

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Ottawa, Canada K1A 1J4

Date : 20180723

Dockets: CART | CRAC-1924

2328782 Ontario Inc. dba Golden Ontario Products Inc.,

APPLICANT

- and -

Canadian Food Inspection Agency,

RESPONDENT

**BEFORE: Luc Bélanger
Chairperson**

**WITH: Mr. Pat Donato representing the Applicant; and
Ms. Wendy Wright representing the Respondent**

In the matter of the Applicant's request for review, made pursuant to paragraph 9(2)(c) of the [*Agriculture and Agri-Food Administrative Monetary Penalties Act*](#), of a violation of subsection 30.1(1) of the [*Meat Inspection Regulations*](#), as alleged by the Respondent.

ORDER ARISING FROM A MOTION PRESENTED DURING THE SECOND CASE MANAGEMENT CONFERENCE CALL OF APRIL 10, 2018, AND FOLLOWING THE THIRD CASE MANAGEMENT CONFERENCE CALL OF JULY 10, 2018.

1. BACKGROUND TO THE CURRENT ORDER

[1] The Canada Agricultural Review Tribunal (the Tribunal) convened a second case management conference call (CMCC) on April 10, 2018. Prior to this second CMCC, the parties had each confirmed the witnesses who would be testifying at the scheduled April 17, 2018, hearing.

[2] The Applicant, Golden Ontario Products Inc. (Golden), had provided a witness list which included: Lorri Dickert, Brandon Rumph, Patrizio Donato, and Nancy Kingsley.

[3] The Respondent, the Canadian Food Inspection Agency (CFIA), indicated its intent to call Inspectors Bill Reinhart and Joanne Hamilton.

[4] At the April 10, 2018, CMCC, seven days before the scheduled hearing, counsel for the CFIA indicated the need to add an additional witness to provide testimony related to Hazard Analysis and Critical Control Points (HACCP) plans and the Food Safety Enhancement Program (FSEP). The CFIA further indicated the need for additional hearing time and asked for an adjournment. Golden objected to the additional witness and to the request for an adjournment.

[5] During the second CMCC, I provided directions and established a short deadline for the CFIA to present its motion to add a witness and request for adjournment by written submissions. I also provided Golden with an opportunity to provide written submissions in response. Both parties respected the short deadlines.

[6] The CFIA provided its motion and request for adjournment on April 10, 2018, asking for the addition of witness Dan Gesinghaus, for an adjournment, and if the adjournment was granted, the addition of Daniel Graham as a witness who would provide evidence via affidavit.

[7] Golden provided its submissions in response on April 11, 2018. In its submissions Golden accurately pointed out that Rule 38 of the [*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)*](#) (the Rules) required the CFIA to provide its witness list at least 20 days before the hearing. Golden also correctly argued that affidavit evidence must be filed at least 15 days before the hearing in accordance with Rule 21 of the Tribunal's [Rules](#). Finally, Golden provided strong arguments on why the hearing should not be adjourned.

[8] I was not able to issue a timely order, settling these issues, due to an unforeseen illness and I was instead forced to postpone the April 17, 2018 hearing.

[9] As a result of this unfortunate postponement, the arguments with respect to adjourning the hearing and related to the timeliness of the motion to add a new witness have become moot. The only live issue would be the testimony by affidavit of Mr. Daniel Graham.

2. AGREEMENTS ARISING FROM THE THIRD CMCC OF JULY 10, 2018, AND THE UNADDRESSED ISSUE STEMMING FROM PREVIOUS MOTION

[10] *During the third CMCC, I asked the parties for some additional information pertaining to the previous motion and submissions. I also enquired about witnesses, hearing length and hearing dates.*

[11] *I will allow the testimony of the new CFIA witness, Mr. Dan Gesinghaus. In my view, his testimony is directly relevant to the issues before me in this case. Mr. Gesinghaus testimony will provide a broad overview of Hazard Analysis and Critical Control Points (HACCP) plans and the Food Safety Enhancement Program (FSEP). Counsel for the CFIA confirmed that Mr. Gesinghaus will not offer an opinion on the quality or content of Golden's HACCP plan which is at issue in this case. Furthermore, CFIA counsel confirmed that no additional documentary evidence will be submitted in support of Mr. Gesinghaus' testimony.*

[12] *As a result of the addition of Mr. Gesinghaus' testimony, Golden will be allowed to present its own witness in response to his testimony. Golden was not able to provide specific details for their witness at the time of the CMCC on July 10, 2018.*

[13] *In accordance with Sub-Rule 24(1) of the [Rules](#), I **ORDER** that all witnesses be excluded from the hearing room while other witnesses' are called to give evidence. The objective of this order is to maintain the integrity of the evidence presented through testimony at the hearing.*

[14] *It should be understood that Mr. Donato, who is representing Golden in these proceedings, is not covered by this exclusion order. Likewise, Ms. Kingsley, whose presence may be essential to provide instructions to Mr. Donato, is not covered by this exclusion order.*

[15] *Nevertheless, with the general objective of the exclusion order in mind, I **ORDER** that Ms. Kingsley be called as Golden's first witness and Mr. Donato testify as Golden's second witness. Golden will determine the order of its subsequent witnesses.*

[16] *Given the added complexity and the addition of 1 new witness by each of the parties, I **ORDER** that at the parties submit their completed witness lists as well as the order in which they plan to call them by **November 20, 2018**.*

[17] *With the addition of these two witnesses, the parties agreed that the hearing will likely require three days. I agree with this assessment and **ORDER** that the hearing be set for three days.*

[18] *Both parties indicated that they should be available for a hearing during the week of January 21, 2019, subject to the availability of their respective witnesses. I **ORDER** that both parties confirm their availability for a three-day hearing from January 21, 2019, to January 23, 2019, on or before **September 28, 2018**.*

[19] *Once the parties have confirmed their availabilities the Tribunal will confirm the exact location for the hearing in an official Notice of Hearing.*

[20] *For the reasons that follow, I will not allow the CFIA's proposed affidavit witness, Daniel Graham. His testimony appears redundant and Bill Reinhart will likely be testifying to the same facts. Furthermore, Daniel Graham's report has already been submitted within the CFIA's Agency Report previously filed with the Tribunal and, by the CFIA's own admission, his affidavit would simply summarize his notes.*

Dated at Ottawa, Ontario, on this 23rd day of July, 2018.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal