Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Abou-Latif* v. *Canada (Canada Border Services Agency),* 2013 CART 35

Date: 20131030
Docket: CART/CRAC-1655

BETWEEN:

Adel Abou-Latif, Applicant

- and -

Canada Border Services Agency, Respondent

Before: Member Bruce La Rochelle

With: **Rema Kaddage, representative for the applicant; and**
David Davis, representative for the 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, as set out in Notice of Violation 3961-12-M-0295 dated August 11, 2012, and is liable to pay 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 Ottawa, ON,
On Friday, October 11, 2013

REASONS

Alleged Incident and Legislative Authority

[2] The respondent, the Canada Border Services Agency (Agency), submits, by way of Notice of Violation that on August 11, 2012, at P.-E.-Trudeau International Airport, Montreal (Dorval), Quebec, the applicant, Mr. Adel Abou-Latif (Mr. Abou-Latif) did (*verbatim*) "import an animal product to wit: meat, without meeting the prescribed requirements", contrary to section 40 of the *Health of Animals Regulations*.

[3] A person is only permitted to import meat into Canada if he or she meets the requirements of "Part IV—Importation of Animal By-Products, Animal Pathogens and Other Things" of the *Health of Animals Regulations*, which includes section 40.

[4] 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…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*
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> *(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...

...

41.1 *(1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product...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...

...

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.

…

[5] The basic regulatory regime, as particularized in the legislative extracts quoted, is that of prohibiting the importation of meat or meat by-products into Canada from countries other than the United States, unless an import permit has been obtained. In certain cases, a certificate or other document showing how the meat or meat by-product has been processed may be accepted in place of an import permit. In such cases, the products are permitted to be imported on the basis that the particulars disclosed result in a conclusion that the product would not or would not be likely to introduce particular diseases or contaminants into Canada, and therefore, potentially into the Canadian food supply. In addition, an inspector is accorded a particularized discretion to permit the importation of animal by-products, based on reasonable grounds to believe that the importation of the product, "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" (paragraph 41.1(1), Health of Animals Regulations).

[6] The roles of the various parties involved in the regulation of food importation are discussed in greater detail in the Tribunal case of *Gebru v. Canada (CBSA),* 2013 CART 2, particularly at paragraphs 10 to 16 of that decision.

[7] The Tribunal must determine whether the Agency has established all the elements required to support the Notice of Violation and, if Mr. Abou-Latif did import meat into Canada, whether he fails to meet the requirements that would have permitted such importation.

Procedural History

[8] In Notice of Violation 3961-12-M-0295 the Agency alleges that, on August 11, 2012, at P.-E.-Trudeau International Airport, Montreal (Dorval), Quebec, Mr. Abou-Latif "committed a violation, namely, import an animal product to wit: meat, without meeting the prescribed requirements", contrary to section 40 of the *Health of Animals Regulations.* Such action is a violation under subsection 7(1)(*a*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (S.C. 1995, c. 40; "the Act") and section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (SOR/2000 - 187; "the Regulations").

[9] Paragraph 7(1)(*a*) of the Act reads as follows:

> **7.** (1) *Every person who*
>
> *(a) contravenes any provision of an agri-food Act or of a regulation made under an agri-food Act…*
>
> *…*
>
> *the contravention of which, or the refusal or neglect of which, is designated to be a violation by a regulation made under paragraph 4(1)(*a*) commits a violation and is liable to a warning or to a penalty in accordance with this Act.*

[10] Section 2 of the Regulations reads, in part, as follows:

> ***2.*** *The contravention of a provision of the* Health of Animals Act *or the* Plant Protection Act *or of a regulation made under these Acts, or the contravention of an order – or class of orders – made by the Minister under the* Plant Protection Act*, or the refusal or neglect to perform any specified duty – imposed by or under the* Health of Animals Act *or the* Plant Protection Act *that is set out in column 1 of an item of Schedule 1, is a violation that may be proceeded with in accordance with the Act.*

[11] The Agency served the Notice of Violation with Penalty personally on Mr. Abou Latif on August 11, 2012. In the Notice of Violation, Mr. Abou-Latif is advised that the alleged violation is a serious violation under section 4 of the Regulations for which the penalty assigned is $800.00. Section 4 of the regulations reads as follows:

> ***4.*** *The classification of a violation as a minor, serious or very serious violation of a provision set out in column 1 of an item of Schedule 1 is as set out in column 3 of that item.*

[12] The specific prohibition is found as item 79 of Division 2 ("Health of Animals Regulations") of Schedule 1. Item 79 is referenced to section 40 *Health of Animals Regulations*. In item 79, the violation is described as "import an animal by-product without meeting the prescribed requirements" and is categorized as "serious".

[13] By letter dated August 15, 2012 and received by the Tribunal on August 15, 2012, the Tribunal was advised by Ms. Rema Kaddage (Ms. Kaddage) that (reproduced *verbatim*) "Rema Kaddage will be representing my husband Adel Abou-Latif in a Oral hearing in Ottawa in english". Despite the fact that no reasons were specified in the document, which was more a statement of representation than a Request for Review, the Tribunal chose to accept the document as a Request for Review.

[14] By letter from the Tribunal dated August 15, 2012, sent by ordinary mail to Mr. Abou-Latif and the Agency, the Agency was advised that its Report was required to be forwarded to the Tribunal and to Mr. Abou-Latif by August 30, 2012.

[15] On August 30, 2012, the Agency submitted its report (Report) to the Tribunal, advising that the Report had also been sent to Mr. Abou-Latif, "pursuant to the Rules of the Tribunal".

[16] On August 31, 2012, the Tribunal advised Mr. Abou-Latif and the Agency by email scan and regular mail as to the receipt by the Tribunal of the Report. The parties were advised that any additional representations should be made on or before October 1, 2012. No further representations were made by either party, prior to the oral hearing.

[17] On August 23, 2013, the parties were advised by the Tribunal, by email and registered mail, that the hearing had been scheduled for the morning of October 11, 2013, in Ottawa.

[18] The hearing was held on October 11, 2013, as scheduled.

Procedural Deficiencies on the Part of the Applicant

(i) Non Compliance With Document Submission Provisions: Applicant Representation by Agent

[19] Ms. Kaddage represented her husband, Mr. Abou-Latif, at the hearing. No written appointment of Ms. Kaddage as the representative of her husband had been submitted to the Tribunal, contrary to Rule 11 of the Rules of the Review Tribunal (Agriculture and Agri-Food) (SOR/99-451, "Tribunal Rules"), which reads as follows:

> ***11.*** *A party may be represented by counsel or by an agent authorized in writing.*

At the commencement of the hearing, in response to a question from the Tribunal, Mr. Abou-Latif confirmed that his wife was authorized to represent him.

(ii) No Defences Specified in Request for Review

[20] Beyond Ms. Kaddage advising the Tribunal that she would be representing her husband, nothing was specified on behalf of Mr. Abou-Latif as to why a Request for Review was being made. As noted earlier, the Tribunal chose to treat Ms. Kaddage's declaration of representation as a Request for Review, notwithstanding a lack of compliance with Rule 34 of the *Tribunal Rules*, which provides as follows:

34. *An applicant who requests a review by the Tribunal must indicate the reasons for the request, the language of preference and, if the notice of violation sets out a penalty, whether or not a hearing is requested.*

Evidence and Arguments Before The Tribunal

[21] The evidence and arguments before the Tribunal therefore consist of the following:

(i) The Report submitted by the Agency on August 30, 2012;

(ii) The arguments by Mr. Davis, as the Agency's representative, made at the hearing of October 11, 2013;

(iii) The oral testimony of Mr. Abou-Latif, made through Ms. Kaddage, acting as his interpreter;

(iv) The arguments by Ms. Kaddage, as Mr. Abou-Latif's representative, made at the hearing of October 11, 2013.

Evidence

(i) Facts Alleged, Supported by Evidence and Agreed To By The Parties

[22] At the hearing, further to requests from the Tribunal, the parties were able to agree on certain facts, as alleged in the Agency Report. Such facts, as supported by the evidence and as agreed to by the parties, are as follows:

(a) Mr. Abou-Latif, upon his arrival at the P.-E.-Trudeau International Airport, Montreal (Dorval), Quebec, on August 11, 2012, on a flight from Lebanon, presented a signed Canada Border E311 Declaration Card (Declaration Card)in which he replied in the negative, as to whether he was bringing any "meat or meat products" into Canada (Report, Tab 1: copy of the Declaration Card). While the Declaration Card was dated August 11, 2012, the Agency representative noted that the Statement of Facts presented by the Agency erroneously referenced August 8, 2012, as the date of the violation. The date of the Notice of Violation, as particularized in the Agency Report was rectified, with the consent of the parties, to read August 11, 2012.

(b) At the primary inspection, after presenting his signed Declaration Card, Mr. Abou-Latif was asked whether he was importing any food products into Canada, to which he replied "sweets" and "peanuts". Mr. Abou-Latif's Declaration Card was amended accordingly by the primary inspector, and

Mr. Abou-Latif was then referred to secondary inspection (Report, Tab 2: copy of signed word-processed statement by primary Inspector 18973).

(c) At secondary inspection, Mr. Abou-Latif's luggage was opened and a container filled with a ground beef product was discovered (Report, Tab 2: signed statement by secondary inspector, referred to as "AMPS Official Service Statement"; Tab 5: photograph of seized container and contents, agreed to by the parties as representing what was seized).

(d) After determining that the luggage belonged to Mr. Abou-Latif, he was issued a Notice of Violation and a photograph taken of the seized item (Report, Tab 2: signed statement by secondary inspector; Tab 5: photograph of seized container and contents, agreed to by the parties as representing what was seized).

(e) The seized items were disposed of as international waste (Report, Tab 2: AMPS Official Service Statement).

(ii) Facts Alleged, Neither Supported by Evidence Nor Agreed To By The Parties

[23] There is one point on which the parties could not agree, in terms of their respective recollections. The Agency asserts that the primary inspector asked Mr. Abou-Latif whether he had a certificate to import the meat product, and that Mr. Abou-Latif replied "No". The Agency relies on the copy of the signed, word-processed statement by the primary inspector, the Inspector's Non Compliance Report for Travellers at Points of Entry and the AMPS Official Service Statement, all contained in Tab 2 of the Agency Report. None of these documents contain an assertion that Mr. Abou-Latif was asked this specific question, or his reply to same. In addition, the Inspector's Non Compliance Report for Travellers at Points of Entry was not signed by any party involved: the primary inspector, the secondary inspector or the supervisor. Mr. Abou-Latif asserts that the question was not asked.

[24] The Agency also asserts that the secondary inspector explained the serious nature of the violation to Mr. Abou-Latif and that Mr. Abou-Latif refused to pay the penalty and indicated that he would appeal. Reliance for these assertions is placed on the Notice of Violation and the Non-Monetary General Receipt, contained in Tab 4 of the Agency Report. Neither of these documents supports the assertions made.

Arguments of Mr. Abou-Latif

[25] Mr. Abou-Latif's arguments were solely advanced at the hearing, without any previous notice having been provided to the Agency. The Agency's representative did not object to the arguments being advanced at such a late stage of the proceedings, and so they were permitted by the Tribunal, via Ms. Kaddage, his wife. In addition, the Agency did not

object to Ms. Kaddage acting as translator for her husband. Through Ms. Kaddage, Mr. Abou-Latif asserted that he had a minimal understanding of English and no understanding of French. His statements were translated from the Arabic by Ms. Kaddage.

[26] Mr. Abou-Latif's arguments were twofold: (a) he did not understand the declaration form when he signed it; and (b) he did not know that the importation of meat products from Lebanon was prohibited. There was no dispute that the product imported contained meat, though it was typically used as a cooking base, rather than as a primary meal staple. With respect to the second argument, he acknowledged that, through internet research, he now realized that a defence of lack of knowledge was not valid, as a defence to the Notice of Violation.

[27] Given the provisions of paragraph 18(1)(*b*) of the Act, ignorance of the laws in relation to agricultural product importation is not a valid defence. The provisions of paragraph 18(1)(*b*) of the Act are as follows:

> ***18.*** *(1) A person named in a notice of violation does not have a defence by reason that the person…*
>
> *(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person*.

[28] The Tribunal notes that, in the current and in a number of previous cases, an applicant, at the time of submission of the Request for Review, has not provided reasons, or any reasons that would accord a justification in accordance with subsection 18(2) of the Act, the provisions of which are as follows:

> ***18.*** *(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.*

Such common law defences are primarily associated with impairment of volition, such as insanity, automatism, duress, coercion and necessity. The Tribunal has discussed these defences further in *Ziha v. Canada (CBSA)*, 2013 CART 13, at paragraphs 29 to 32 therein.

[29] In its discretion, in many cases involving the submission of no reasons or statutorily unrecognized reasons in support of a Request for Review, the Tribunal has nonetheless proceeded with the Request for Review, requiring the Agency to submit a report, to which an applicant is invited to respond. However, where an applicant, in submitting a Request for Review, fails to provide reasons recognized by section 18 of the Act and as required by Rule 34, the applicant risks being subject to a finding by the Tribunal that the Request for Review is inadmissible. Reference is made to paragraph 3.3 of the Tribunal's *Practice Note #11 - Determining Admissibility of Requests for Review and Practices Regarding the Exchange of Documents Amongst Applicants, Respondents and the Tribunal*, issued on

May 1, 2013, in which the requirement for the inclusion of reasons in the Request for Review is emphasized.

[30] In the current case, no reasons whatsoever were specified by Mr. Abou-Latif at the outset, yet the Tribunal chose to permit the matter to proceed. This practice is unlikely to continue with Requests for Review filed subsequent to May 1, 2013, the date of issuance of the Tribunal's *Practice Note #11*. Indeed, at the hearing, the Tribunal reminded the Agency that the Agency could request of the Tribunal that the Agency be relieved of its obligation to submit a report, until such time as an applicant meets the requirements of Rule 34.

[31] In the Tribunal's view, this case exemplifies why the Tribunal has considered it advisable to issue *Practice Note #11*. Clearly, it is in the public interest, relative to hearing costs and related time and expenditure of resources, that an applicant in a case such as this be compelled to provide, at the outset, substantive reasons not otherwise prohibited by section 18 of the Act. These points were also discussed in the recent case of *Farzad* v. *Canada (CBSA),* 2013 CART 33, at paragraphs 31 and 32.

Arguments of The Agency

[32] In the Agency's submission, in which it notes that no reasons were provided by Mr. Abou-Latif, all of the elements of the violation are present: Mr. Abou-Latif is the person named in the Notice of Violation and he is also the person who committed the violation. The violation is that of importing meat products from Lebanon, in circumstances where such importation is clearly prohibited (Agency Report, "Respondent's Arguments", paragraphs 3, 4 and 5). With respect to Mr. Abou-Latif's lack of understanding of French and minimal understanding of English, the Agency chose to address this in cross-examination, particulars of which are discussed in the following paragraphs.

Assessment of the Arguments

General

[33] The Tribunal remains mindful of the constraints on its role, as enunciated by the Federal Court of Appeal in *Doyon v. Attorney General of Canada*, 2009 FCA 152, at paragraph 28:

> *[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.*

Applicant's Minimal Understanding of English and Lack of Understanding of French

[34] The Tribunal has noted, in paragraph 28, *ante*, that certain common law defences remain available to the applicant, on the basis that such defences are not inconsistent with the governing legislation. Such defences primarily relate to impairment of volition. It may be that a complete lack of understanding of either Official Language of Canada could be viewed as an impairment of volition, though that need not be determined in the present case. In the agreed statement of facts, Mr. Abou-Latif was asked if he had anything to declare and was able to answer "sweets" and "peanuts". Furthermore, in cross-examination, he acknowledged that he received help in completing the declaration form on the plane from someone whose understanding of English was superior to his own. It may be reasonably assumed that any points of concern that Mr. Abou-Latif had in understanding the form would have been addressed through conversation in Arabic between Mr. Abou-Latif and his fellow passenger.

[35] In the recent Tribunal decision of *Dao* v. *Canada* (CBSA), 2013 CART 31, Mr. Dao asserted that he did not understand English, and was represented at the hearing by another family member. At the hearing, there was refutational evidence provided by an inspector, detailed in paragraph 14 of the decision, as follows:

> *[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…*

[36] Similar refutational evidence, as found in Dao, was not available in the current case, as the Agency personnel involved with the discovery and seizure of the prohibited meat product were not in attendance at the hearing. The Tribunal was advised by Mr. Davis, without supporting evidence being advanced, that both inspectors were no longer employed by the Agency. Thus, the Agency was limited in its evidence to its Report, plus that which could be elicited through cross-examination. In fairness to the Agency representative, there was no information provided by Mr. Abou-Latif in advance of the hearing that his language limitations would be part of his defence. In more usual circumstances, where the elements of an applicant's defence are communicated in advance, the Agency would have been in a position to seek to submit written representations current or former Agency personnel, in circumstances where such persons were not available to testify at the hearing.

[37] In the present case, the Tribunal finds that Mr. Abou-Latif's impediments to understanding the English language, both generally and in circumstances where he requested translation assistance on the airplane, were not such as to be considered to be an

impediment to volition. In this regard, Mr. Abou-Latif is in a similar position to that of the applicant in *Dao*. Mr. Abou-Latif may have difficulties understanding English, but his difficulties in understanding did not extend to a complete inability to appreciate the nature and consequences of his actions.

Existence of Certificate or Permit

[38] As has been noted, there is a disagreement between the Agency and Mr. Abou-Latif as to whether he was asked about the existence of permits or certificates that might otherwise enable the product to be imported. In cases of such disagreement, the Tribunal has at times considered whether, in view of all of the case circumstances, such a permit or certificate was either in existence or obtainable at the time, irrespective of whether the applicant was so questioned. In *Krasnobryzhyy v. Canada (CBSA),* 2012 CART 11, the Tribunal addressed this issue as follows, at paragraph 35 of that decision:

> *[35] …Krasnobryzhyy's conduct by marking "Non" on his E311 Declaration Card and by failing to declare the dry sausage to the Agency at any time before Inspector 17739 found it in his luggage during secondary inspection, is sufficient to prove that he was given a reasonable opportunity to declare the product or to produce a certificate, document or permit, which would permit importation of a meat product, even if as Krasnobryzhyy testified, no Agency officer actually directly asked him for certificates or permits that would have allowed entry of the meat product into Canada. The evidence presented by both parties does not support any finding by the Tribunal that Krasnobryzhyy actually had such a permit or certificate in his possession…*

The reasoning of *Krasnobryzhyy* has been recently adopted by the Tribunal in the cases of *Yan v. Canada (CBSA)*, 2013 CART 26, at paragraphs 57 and 58 and *Lemotomo* v. *Canada (CBSA),* 2013 CART 30, at paragraph 45. The Tribunal similarly adopts such reasoning in the present case. There is no basis for assuming that, whether the question had been asked, a certificate or permit was either available or obtainable.

Conclusion

[39] The Tribunal finds that the Agency has proven, on a balance of probabilities, each of the necessary elements to prove that Mr. Abou-Latif has committed the violation set out in Notice of Violation 3961-12-M-0295, dated August 11, 2012. The Tribunal therefore finds that Mr. Abou-Latif 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.

[40] The Tribunal wishes to inform Mr. Abou-Latif that this is not a criminal or a federal offence but a monetary violation, and that he has the right to apply after 5 years to have the

notation of this violation removed from the Minister's records, in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties 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 30th day of October, 2013.

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Dr. Bruce La Rochelle, Member