

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

**DECISION**

In the matter of an application for a review of the facts of a violation of provision 39 of the *Plant Protection Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**Dhahira Ibrahim, Applicant**

**- and -**

**Canada Border Services Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.**

## REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated June 20, 2006, alleges that the Applicant, at 19:00 hours on the 18<sup>th</sup> day of June, 2006, at Ottawa, in the province of Ontario, committed a violation, namely: “Fail to declare wood with bark as prescribed” contrary to section 39 of the *Plant Protection Regulations*, which states:

39. Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).

Section 2 of the *Plant Protection Act*, under which the *Regulations* were passed, states:

2. The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada.

Section 3 of the *Plant Protection Act* contains the following pertinent definitions:

“pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest;

“plant” includes a part of a plant;

“prescribed” means prescribed by regulation;

“thing” includes a plant and a pest.

Section 2 of the *Plant Protection Regulations* contains the additional following pertinent definition:

“infested” means that a pest is present in or on a thing or place or that the thing or place is so exposed to a pest that one can reasonably suspect that the pest is in or on the thing or place;

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The uncontested evidence of the Respondent is that the Applicant imported 20 small

branches with bark attached from Somalia without declaring them either verbally or in writing. They were found during inspection of her luggage. When asked, the Applicant indicated the branches were to be used as toothbrushes.

The Respondent further stated it to be a well known fact, with which I agree, that the bark of trees can carry insects and insects eggs, and hence could be infested by invasive alien species.

Having regard to all the evidence, including the picture of the wood in question at tab 7 of the Respondent's report, I am satisfied that the Respondent has established, on a balance of probabilities that one can reasonably suspect the wood to contain a pest, and accordingly that the violation was committed.

The Applicant stated she did not know she was importing something that could be contrary to the *Plant Protection Regulations* and further did not consider the questions on the Customs form E-311 to include the articles she imported.

Lack of knowledge of the *Regulations* and misinterpretation of the form are not defences by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Administrative Penalties Act* which states as follows:

- 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.

The Applicant further stated that, being on social assistance, she was in no position to pay the penalty. Unfortunately for the Applicant, the penalty is established by regulation, and I have no authority to amend it.

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Thomas S. Barton, Q.C., Chairman