

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Ottawa, Canada K1A 0B7

Docket: CART – 2042

METUSH MUSTAFA

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Metush Mustafa representing the Applicant; and
Ms. Christopher Hayes and Ms. Sandy Kozak representing the Respondent**

ORDER DATE: November 28, 2019

In the matter of an application to the Canada Agricultural Review Tribunal pursuant to paragraph 9(2)c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the facts of Notice of Violation #4974-18-1868 accompanied by an \$800 penalty issued pursuant to section 40 of the [Health of Animals Regulations](#).

**ORDER ARISING FROM THE RESPONDENT'S SUBMISSIONS RECEIVED ON NOVEMBER
25, 2019**

1. BACKGROUND TO THE CURRENT ORDER

[1] Following the issuance of the Notice of Violation #4974-18-1868 (NOV), the Applicant requested, on October 15, 2018, that the Minister of Public Safety and Emergency Preparedness review the NOV pursuant to paragraph 9(2)b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On November 14, 2018, the Minister acknowledged the receipt of the Applicant's request and informed him that a ministerial decision, identified as #18-02900, would be rendered on the basis of the evidence submitted if none were received within 30 days.

[3] On November 28, 2018, the Canada Agricultural Review Tribunal (Tribunal) received the Applicant's request for the review of the Minister's decision #18-02900.

[4] During the mandatory case management conference held on October 10, 2019, the Respondent explained that, although the Applicant requested a review by the Minister of Public Safety and Emergency Preparedness, his true intention was to solely proceed before the Tribunal. As such, the Respondent decided to close the Applicant's request for a ministerial review.

[5] Given the Respondent's decision to close the Applicant's request, on November 1, 2019, the Tribunal **ORDERED** that the appeal would be dealt as a review of the Minister's decision #18-02900 in accordance with paragraph 13(2)b) of the [AAAMP Act](#).

[6] However, upon review of the parties' submissions it became unclear whether the Minister's decision #18-02900 was the decision taken to close the Applicant's request for review or if the decision #18-02900 was ever rendered. Accordingly, the Tribunal sought clarification regarding the nature of the decision taken by the Respondent.

[7] On November 25, 2019, the Respondent clarified that the decision to close the Applicant's request for a review was purely administrative—it was not a Minister's decision. As such, although the Minister's decision #18-02900 is referenced in the record and was the basis of the Applicant's request for a review to the Tribunal, it was never rendered.

[8] In light of the latter, the Tribunal's **ORDER** dated November 1, 2019, is set aside and the Applicant's request for a review will be dealt as a review of the facts of NOV #4974-18-1868 in accordance with paragraph 9(2)c) of the [AAAMP Act](#).

2. TYPE OF REVIEW AND EVIDENCE

[9] A review of the [AAAMP Act](#) reveals that it establishes a dual-track procedure for challenging a notice of violation—either to the Minister or to the Tribunal. When the Tribunal directly reviews an NOV made in accordance with paragraph 9(2)c) of the [AAAMP Act](#), it acts as a “first instance review” of an enforcement agency’s exercise of discretion to issue a notice of violation.

[10] In other words, a direct request for a review of an NOV made to the Tribunal entails that it must hear all relevant evidence and arguments presented by the parties and make a determination as to whether the NOV should be upheld or set aside based on that evidence, argument, and the applicable law.

[11] Given that this is a direct review of the facts of NOV #4974-18-1868, the parties will be allowed to present evidence and have witnesses testify during the hearing scheduled on **December 5, 2019**.

3. ORDER

[12] Considering the above-mentioned reasons, I **ORDER** that the Tribunal’s **ORDER** dated November 1, 2019, is set aside and that this request will be dealt as a review of the facts of NOV #4974-18-1868 in accordance with paragraph 9(2)c) of the [AAAMP Act](#).

[13] I **ORDER** that the Agency’s Report forms part of the evidentiary record.

[14] I **ORDER** that the Respondent’s witness, Nathan Reid, Border Services Officer and dog handler is allowed to testify at the hearing scheduled on **December 5, 2019**.

Dated at Ottawa, Ontario, on this 28th day of November 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal