

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20191217**

**Docket: A-395-18**

**Citation: 2019 FCA 317**

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.  
GLEASON J.A.  
RIVOALEN J.A.**

**BETWEEN:**

**GEORGE GANTCHEFF**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Hearing held at Montreal, Quebec, on December 17, 2019.

Judgment delivered from the bench at Montreal, Quebec, on December 17, 2019.

**REASONS FOR JUDGMENT OF THE  
COURT BY:**

**GLEASON J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Montreal, Quebec, on December 17, 2019.)**

**GLEASON J.A.**

[1] This is an application for judicial review of the decision of the Canada Agricultural Review Tribunal (the Tribunal) rendered on November 7, 2018 (2018 CART 14), in which the Tribunal upheld the decision of the Minister of Public Safety and Emergency Preparedness that

the applicant had contravened subsection 16(1) of the *Health of Animals Act*, S.C. 1990, c. 21 (the Act) and was required to pay the monetary penalty that was imposed upon him.

[2] The applicant arrived in Canada on a private flight returning from Bulgaria after a stopover in the United States. He brought with him to eat on the flight beef-stuffed peppers that had been prepared by a member of his family in Bulgaria. The applicant and the other passengers were unable to eat all the stuffed peppers during the flight, so the Applicant put the remaining peppers in Metro bags. He said he had intended to throw them out.

[3] The day before he arrived in Canada, the applicant made a customs declaration. This declaration did not mention that he would be bringing in beef-stuffed peppers. The applicant did not amend his declaration through the pilot to take into account the fact that he intended to leave beef-stuffed peppers on the aircraft for them to be disposed of.

[4] When the aircraft landed, the Canada Border Services Agency (the Agency) conducted an inspection and an officer discovered the bag containing the stuffed peppers that had not been declared. The applicant confirmed that the stuffed peppers were his and indicated that they were going to be thrown out. The Agency found that the applicant had contravened subsection 16(1) of the Act because he had brought an animal by-product (the beef-stuffed peppers) into Canada. A notice of violation was accordingly issued under section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 (the Penalties Act) and an administrative monetary penalty of \$1,300 was imposed. On November 26, 2015, the applicant

requested a review of the notice of violation, and on July 21, 2016, the Minister upheld the notice of violation and denied the request for review.

[5] On August 11, 2016, the applicant requested that the Tribunal review the Minister's decision. The Tribunal held, in the decision that is the subject of this application for judicial review, that the Minister did not err in his decision. The Tribunal indicated, among other things, that: the applicant had acknowledged that the food belonged to him; the fact that the stuffed peppers came from Bulgaria and that beef from that country is prohibited in Canada were not in dispute; the fact that the food had not been declared through the pilot of the aircraft was not in dispute; the defences and reasons put forward by the applicant are not admissible under the Penalties Act; and the Agency proved that the applicant had brought an animal by-product into Canada in contravention of subsection 16(1) of the Act.

[6] The applicant argues that the decision cannot be upheld because he was not required to declare food that was to remain on the aircraft and be thrown out, especially since neither the Act nor the information issued by the Agency clearly sets out such a requirement. He adds that he did not intend to bring this food into Canada and that the concept of importation implies a purpose of taking possession of and using the food upon entry into Canada, which he did not do.

[7] The only issue before us is whether the Tribunal's decision is reasonable as the applicable standard of review in this case is reasonableness.

[8] It is our opinion that the Tribunal's decision is reasonable for two reasons. First, it was not unreasonable to find that the applicant had contravened subsection 16(1) of the Act and that he imported stuffed peppers into Canada because he did bring them into the country. Second, the applicant's lack of intent is irrelevant because the monetary penalties scheme implemented by the Penalties Act creates an absolute liability system.

[9] More specifically, subsection 18(1) of the Penalties Act provides that a person named in a notice of violation does not have a defence by reason that the person exercised due diligence to prevent the violation, or reasonably and honestly believed in the existence of facts that, if true, would exonerate the person. As stated by Justice Létourneau in *Doyon v. Canada (Attorney General)*, 2009 FCA 152, 395 N.R. 176, at paragraph 27, this system incorporates "the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an *actus reus* which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him - or herself."

[10] Given the scope of subsection 18(1) of the Penalties Act, the Tribunal's decision in this case cannot be said to be unreasonable. This application will therefore be dismissed with costs.

"Mary J. L. Gleason"

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-395-18

**STYLE OF CAUSE:** GEORGE GANTCHEFF v. THE  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** DECEMBER 17, 2019

**REASONS FOR JUDGMENT OF THE COURT  
BY:** BOIVIN J.A.  
GLEASON J.A.  
RIVOALEN J.A.

**DELIVERED FROM THE BENCH BY:** GLEASON J.A.

**APPEARANCES:**

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