

**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 section 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*.

Chantal Arbour, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the written submission 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 May 18, 2004, alleges that the Applicant, at 19:25 hours on the 18th day of May, 2004, at MCIA, Ottawa, in the province of Ontario, committed a violation, namely: “Défaut de déclarer bulbes avec sol” 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.

The Applicant imported three containers of tulip bulbs from the Netherlands, one of which containers contained some soil. Neither the bulbs nor the soil was declared on Customs Declaration Form E-311.

Although the Applicant might have avoided receiving a Notice of Violation had these items been declared on Customs Form E-311, this form is sanctioned by the *Customs Act* and *Regulations*, and a false declaration on this form is not a matter which can be proceeded with as a violation under the Agriculture and Agri-food Monetary Penalties legislation.

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The alleged violation is failing to declare the bulbs and soil as pests, or things that could

be infested, as required by s. 39 of the *Plant Protection Regulations*.

The Applicant contends that she was not given the right to an inspection of these items upon importation, but the Tribunal cannot find the Applicant has any such right under the current legislation.

The Applicant further alleges she was treated in a discriminatory manner, but the Tribunal has no jurisdiction over the conduct of the officers, its mandate being restricted to determining whether a violation has occurred,

The Applicant indicated she was given inaccurate information at the point of purchase that there would be no problem, and was unaware of any soil being contained with the bulbs. It is obvious the Applicant was also unaware of the provisions of the *Plant Protection Regulations* which require these items to be declared upon importation.

Unfortunately for the Applicant, those are not matters that would provide her with a defence by reason of subsection 18(1) of the *Agriculture and Agri-food Administrative Monetary 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 Respondent has adduced evidence to show that bulbs and soil from the Netherlands were capable of being vectors for various insects, viruses, bacteria and fungi, and accordingly that there was a risk they could have been infested.

The Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 12th day of August, 2004.

Thomas S. Barton, Q.C., Chairman