



Ottawa, Canada K1A 0B7

Date: 20190715
Docket: CART|CRAC-1913

BETWEEN:

Ken Falk

APPLICANT

- and -

Canadian Food Inspection Agency (CFIA)

RESPONDENT

**BEFORE: Patricia L. Farnese
Member**

**WITH: Mr. Delwen Stander representing the Applicant; and
Ms. Brett Love and Ms. Lisa Riddle representing the Respondent**

In the matter of an application to the Canada Agricultural Review Tribunal (Tribunal) pursuant to subsection 12(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), for a review of Notice of Violation #1516WA0112, accompanied by a \$10,000 penalty issued pursuant to subsection 14(1) of the [Meat Inspection Act](#).

**ORDER ARISING FROM THE CASE MANAGEMENT CONFERENCE CALL HELD ON JULY
10, 2019**

1. BACKGROUND TO THE CURRENT ORDER

[1] On March 14, 2019, the Applicant sent a Notice of Constitutional Question to contest the constitutional validity of sections 13(1)(c), 13(2) and 14 of the [Meat Inspections Act](#), on the basis that these provisions allegedly infringed section 8 of the [Canadian Charter of Rights and Freedoms \(Charter\)](#).

[2] On July 4, 2019, the Canada Agricultural Review Tribunal (Tribunal) convened the parties to a second case management conference call (CMCC). The purpose of this CMCC was to invite the parties to discuss and agree on the proceedings to address the constitutional question, in preparation for the hearing set for September 30, 2019.

[3] Following this second CMCC, I issued an Order on July 5, 2019, which confirmed that the parties agreed to each submit a factum in order to permit a just and most expeditious conduct of proceedings.

[4] On July 8, 2019, the Applicant sent an email to the Tribunal, requesting that I convene the parties to another CMCC, so that he might have the opportunity to provide further submissions in regards to the "exchange" of factums in advance of the hearing.

[5] Following this request, I convened a third CMCC on July 10, 2019.

2. APPLICANT'S SUBMISSIONS

[6] The Applicant reassessed his position and now alleges that the proceedings agreed were inappropriate and prejudicial to his case. He asserts that the submission of legal arguments and relevant case law prior to the hearing would breach the Applicant's right to a full and complete defence.

[7] The Applicant contends that the Notice of Constitutional Question is sufficient to understand the constitutional question and holds enough information to enable the Respondent to prepare a defence.

[8] The Applicant wishes to submit his written legal arguments and relevant case law at the time he intends to present his closing arguments.

3. THE NOTICE OF CONSTITUTIONAL QUESTION

[9] The Notice of Constitutional Question must include not only the facts given rise to the constitutional question, but also its legal basis, namely the nature of the constitutional principles argued, pursuant to Rule 69 of the [Federal Courts](#).

[10] To this end, the Applicant bears the onus, on the balance of probabilities, to establish two types of facts: material facts, respecting events and circumstances giving rise to the constitutional question, and legislative facts, relating to the validity of the applicable legislation.

[11] [Practice Note #13](#), therefore, provides that the Applicant has the obligation to explain the constitutional question raised by explaining how and why his rights have been infringed, or how and why government action was not justifiable.

[12] Moreover, principles governing treatment of Notices of Constitutional Questions provide that a constitutional question should not be decided in a factual vacuum. The parties and any intervening Attorneys General must be allowed a fair opportunity to adduce any necessary and relevant constitutional facts ([Beattie v Canada, 2006 FC 24 \(F.C.\)](#)).

4. CONSIDERATIONS OF PROCEDURAL FAIRNESS

[13] The Tribunal is mandated to deal with matters that come before it as informally and expeditiously as possible while respecting considerations of natural justice and fairness pursuant to Section 44 of [Agriculture and Agri-Food Administrative Monetary Penalties Act](#).

[14] Ensuring that the parties receive sufficient notice and know the case to be met is consistent with the Tribunal's duty to act fairly towards both parties.

[15] The right to know the case to be met requires the Applicant to produce sufficient information to provide the Respondent with a reasonable and meaningful opportunity to answer the case before the decision maker renders its decision ([Quebec \(Attorney General\) v. Canada \(National Energy Board\), \[1994\] 1 SCR 159](#)).

[16] I disagree with the Applicant that his Notice of Constitutional Question provides sufficient detail to meet the standards outlined in ([Beattie v Canada, 2006 FC 24 \(F.C.\)](#)) and ([Quebec \(Attorney General\) v. Canada \(National Energy Board\), \[1994\] 1 SCR 159](#)).

[17] Therefore, the exchange of factums or legal arguments in advance of the hearing is not prejudicial to the Applicant. Rather, the failure to do so would be prejudicial to the Respondent and would breach the rules of procedural fairness.

5. THE TRIBUNAL'S AUTHORITY

[18] The Tribunal has the authority to determine any procedural matter not provided by its rules pursuant to Rule 4 of [*Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)*](#) (*Tribunal Rules*).

[19] Therefore, the Tribunal determines that the exchange of factums is the most appropriate proceeding to address the constitutional question in a fair and most expeditious matter.

6. ORDER

[20] Mindful of the principles governing the constitutional notice and procedural fairness considerations, the Tribunal finds that the Notice of Constitutional Question issued on March 14, 2019, is no sufficient to permit the Respondent's full participation to the review this matter.

[21] Thereby, the Tribunal **ORDERS** that the previous Order, issued on July 5, 2019, stands and as a result the parties are still expected to submit their respective factums to the Tribunal.

[22] The factums must still include: a statement of facts, the question in issue, the legal arguments, and the outcome sought.

[23] The Applicant is still expected to submit his factum by August **30, 2019**, and the Respondent by September **20, 2019**.

Dated at Saskatoon, Saskatchewan, on this 15th day of July, 2019.

(Original signed)

Patricia L. Farnese
Member
Canada Agricultural Review Tribunal