



Citation: 1269777 *Ontario Inc. v. Canada (Canadian Food Inspection Agency)*,  
2017 CART 17

Date: 20170804  
Docket: CART/CRAC-1956

**BETWEEN:**

**1269777 Ontario Inc.,**

**APPLICANT**

**- and -**

**Canadian Food Inspection Agency,**

**RESPONDENT**

**BEFORE: Luc Bélanger, Chairperson**

**WITH: Mr. Jeffrey Grof, representative for the Applicant; and  
Agathe Rwankuba, representative for the Respondent**

In the matter of an application made by the Applicant, pursuant to subsection 8(1), of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the facts of a violation of paragraph 138(2)(a) of the [Health of Animals Regulations](#).

**DECISION ON ADMISSIBILITY**

**The Canada Agricultural Review Tribunal ORDERS that the application for a review of Notice of Violation 1617QC0023 dated May 03, 2017, as requested by the Applicant, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.**

By written submissions only.

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### **REASONS FOR INADMISSIBILITY OF REQUEST**

#### **I. Overview**

[1] Mr. Jeffrey Grof, on behalf of 1269777 Ontario Inc. (Applicant), has requested that the Canada Agricultural Review Tribunal (Tribunal) review and set aside the Notice of Violation 1617QC0023 from the Canadian Food Inspection Agency (Agency). The Agency issued the Notice of Violation with warning to the Applicant on May 3, 2017, in violation of paragraph 138(2)(a) of the [\*Health of Animals Regulations\*](#).

[2] A request for review is a right that Parliament extends to applicants which allows them, for a very limited expenditure of time and money, to have their notices of violation, or Minister's decisions concerning such notices of violation, reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the rendering of a decision, considerable time and money from all parties, will be expended. For this reason, legislators have placed some basic requirements on applicants that they must meet for their rights to be preserved.

[3] For this request to be admissible, the Applicant must meet the admissibility threshold set out in the [\*Agriculture and Agri-Food Administrative Monetary Penalties Act\*](#) (AAAMP Act), the [\*Agriculture and Agri-Food Administrative Monetary Penalties Regulations\*](#) (AAAMP Regulations) and the [\*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)\*](#) (Tribunal Rules).

[4] The sole issue in the case, then, is whether the Applicant has met this admissibility threshold.

#### **II. Background**

[5] On June 5, 2017, the Tribunal received a letter from the Applicant, by ordinary mail, requesting that the Tribunal review and set aside the Agency's Notice of Violation.

[6] In a letter dated June 7, 2017, also sent by email on the same day to the Applicant, the Tribunal acknowledged receipt of the Applicant's letter and requested that the Request for Review be sent immediately by registered mail.

[7] On June 13, 2017, the Agency provided to the Tribunal a copy of the Certificate of Service sent to the Applicant.

[8] In a letter dated June 30, 2017, also sent by email on the same day to the Applicant, the Tribunal requested further documentation from the Applicant to support the Request for Review of the Notice of Violation.

[9] On July 14, 2017, the Applicant sent a Request for Review form for the Notice of Violation by registered mail to the Tribunal.

### III. Issue

[10] There is only one issue in this case: Did the Applicant meet the admissibility threshold to allow the Tribunal to consider the Request for Review?

### IV. Analysis

[11] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(1) of the [Canada Agricultural Products Act](#), (CAP Act) and its jurisdiction consists of responding to requests for review of matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[12] The AAAMP Act, the AAAMP Regulations and the Tribunal Rules require that the Tribunal, before it proceeds to a full hearing of a matter, make a decision on the admissibility of an applicant's request for the review. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the notice of violation, or has failed to file a request for review within the prescribed time and manner as set out in the AAAMP Act and AAAMP Regulations.

[13] Subsection 11(1) and subsection 14(1) of the AAAMP Regulations outline the required statutory period and the permitted modes of delivery for the filing of a request for review of the facts of a violation before the Tribunal:

*11. (1) Where a person named in a notice of violation that contains a warning requests, pursuant to subsection 8(1) of the Act, a review of the facts of the violation by the Minister or the Tribunal, the request shall be made in writing within 30 days after the day on which the notice is served.*

*14. (1) A person may make a request referred to in section 11, 12 or 13 by delivering it by hand or by sending it by registered mail, courier, fax or other electronic means to a person and place authorized by the Minister.*

[14] The Federal Court of Appeal (FCA) has interpreted these provisions very strictly as not permitting the delivery of a request for review by regular mail. In *Re: Section 14 of the AAAMP Regulations*, [2012 FCA 130](#) (*Re: Section 14 of the AAAMP Regulations*), the FCA held as follows:

*[22] In my view, section 14 cannot be construed as authorizing regular mail as a means of communicating a request. Subsection 9(2) of the Act provides that a person*

*may request a review by the Tribunal “in the prescribed time and manner”. Section 14 of the Regulations simply does not prescribe regular mail as a manner of requesting a review by the Tribunal.*

...

*[25] I therefore conclude that section 14 cannot be construed as including regular mail as an authorized mode of transmission ...*

[15] Furthermore, the time limits for filing a request for review, as set out in the AAAMP Act and AAAMP Regulations cannot be extended by the Tribunal. This principle was similarly articulated by the FCA in *Clare v. Canada (Attorney General)* [2013 FCA 265](#) (Clare)). The FCA in that case stated that:

*[29] ... the Tribunal lacks jurisdiction to extend the clear timelines which the AAAMP Act and AAAMP Regulations provide.*

[16] These two case extracts, cited above, apply directly to the Applicant’s situation with respect to the filing of the present Request for Review to the Tribunal. The statutory deadline for the Applicant to deliver the Request for Review using a permitted method of transmission was 30 days after the date of service of the Notice of Violation.

[17] According to the Certificate of Service provided by the Agency, the Notice of Violation was served on the Applicant May 3, 2017, with the deemed date of service being May 13, 2017, pursuant to section 9 of the AAAMP Regulations.

[18] Therefore, the last day for the Applicant to file the Request for Review with the Tribunal, would have been on Monday, June 12, 2017.

[19] The first communication from the Applicant was received by the Tribunal on June 5, 2017, which falls within the required 30 day time limit for filing the Request for Review. Unfortunately, this communication was sent by regular mail. According to the law as set out by the FCA in the *Re: Section 14 of the AAAMP Regulations* case, this letter does not meet the requirements of the AAAMP Act and AAAMP Regulations, and thus, does not constitute a valid method of filing for the Request for Review.

[20] The Applicant’s second communication, although sent by registered mail, a permitted method of transmission, and date-stamped by Canada Post on July 14, 2017, was sent well outside of the 30 day statutory time limit and, therefore, cannot constitute a valid request for review to the Tribunal.

[21] Because the Applicant’s first letter was not filed by one of the permitted methods of transmission and its second letter was not filed within the permitted timeframe, there is no valid Request for Review from the Applicant before the Tribunal. Unfortunately, in both instances, the Applicant has failed to meet the requirements set out in the AAAMP Act and AAAMP Regulations. This failure cannot be remedied either by the Tribunal or by the Applicant, given the strict interpretation advanced by the FCA in the *Re: Section 14 of the AAAMP Regulations* and *Clare* cases cited above.

[22] While a harsh and seemingly unfair result, the Applicant's Request for Review is not admissible, as it was not filed within the required statutory period by a permitted mode of delivery.

## **V. Disposition**

[23] The Tribunal therefore orders that the Applicant's Request for Review of the Notice of Violation 1617QC0023 is inadmissible. By law then, the Applicant is deemed to have committed the violation indicated in the Notice of Violation, further to subsection 8(2) of the AAAMP Act.

[24] The Tribunal wishes to inform the Applicant that this violation is not a criminal offence. After five years, the Applicant is entitled to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records, in accordance with section 23 of the AAAMP Act.

Dated at Ottawa, Ontario, on this 4th day of August, 2017.

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Luc Bélanger, Chairperson