



Citation: *Atkinson v. Canada (Minister of Public Safety and Emergency Preparedness)*,
2018 CART 3

Date: 20180329
Docket: CART/CRAC-1957

BETWEEN:

Natasha Atkinson,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Ms. Natasha Atkinson, self-represented Applicant; and
Ms. Valerie Larocque, representative for the Respondent**

In the matter of an application made by the Applicant, to the Minister, pursuant to paragraph 9(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), and to the Canada Agricultural Review Tribunal, pursuant to subsection 13(2) of the Act, for a review of the facts of a violation of section 40 of the [Health of Animals Regulations](#).

DECISION

On consent of both parties, the Canada Agricultural Review Tribunal ORDERS that Notice of Violation 4971-16-1834, issued with penalty of \$800, is amended to a Notice of Violation with warning and that the Applicant, Ms. Natasha Atkinson, has committed the violation outlined in the amended Notice of Violation with warning.

By written submissions only.

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REASONS FOR DECISION

I. Background

[1] On November 14, 2016, at Pearson International Airport in Toronto, Ms. Natasha Atkinson was issued Notice of Violation 4971-16-1834, with penalty of \$800, by the Canada Border Services Agency (the Agency), for an alleged violation of section 40 of the [Health of Animals Regulations](#), related to the importation of 200 grams of sausages. Ms. Atkinson asked the Minister of Public Safety and Emergency Preparedness to review the issuance of the Notice of Violation. On May 17, 2017, the Minister's Decision number 16-04535 (Minister's Decision) upheld the issuance of the Notice of Violation with penalty. Ms. Atkinson sought a review of the Minister's Decision with the Canada Agricultural Review Tribunal.

[2] Prior to filing its certified record to the Tribunal, the Agency's Recourse Directorate, which acts on behalf of the Minister in these matters, requested that the Tribunal vary the Notice of Violation with a penalty to a Notice of Violation with warning, on condition that Ms. Atkinson admit that she committed the violation. The Agency proposed that the legal basis for the Tribunal's power to vary the Notice of Violation was found at subsection 14(1) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[3] Ms. Atkinson wrote to the Tribunal agreeing with the Agency's proposal.

[4] I will treat the Agency's request as an offer to settle, consented to by both parties.

II. Issue

[5] Can the Tribunal vary a Notice of Violation with penalty to a Notice a Violation with warning pursuant to section 14(1) of the [AAAMP Act](#)?

[6] I am of the view that subsection 14(1) of the [AAAMP Act](#) does not empower the Tribunal to vary a Notice of Violation with penalty to a Notice of Violation with warning. Even so, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement.

III. Jurisdiction and Powers

[7] 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.

[8] Many of the Tribunal's general powers are outlined at section 8 of the [CAP Act](#):

8 (1) The Board and the Tribunal are courts of record and each shall have an official seal that shall be judicially noticed.

*(2) In addition to the powers conferred by subsection (1), the Board and the Tribunal each have, with respect to the appearance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of their orders and **other matters necessary or proper for the due exercise of their jurisdiction, all such powers, rights and privileges as are vested in a superior court of record...***

[Emphasis added]

[9] Subsection 12(1) of the [CAP Act](#) also states:

...the Tribunal has sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which the Tribunal is given jurisdiction by this Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act.

These powers necessarily include the ability to decide all matters raised by the parties and to give effect, where appropriate, to matters consented to by them.

[10] The purpose of the [AAAMP Act](#) is the creation of an alternative to the existing penal system in order to supplement existing enforcement measures and to provide “a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts” (Section 3 [AAAMP Act](#)).

[11] Additionally, the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (the Rules) state the following:

3. These Rules are to be interpreted and applied in order to permit the just, most expeditious and least expensive conduct of proceedings.

4. The Tribunal is to determine any procedural matter not provided for in these Rules in a manner that is consistent with these Rules.

[12] The Tribunal's powers must be provided by its enabling legislation or alternatively, must be practically necessary to the realization of the object and purpose of the statutory regime created by the legislature (see [ATCO Gas & Pipelines Ltd. v. Alberta \(Energy & Utilities Board\)](#), 2006 SCC 4 at paragraph 51).

IV. Analysis

[13] In asking the Tribunal to vary the Notice of Violation, the Agency pointed to the Tribunal's powers under subsection 14(1) of the [AAAMP Act](#):

14 (1) After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be,

(a) confirm, vary or set aside any decision of the Minister under section 12 or 13, or

(b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty,

[...]

[Emphasis added]

[14] A proper interpretation of subsection 14(1) of the [AAAMP Act](#) must not be limited to a pure textual analysis of this provision but should also consider the context and purpose of the applicable legislative scheme ([Canada \(AGC\) v. Stanford, 2014 FCA 234](#), at paragraphs 46).

[15] An applicant who receives a Notice of Violation issued under the [AAAMP Act](#) has the option to request a review at first instance by either the Minister or the Tribunal (9(2)(b) and (c) of the [AAAMP Act](#)). An applicant that chooses to have the Minister perform the first instance review, can then ask the Tribunal to review the Minister's first instance decision (12(2) and 13(2)(b) of the [AAAMP Act](#)).

[16] Section 14(1)(a) of the [AAAMP Act](#) applies where the Tribunal is reviewing a Minister's first instance decision. This view is supported by the references in this provision to sections 12 and 13 of the [AAAMP Act](#), which discuss the Minister's first instance review powers. In this case, the Tribunal is performing a review of a first instance decision by the Minister's delegate, on behalf of the Minister.

[17] Upon review of a Minister's decision, the Tribunal has the power to confirm, vary them or set it aside. The Tribunal's powers to confirm or set aside Minister's decisions are relatively straightforward and amount to upholding or rejecting the factual or legal findings of the Minister or their delegate. In this case the Agency has suggested that the Tribunal use its power to vary the Notice of Violation with penalty of \$800, which was upheld in the Minister's decision, to a Notice of Violation with warning.

[18] The power to vary a Minister's decision is similar in nature to the power to correct a Notice of Violation which is found at section 14(1)(b) of the [AAAMP Act](#) (discussed below). The Tribunal may confirm that a violation has been committed but vary the amount of the penalty determined by the Minister's delegate, where it is not established in accordance

with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).

[19] Similarly, with respect to a first instance review of a Notice of Violation, 14(1)(b) of the [AAAMP Act](#) states that the Tribunal may correct the penalty amount where it finds that it has not been established in accordance with the regulations.

[20] Subsection 7(2) of the [AAAMP Act](#) grants a designated officer discretion to issue a Notice of Violation either with a warning or with a penalty established in accordance with the regulations. The language found at section 7 suggests that the Tribunal's power to correct a Notice of Violation, found at 14(1)(b) [AAAMP Act](#), is limited to situations where the Notice of Violation with penalty is not determined in accordance with the regulations. A Notice of Violation which does not respect section 5 of the [AAAMP Regulations](#) or the gravity valuation and penalty adjustment tables located at Schedules 2 and 3 of the [AAAMP Regulations](#) can be corrected by the Tribunal.

[21] Consequently, section 14(1) of the [AAAMP Act](#) does not specifically provide the Tribunal with the power to vary a Notice of Violation issued with penalty to a Notice of Violation issued with warning.

[22] Nonetheless, the Tribunal's powers are not only limited to section 14 of the [AAAMP Act](#) but can also be found at sections 8 and 12 of the [CAP Act](#) (cited above).

[23] Based on a reading of its specific powers, under the [CAP Act](#) and [AAAMP Act](#), and its powers by necessary implication, the Tribunal has amended Notices of Violation on motions presented by enforcement agencies (see [Knezevic v. Canada \(CBSA\)](#), 2011 CART 21 at paragraph 10; and [Dai v. Canada \(CBSA\)](#), 2012 CART 8, at paragraph 12) and, occasionally, with the consent of applicants (see for example [Kropelnicki v. Canada \(CFIA\)](#) 2010 CART 22, at paragraph 5).

[24] In exercising this amending power, the Tribunal's main concern has been whether applicants would be prejudiced as a result of the amendment and in particular in knowing the case against them. Under the circumstances, given that both parties consent to amend the Notice of Violation, that consideration is not especially relevant.

V. Application of Law to the Facts

[25] The Tribunal is mindful that it is mandated to exercise only the powers provided by statute or which by practical necessity and necessary implication flow from the regulatory authority conferred upon it.

[26] In that light, what would be the just and most efficient conduct of proceedings in this case, consistent with the Tribunal's powers and jurisdiction?

[27] The hearing before the Tribunal has not occurred. The parties are in agreement with varying the Notice of Violation with penalty to a Notice of Violation with warning. It is

important to note, that agreeing to a Notice of Violation with warning, is still an admission of responsibility by the applicant, Ms. Atkinson.

[28] I find that the just and most efficient outcome in this case is to amend the Notice of Violation with penalty of \$800 to a Notice of Violation with warning in accordance with the agreed upon settlement offer.

[29] It would have been preferable, in my opinion, for the Agency to withdraw the Notice of Violation with penalty and re-issue a Notice of Violation with warning in this case given that we are still within the legislated timeframe of two years provided at 26(b) of the [AAAMP Act](#) for violations categorized as serious. However, as the matter is now before me, I find it is more fair and efficient to issue the order which respects the wishes of the parties and the powers which are provided to me by statute.

VI. Order

[30] The Tribunal therefore ORDERS that Notice of Violation number 4971-16-1834, originally issued with a penalty of \$800, be amended to a Notice of Violation with warning.

[31] The Tribunal finds that the Ms. Atkinson has committed a violation of section 40 of the [Health of Animals Regulations](#), as alleged in Notice of Violation, however, no penalty is owed to the Agency as a result of this finding.

[32] The Tribunal wishes to inform Ms. Atkinson that this violation is not a criminal offence. After five years, she 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 29th day of March, 2018.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal