency must prove the following:

- Dao is the person who committed the violation;
- Dao imported an animal by-product, in this case, any or all of the birds' nests, pork floss and pork in a rice roll, into Canada; and
- if Dao did import meat products into Canada, Agency officials gave him a reasonable opportunity to justify the importation in accordance with Part IV of the *Health of Animals Regulations*.

[26] The Tribunal must consider all the evidence, both written and oral, before it to determine whether the Agency has proven, on the balance of probabilities, each of the elements of the alleged violation.

[27] With respect to element 1, Dao's identity, as the alleged violator, is not in dispute. Although there is evidence before the Tribunal that Dao and his wife were indeed travelling together and that his wife may have directed him as to how to complete the Declaration Card, the evidence of Inspector 14984, as well as that of Dao himself, was that Dao was the person who was responsible for, had control of, and had packed the food found in his luggage. Throughout the entire secondary inspection process, the identity of Dao, the alleged violator, and his care, control and ownership of the pork floss, the bird's nests and the rice roll filled with pork, have been proven, on a balance of probabilities. The Tribunal finds, as fact, that Dao was the alleged violator identified by Inspector 14984, and the food found in his bags can rightly be attributed as belonging to him, albeit that he would be sharing it with his wife, and perhaps even others once in Canada.

[28] With respect to element 2, the Tribunal accepts, as a finding of fact, on the balance of probabilities, that the Agency has established through evidence from Inspector 14984, that was not denied and was even admitted by Dao, that Dao imported an animal by-product, in this case, birds' nests, pork floss and pork in a rice roll, into Canada on January 31, 2012.

[29] The third element is also essential to proving a violation of section 40 of the *Health of Animals Regulations*. That section, as noted above, states as follows: "No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part." Moreover, the Minister of Agriculture and Agri-Food, in the AMPs Regulations, has found it necessary to designate in the listing of section 40 of the *Health of Animals Regulations* in Schedule 1, Part 1, Division 2 (Violation #79, section 40) of those Regulations that the violation relates to the: "Import an animal by-product without meeting the prescribed requirements". In both instances—in the *Health of Animals Regulations* themselves, and in the listing of the violation under the AMPs Regulations—the violation mentions and permits a justification from the alleged offender.

[30] There can be no doubt, that alleged violators of section 40 may defend themselves by adducing evidence proving they met the prescribed requirements permitted under Part IV of the *Health of Animals Regulations*. Moreover, the responsibility and burden for persuading the Agency, or eventually the Tribunal, that a person has met the prescribed requirements of Part IV falls on the alleged violator and he or she must take all necessary and reasonable steps to make such a justification known. Normally, this justification will take one of two forms, either by:

- the traveller declaring any animal by-products to the Agency, either in writing on that person's Declaration Card or in person to an Agency official once that person had deplaned and entered Canada on his way through an airport, such that an Agency inspector could inspect the product and determine if it should be allowed entry into Canada pursuant to section 41(1)(a) or section 41.1(1) of the *Health of Animals Regulations*; or
- the traveller producing a certificate (section 41(1)(b); section 41(1)(c); section 43; section 46), document (section 52(1)), or permit (section 52(2)) such that the meat product would be permitted to be imported into Canada under Part IV.

[31] The third element of the violation – if Dao did import meat products into Canada, that Agency officials provided a reasonable opportunity to him to justify the importation in accordance with Part IV of the *Health of Animals Regulations* – in the grand majority of cases, would be an element of the violation that will be very easily met by the Agency, as the threshold for adducing sufficient evidence is extremely low. Normally, the Agency would have only to prove to the Tribunal that the traveller's Declaration Card was falsely marked or that the person understood and answered "no" to the primary inspector's question about whether the traveller was bringing meat products into Canada; and that the traveller was given an opportunity to produce a certificate, document or permit, which would permit importation of a meat product. In the case of a person who understands either of Canada's official languages, the Agency's burden to prove that they had afforded a traveller a reasonable opportunity to justify any importation of meat products in accordance with Part IV of the *Health of Animals Regulations* would normally be quickly and easily met.

[32] The Tribunal finds, in this case, that the Agency has met this burden. Dao's knowledge that his luggage contained animal products and his conduct in marking "no" on the Declaration Card and subsequently failing to declare the products to the Agency at primary inspection, or at any time before Inspector 14984 found them in his baggage during secondary inspection, is sufficient to prove that Dao was given a reasonable opportunity to declare the products or to produce a certificate, document or permit, which would permit importation of a meat product. The Tribunal considered Dao's evidence that he did not understand English, a condition which might have had a limiting effect on his ability to produce a permit. However, while there was some evidence from Dao that he did not understand English or did not understand English well, there was sufficient evidence

from Inspector 14984 that she felt that she was being understood by Dao during secondary inspection. The fact that Dao was able, moreover, to dialogue in English with Inspector 14984, concerning the matters affecting the issuance of the Notice of Violation, also indicate that Dao was able to understand English at least at a basic level. The Tribunal, finds as fact, that the evidence presented by both parties does not support any finding by the Tribunal that Dao actually had such a permit or certificate in his possession on January 31, 2012, or that Agency officials failed to give him a reasonable opportunity to justify the importation in accordance with Part IV of the *Health of Animals Regulations*.

[33] The Tribunal is aware that the Act creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Section 18 of the Act states:

18. (1) *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.

[34] When an administrative monetary penalties provision has been enacted for a particular violation, as is the case for section 40 of the *Health of Animals Regulations*, there is little room to mount a defence. In the present case, section 18 of the Act will exclude practically any excuse that Dao might raise, such as his not knowing he was breaking the law, that he did not intend to break the law, or that he did not think he had to declare the food products verbally or on the Declaration Card, all of which Dao did verily believe given the evidence presented. However, given Parliament's clear statement on the issue, the Tribunal accepts that none of the statements made by Dao in his submissions to this Tribunal and in his communications with Agency inspectors are permitted defences under section 18. Finally, the Tribunal is not empowered under its enabling legislation to consider arguments from the parties based on compassionate and humanitarian considerations which might have the effect of eliminating, reducing, or providing a payment plan for the fine as set out in a Notice of Violation.

[35] The Tribunal appreciates that Agency inspectors are charged with the important task of protecting individuals, animals, and plants, agricultural production and the food system in Canada from risks posed by pests, pathogens and parasites. There is no doubt that these tasks must be carried out conscientiously. Furthermore, the Tribunal knows that the Agency has established its own process for handling travellers' complaints against Agency inspectors. There was no evidence presented in this case showing that Dao had pursued this avenue, nor was there any evidence presented by the parties that the inspector's conduct in this case was anything but above reproach.

Conclusion

[36] The Tribunal finds that the Agency has proven, on a balance of probabilities, each of the necessary elements to prove that Dao has committed the violation set out in Notice of Violation YYZ4971-0440 dated January 31, 2012. The Tribunal, therefore further finds that Dao committed the violation and is liable for payment of the penalty in the amount of \$800.00 to the respondent within thirty (30) days after the day on which this decision is served.

[37] The Tribunal wishes to inform Mr. Dao that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after five years to have the notation of this violation removed from the Minister's records, in accordance with subsection 23(1) of the Act, which states as follows:

23. (1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from

(a) where the notice of violation contained a warning, the date the notice was served, or

(b) in any other case, the payment of any debt referred to in subsection 15(1),

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa, Ontario, this 25th day of September, 2013.

Dr. Don Buckingham, Chairperson