



Canada Agricultural  
Review Tribunal  
Ottawa, Canada  
K1A 0B7

Commission de révision  
agricole du Canada

Citation: *Kaveh v Canada (Canada Border Services Agency)*, 2019 CART 9

Date: 20190807  
Docket: CART – 1969

**BETWEEN:**

**BABAK KAVEH,**

**APPLICANT**

**- and -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,**

**RESPONDENT**

**BEFORE: Luc Bélanger  
Chairperson**

**WITH: Mr. Babak Haveh, representing himself; and  
Ms. Tara-Lee Fraser, representing the Respondent**

### **DECISION**

**The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement reached by the parties.**

By written submissions only.



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## **I. OVERVIEW**

[1] This matter concerns a request for review of the Minister’s decision made by the Applicant to the Canada Agricultural Review Tribunal (Tribunal), pursuant to paragraph 13(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMP Act\)](#).

[2] On January 30, 2017, following his arrival at Toronto Pearson International Airport, Mr. Kaveh (Applicant) allegedly imported to Canada an animal by-product, namely 10lbs of dried full cream milk, without a certificate or license to do so and did not declare this product to a border services officer. Consequently, the Canada Border Services Agency (Agency) issued to him a Notice of Violation (NOV) #4971-17-0133 with a penalty of \$800 for a “serious” violation of paragraph 34(1)(b) of the [Health of Animals Regulations](#).

## **II. PROCEDURAL HISTORY**

[3] Following the issuance of this NOV, the Applicant applied to the Minister of Public Safety and Emergency Preparedness for a review of the NOV pursuant to paragraph 9(2)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act \(AAAMP Act\)](#).

[4] On August 2, 2017, the Minister’s decision #17-00375 upheld the issuance of the NOV with penalty of \$800.

[5] On August 16, 2017, the Applicant applied to the Canada Agricultural Review Tribunal (Tribunal) for a review of the Minister’s decision pursuant to paragraph 13(2)(b) of the [AAAMP Act](#).

## **III. OFFER TO SETTLE**

[6] On January 15, 2019, the Agency presented a written offer to settle the case to the Applicant, which offered to replace the NOV originally issued with a penalty of \$800, by a NOV with warning, with no monetary penalty owing.

[7] The Applicant communicated his acceptance of this offer by way of an email, received by the Tribunal on January 20, 2019.

[8] As explained in the Agency's offer to settle, a violation in the name of the Applicant will remain in the Agency's records for the next five years following the date the violation is varied.

#### **IV. THE SETTLEMENT**

[9] The Tribunal has the sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to requests for review of matters arising from the issuance of agriculture and agri-food administrative penalties pursuant to section 38(1) of the [AAAMP Act](#).

[10] Moreover, as a court of record, the Tribunal is vested of additional powers to the ones explicitly conferred by its enabling legislation, to enforce its orders and other matters necessary for the due exercise of its jurisdiction pursuant to section 41(2) of the [AAAMP Act](#).

[11] The [AAAMP Act](#) does not explicitly empower the Tribunal to vary a NOV with penalty to a NOV with warning. However, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement as established in [Atkinson](#)<sup>1</sup>.

[12] Given these powers provided to me by statute, I find that the most just and efficient outcome in this case is to amend the NOV with penalty of \$800 to a Notice of Violation with warning in accordance with the agreed settlement by the parties.

[13] This is not an order of the Tribunal which can be the subject of a judicial review application pursuant to subsection 38(2) of the [AAAMP Act](#).

[14] This settlement agreement constitutes a final settlement of the rights of both parties in relation to docket CART -1969 and the events which occurred on January 30, 2017.

[15] This settlement should not be cited as a precedent or otherwise relied on except in relation to the current NOV.

#### **V. ORDER**

[16] As requested by the parties and pursuant to the powers coffered to me by the [AAAMP Act](#), I confirm, by **ORDER**, the settlement agreement.

[17] I wish to inform the Applicant that this violation is not a criminal offence. After five years, he is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

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<sup>1</sup> [Atkinson v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2018 CART 3.

Dated at Ottawa, Ontario, on this 30<sup>th</sup> day of July 2019.

(Original signed)

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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal