

**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*.

**Maria Xenikakis, 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 did not commit the violation and is not liable for payment of the penalty.**

## REASONS

The Applicant requested an oral hearing pursuant to ss. 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Toronto on November 13<sup>th</sup>, 2003.

The Applicant made her own submissions.

The Respondent was represented by its solicitor, Mr. Robert Jaworski.

The Notice of Violation dated March 18, 2003, alleges that the Applicant, at 18:15 hours on the 18<sup>th</sup> day of March 2003, at Toronto, in the province of Ontario, committed a violation, namely: “fail to declare chestnuts fresh 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 general scheme of the *Plant Protection Act* is to impose obligations on persons who have knowledge of a pest, are suspicious there may be a pest, or have reasonable grounds to believe something is a pest.

There is no dispute that the Applicant imported fresh chestnuts from Greece.

However, the Respondent provides no evidence that the chestnuts are pests, that they are or could be infested with pests or that the chestnuts could constitute a biological obstacle to the control of a pest. The only evidence as to the nature or condition of the chestnuts is a picture in tab 5 of the report of the Respondent, showing the chestnuts which look to be normal in appearance and with no visible imperfections.

Using a broad and literal interpretation of “*pest*” would mean almost anything imported into Canada could be argued to be injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants. Such a broad interpretation would impose too onerous an obligation on a person importing anything into the country, and would not be consistent with the general scheme of the *Act*. Section 39 of the *Regulations* and the definitions quoted earlier must be read in the context of the *Act* as a whole.

Accordingly, without any evidence to show the Applicant knew the chestnuts were pests, or without evidence of any conditions that would cause the Applicant to suspect the chestnuts were pests, or without evidence of any reasonable grounds for the Applicant to believe that the chestnuts were pests, the Tribunal finds there was no obligation on the Applicant to declare the chestnuts in question pursuant to s. 39 of the *Plant Protection Regulations*.

There being no evidence that the chestnuts in question were “pests”, the Respondent has not established, on a balance of probabilities, that the Applicant committed the violation identified in the Notice of Violation.

The Applicant was visibly shaken in recounting how she was treated while proceeding through customs at the airport on her return from Greece. The Tribunal is sympathetic to the allegations of the Applicant, but has no jurisdiction over the conduct of the customs officers or the officers of the Respondent, its jurisdiction being limited to ascertaining whether or not the Respondent has established a violation was committed.

Dated at Ottawa this 20<sup>th</sup> day of November, 2003

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Thomas S. Barton, Q.C., Chairman