

**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*.

**Andrzej Gajewski, Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following an oral hearing and 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 requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Edmonton on November 16, 2004.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey.

The Notice of Violation dated August 23, 2004, alleges that the Applicant, at 15:40 hours on the 23 day of August 2004, at Edmonton Int'l Airport, in the province of Alberta, committed a violation, namely: "fail to declare green pine cones as prescribed" contrary to s. 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 admitted importing two pine cones from Poland into Canada. He said these were given to him by his niece as souvenirs. The Applicant was not aware of the requirement to declare these items upon importation, and had no intention of violating the *Plant Protection Regulations*.

The evidence of the Respondent clearly established that green pine cones with seeds imported from Poland could be infested with a number of pests including Scleroderris Canker.

The Tribunal is satisfied the Respondent has met its burden of proof in establishing that the Applicant, on a balance of probabilities, committed the violation.

Although the Tribunal does not doubt the Applicant had no intention of committing this violation, this lack of knowledge does not afford the Applicant a defence by reason of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalty 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 the facts that, if true, would exonerate the person.

The Tribunal also notes it had no jurisdiction to reduce the penalty that has been established in accordance with the *Regulations*.

Dated at Ottawa this 23<sup>rd</sup> day of November, 2004

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Thomas S. Barton, Q.C., Chairman