

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Ottawa, Canada K1A 1J4

Citation: *Olejnicka-Oliwa v. Canada (Canada Border Services Agency)*, 2018 CART 19

Date: 20181228

Docket: CART | CRAC-2005

BETWEEN:

Anne Marie Olejnicka-Oliwa,

APPLICANT

- and -

Minister of Public Safety and Emergency Preparedness,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Andrew Stawicki, representing the Applicant; and
Michèle Hobbs, for the Respondent**

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

DECISION ON ADMISSIBILITY

The Canada Agricultural Review Tribunal ORDERS that the application for a review of the facts of the Notice of Violation number 4971-18-1581, dated October 18, 2018, as requested by the Applicant, IS INADMISSIBLE and, pursuant to this order, IS DISMISSED.

REASONS FOR INADMISSIBILITY OF REQUEST	2
I. OVERVIEW	2
II. BACKGROUND	3
III. ISSUE	3
IV. ANALYSIS	3
V. ORDER.....	5

REASONS FOR INADMISSIBILITY OF REQUEST

I. OVERVIEW

[1] On October 18, 2018, at the Pearson International Airport in Toronto, the Applicant, Anne Marie Olejnicka-Oliwa, failed to declare 300 grams of Kielbasa, which was later discovered by an agent of the Canada Border Services Agency (Agency). Following this discovery, the agent issued her the Notice of Violation number 4971-18-1581 with an 800\$ penalty for violation of section 40 of the [HA Act](#).

[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 [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 October 23, 2018, the Tribunal received an email from the Applicant's representative, requesting that the Tribunal review the facts of the Notice of Violation.

[6] In a letter dated October 23, 2018, sent by email on the same day to the Applicant's representative, the Tribunal acknowledged receipt of the Applicant's letter and requested that the Applicant fully comply with section 31 of the [Tribunal Rules](#). The Tribunal also requested that the Applicant's representative send his request for review by registered mail as soon as possible, as is required by section 13 of the [Tribunal Rules](#).

[7] On November 30, 2018, the Tribunal had still not received the Applicant's request for review by registered mail. Consequently, the Tribunal sent a second letter dated November 30, 2018, to the Applicant's representative asking him to comply with sections 13 and 31 of the [Tribunal Rules](#) on or before December 17, 2018.

[8] On December 17, 2018 the Applicant's representative did not comply with sections 13 and 31 of the [Tribunal Rules](#).

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] Subsections 11(2), 14(1) and 14(3) 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] The Applicant did not pay the \$800 penalty and therefore preserved her right to file a request for review to the Tribunal pursuant to subparagraph 9(2)(c) of the [AAAMP Act](#).

[14] According to the Notice of Violation, which was served to the Applicant in person, the date of service is October 18, 2018.

[15] Therefore, the last day for the Applicant to file the request for review with the Tribunal would have been on Saturday, November 17, 2018. In accordance with section 5 of the [Tribunal Rules](#), the Applicant had until Monday, November 19, 2018 due to the fact that Saturday and Sunday are recognised holidays.

[16] 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 Federal Court of Appeal (FCA) in [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265 (*Clare*). The FCA stated that:

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

[17] The first and only communication from the Applicant's representative was received by the Tribunal on October 23, 2018, which falls within the required 30 day time limit for filing the request for review. The Applicant has the responsibility to file their request for review by one of the permitted methods of transmission within a 30 day delay.

[18] Because the Applicant's request for review was not filed by one of the permitted methods of transmission, there is no valid request for review from the Applicant before the Tribunal. Unfortunately, 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 [Clare](#).

[19] The Tribunal requested on two occasions from the Applicant to properly file their request for review. 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 method of transmission.

V. ORDER

[20] The Tribunal therefore **ORDERS** that the Applicant's request for review of the Notice of Violation number 4971-18-0625 is inadmissible and dismissed. By law then, the Applicant is deemed to have committed the violation indicated in the Notice of Violation 4971-18-0625, further to subsection 9(3) of the [AAAMP Act](#), and is liable for payment of the penalty in the amount of \$800 to the Agency within thirty (30) days after the day on which this decision is served.

[21] 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.

[22] 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 28th day of December, 2018.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal