

Federal Court



Cour fédérale

**Ottawa, July 29, 2019** – A decision was issued today by the Honourable Anne Mactavish in file T-1620-17:

**IN THE MATTER OF DAVID KATTENBURG v ATTORNEY GENERAL OF CANADA**

**Summary:** Dr. David Kattenburg seeks judicial review of a decision of the Complaints and Appeals Office of the Canadian Food Inspection Agency (CFIA) that upheld the labelling of two wines as “Products of Israel.” The wines were produced entirely in the Psâgot and Shiloh settlements in the West Bank. Whatever the status of these settlements may be, all of the parties and interveners agree that they are not part of the State of Israel.

Dr. Kattenburg had complained to the CFIA on the basis that the “Product of Israel” label was incorrect and in violation of CFIA regulations. The CFIA initially agreed with him. However, it later reversed its decision, stating that it had not fully considered the implications of the *Canada-Israel Free Trade Agreement (CIFTA)*. Dr. Kattenburg brought an appeal of the reversal to the Complaints and Appeals Office (CAO) of the CFIA. After consulting with Global Affairs Canada (GAC), the CAO decided to uphold the CFIA’s reversal. Dr. Kattenburg now seeks judicial review of the CAO’s decision.

Section B.02.108 of the *Food and Drug Regulations* requires that wines sold in Canada be labelled with a clear indication of their country of origin. Both the *Food and Drugs Act* and the *Consumer Packaging and Labelling Act (CPLA)* contain provisions that prohibit representations in the labelling or sale of a product that are false or misleading as to its origin or character.

Dr. Kattenburg asserts that the CAO erred in determining that “Product of Israel” labels complied with Canadian law. The Attorney General of Canada, on the other hand, argues that it was reasonable to label the wines as “Products of Israel”. Given that the West Bank is not part of a recognized country, it was reasonable to look to *CIFTA* in order to meet Canada’s country of origin labelling requirements. Moreover, the *Food and Drugs Act* and the *CPLA* are not concerned with informing consumers about issues of public international law; they are concerned with the health, safety, content and quality of products.

The CAO’s decision is reviewable on a standard of reasonableness. The Court found that the *Food and Drugs Act* and the *CPLA* are not only concerned with providing information about health, safety, and product quality; they are also concerned with the prevention of deception and the provision of full, factual information that allows purchasers to make informed choices to buy conscientiously.

The Court found that the *CIFTA* definition of “territory” relied upon by the CAO is only intended to apply to matters falling within the scope of the trade agreement. Given that there is no dispute that the settlements in which the wines are produced are not part of the territory of the State of Israel, the Court

found that identifying the wines as “Products of Israel” is false, misleading and deceptive and interferes with the ability of Canadian consumers to make informed and rational decisions to buy conscientiously.

While these findings are sufficient to dispose of the matter, the labelling issue also engages subsection 2(b) of the *Canadian Charter of Rights and Freedoms*, which protects the fundamental freedom of expression.

Consumers have long expressed their political views through their purchasing choices. Individuals opposed to the creation of Israeli Settlements in the West Bank need accurate information as to the origins of a product to be able to express their opposition. Incorrectly identifying the wines as “Products of Israel” inhibits the ability of consumers to express their political views through their purchasing choices, limiting their *Charter*-protected right to freedom of expression.

Where a discretionary administrative decision engages *Charter* rights, as is the case here, a decision-maker must ensure that these rights are not limited more than necessary in light of statutory objectives. The CAO did not consider the freedom of expression issue, which buttresses the Court’s conclusion that its decision was unreasonable.

A copy of the decision can be obtained via the Web site of the Federal Court: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do>