

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
Mr. Christopher Hayes and Ms. Sandy Kozak representing the Respondent**

ORDER DATE: December 4, 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 CORRESPONDENCE RECEIVED ON
DECEMBER 4, 2019**

1. BACKGROUND TO THE CURRENT ORDER

[1] Following the issuance of the Notice of Violation (NOV) # 4974-18-1868, the Applicant requested, on October 15, 2018, a review of the NOV by the Minister of Public Safety and Emergency Preparedness 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 was 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] As the Applicant's true intention was solely to proceed before the Tribunal, the Respondent decided to close the Applicant's request for a ministerial review. Accordingly, on November 26, 2019, the Tribunal **ORDERED** that the Applicant's request for a review would proceed as a review of the facts of NOV # 4974-18-1868 in accordance with paragraph 9(2)c) of the [AAAMP Act](#). As such, parties were allowed to summon witnesses at the hearing scheduled on **December 5, 2019**.

[5] On December 4, 2019, the Tribunal received an email from the Respondent stating that it would not be attending the hearing scheduled December 5, 2019, because of a change in its policy regarding the implementation of section 40 of the [Health of Animals Regulations](#). Without directly indicating how this would affect the Tribunal's authority to review the matter at hand or its potential outcome, it implied that the hearing scheduled tomorrow should be cancelled.

[6] In light of the latter, for the reasons that follow, I **ORDER** that the hearing scheduled tomorrow, **December 5, 2019**, will not be postponed or adjourned. The matter will proceed and the Applicant will be able to make its case before the Tribunal regardless of the Respondent informing the Tribunal that they will not attend.

2. AUTHORITY OF THE TRIBUNAL

[7] Pursuant to section 38 of the [AAAMP Act](#) the Tribunal has "sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which it is given jurisdiction under this Act or any other Act of Parliament". A review of a NOV made in accordance with paragraph 9(2)c) of the [AAAMP Act](#) falls within its jurisdiction.

[8] The powers of the Tribunal after it concludes a review of the facts of a NOV are clearly set out in section 14(1) of the [AAAMP Act](#):

14 (1) After concluding a review requested under this Act, the Tribunal shall, by order, as the case may be,

(a) confirm, vary or set aside any decision of the Minister under section 12 or 13, or

(b) determine whether or not the person requesting the review committed a violation and, where the Tribunal decides that the person committed a violation but considers that the amount of the penalty for the violation, if any, was not established in accordance with the regulations, the Tribunal shall correct the amount of the penalty,

and the Tribunal shall cause a notice of any order made under this subsection to be served on the person who requested the review, and on the Minister.

[9] In the case at bar, this means the Tribunal must review the facts of NOV# 4974-18-1868 in accordance with its mandate and determine whether the Applicant should be held liable for a violation of section 40 of the [Health of Animals Regulations](#).

[10] A change in the Respondent's policy regarding the implementation of section 40 of the [Health of Animals Regulations](#) has no bearing on the Tribunal's authority and obligation to safeguard the rights of applicants who receive administrative monetary penalties to have their matters reviewed.

3. POSTPONING OR ADJOURNING A HEARING

[11] Rule 35 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (*Tribunal Rules*) provides that applicants may request a matter to proceed by way of an oral hearing. The Applicant elected to have an oral hearing in this matter. Accordingly, by **ORDER** dated November 1, 2019, the Tribunal scheduled a hearing on December 5, 2019.

[12] Rule 40 of the [Tribunal Rules](#) grants the Tribunal the authority to postpone or adjourn a hearing. Paragraph 40(2) further provides a mechanism for parties who wish to make such requests. It states that :

(2) Any request for a postponement or an adjournment must be made at least 8 days before the hearing date.

[13] In this case the Respondent informed the Tribunal it would not participate in the hearing scheduled tomorrow and seems to request that the Tribunal adjourn the hearing with only 24 hours' notice.

4. ANALYSIS

[14] The Tribunal fails to see how a recent change in the Respondent's policy regarding the implementation of section 40 of the [Health of Animals Regulations](#) would have any impact on the Tribunal's mandate to determine whether the Applicant should be held liable for a violation that allegedly occurred in October 2018.

[15] Additionally, the Respondent requested an adjournment 24 hours prior to the hearing, well outside the 8-day period required by Rule 40 of the [Tribunal Rules](#). The parties were informed well in advance that the matter was to proceed December 5, 2019. The Applicant has the right to put its argument forward regardless if the Respondent elects not to be present at the hearing.

[16] Considering the above-mentioned, I see no reasons not to proceed with the hearing scheduled, December 5, 2019.

5. ORDER

[17] I **ORDER** that the hearing will proceed as previously determined on December 2019, at the Courtyard Toronto Downtown, located 475 Yonge Street, Toronto, Ontario starting at 9:30 a.m. (Eastern Standard Time), in the University B Room.

Dated at Ottawa, Ontario, on this 4th day of December 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal