

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT**

DECISION

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation of paragraph 34(1)(b) of the *Health of Animals Regulations*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

David Wakefield, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the Minister's decision dated June 12, 2002, and all information relating to the violation, the Tribunal by order, sets aside the Minister's decision.

REASONS

The Applicant did not request an oral hearing.

This is not a review of the facts of the violation but rather a review of the Minister's decision.

In order to vary or set aside the Minister's decision, the Review Tribunal must find that there has been an error of law. The following are some general examples of errors of law that would provide grounds for this type of relief:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.
8. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.

The Notice of Violation dated August 21, 2001, alleges that the Applicant, on or about 18:00 hours on the 21st day of August, 2001, at Vancouver International Airport in the province of British Columbia, committed a violation, namely: "*import an animal product, to wit: milk or milk products without the required certificate*" contrary to paragraph 34(1)(b) of the *Health of Animals Regulations*. Section 34 states:

34.(1). No person shall import milk or milk products into Canada from a country other than the United States or from a part of such a country, unless

(a) the country or part of the country is designated as free of foot and mouth disease pursuant to section 7; and

(b) the person produces a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin or part of such a country is the designated country or part thereof referred to in paragraph (a).

The *Health of Animals Regulations* were made pursuant to the *Health of Animals Act*. The *Regulations* are subordinate to and must be read in conjunction with the *Act*. The primary obligation of a person importing an animal by-product into Canada is set out in subsection 16(1) of the *Act* which states as follows:

16.(1) Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either, before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

Accordingly, if an importer complies with this subsection, he cannot be in violation of paragraph 34(1)(b) of the *Regulations*.

The Minister, in his decision, finds as a fact that the “*reported milk and milk products were found*” at the time of inspection. The inspection took place after the Applicant had declared he was importing milk and yogurt, and after the Applicant had presented his luggage to the Inspector.

By doing so, the Applicant complied with *subsection 16(1)* of the *Health of Animals Act*.

The Minister committed the error of not taking into account the governing legislation, being the *Health of Animals Act*.

Dated at Ottawa this 11th day of September, 2002.

Thomas S. Barton, Q.C., Chairman