



Citation: *Rizk v. Canada* (Minister of Public Safety and Emergency Preparedness), 2018 CART 13

Date: 20181107
Docket: CART/CRAC-1997

BETWEEN:

Nada Rizk,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Nada Rizk, for the Applicant; and
Michèle Hobbs, for the respondent**

In the matter of an application made by the Applicant, to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) for a review by the Tribunal of a Minister's Decision, holding that the Applicant violated subsection 16(1) of the [Health of Animals Regulations](#).

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal ORDERS that the application for a review of the Minister's Decision 18 00007, dated August 16, 2018, as requested by the Applicant, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.

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REASONS FOR INADMISSIBILITY OF REQUEST

I. OVERVIEW

[1] Nada Rizk (Applicant) has requested that the Canada Agricultural Review Tribunal (Tribunal) review the Minister of Public Safety and Emergency Preparedness' (Minister) decision number 18-00007 (Minister's Decision). The Canada Border Services Agency (Agency) had issued Notice of Violation 4312-17-0198 with penalty of \$1,300 for a violation of subsection 16(1) of the [Health of Animals Regulations](#), which was upheld by the Minister in his decision.

[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 gearing 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 September 6, 2018, the Tribunal received a letter from the Applicant, by ordinary mail, requesting that the Tribunal review and set aside the Minister's Decision.

[6] In a letter dated September 13, 2018, sent by email on the same day to the Applicant, the Tribunal acknowledged receipt of the Applicant's letter and requested that the Applicant fully comply with section 47 of the [Tribunal Rules](#).

[7] On September 26, 2018, the Tribunal received the Applicant's Request for Review by registered mail.

[8] On September 27, 2018, the Agency provided to the Tribunal a copy of a receipt from Canada Post, stating a delivery date of August 20, 2018.

III. ISSUE

[9] 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

[10] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 4.1(1) of the [Canada Agriculture 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.

[11] 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](#).

[12] Paragraph 13(a) 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:

13 If a person is notified that the Minister, having concluded a review, has decided that the person committed a violation

(a) the time within which the person may request a review of the Minister's decision by the Tribunal is 15 days after the day on which the notice is served and the request must be in writing;

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 or fax or other electronic means to a person and place authorized by the Minister.

[13] 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 ...

[14] 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.

[15] 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 15 days after the date of service of the Minister's Decision.

[16] According to the receipt provided by the Agency, the Minister's Decision would have been delivered on August 20, 2018. As the receipt provides no sending date, the Tribunal must rely on this delivery date to determine the date of service. In accordance with subsection 9(2) of the [AAAMP Regulations](#), "[a] document sent by registered mail is served on the 10th day after the date indicated in the receipt issued by a post office". This was confirmed by the Federal Court of Appeal in [Adebogun v. Canada \(Attorney General\)](#), 2017 FCA 242. As such, the Minister's Decision was deemed served on August 30, 2018.

[17] Therefore, the last day for the Applicant to file the Request for Review with the Tribunal would have been on Friday, September 14, 2018.

[18] The first communication from the Applicant was received by the Tribunal on September 6, 2018, which falls within the required 15 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 [Re: Section 14 of the AAAMP Regulations](#), 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.

[19] The Applicant's second communication, although sent by registered mail, a permitted method of transmission, and date-stamped by Canada Post on September 19, 2018, was sent well outside of the 15-day statutory time limit, and, therefore, cannot constitute a valid request for review to the Tribunal.

[20] 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.

[21] 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. ORDER

[22] The Tribunal therefore **ORDERS** that the Applicant's Request for Review of the Minister's Decision 18-00007 is inadmissible. By law then, the Applicant is deemed to have committed the violation indicated in the Notice of Violation 4312-17-0198, further to subsection 9(3) of the [AAAMP Act](#), and is liable for payment of the penalty in the amount of \$1,300 to the Agency within thirty (30) days after the day on which this decision is served.

[23] The Applicant may wish to contact the Agency's representatives directly to inquire whether they would agree to a manageable payment schedule for the penalty amount.

[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 7th day of November, 2018.

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal