



Citation: *Nkeng v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2019  
CART 01

Date: 20190116  
Docket: CART | CRAC-2006

**BETWEEN:**

**Paul Nkeng,**

**APPLICANT**

**- and -**

**Minister of Public Safety and Emergency Preparedness,**

**RESPONDENT**

[Translation of the official version in French]

**BEFORE: Luc Bélanger  
Chairperson**

**WITH: Paul Nkeng, representing himself; and  
Michèle Hobbs, representing the Respondent**

In the matter of an application made by the Applicant for a review of the Minister's decision pursuant to subsection 13(2) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), for an alleged violation of section 7 [Plant Protection Act](#) (PPA), alleged by the respondent.

**DECISION ON ADMISSIBILITY**

**The Canada Agricultural Review Tribunal (Tribunal) ORDERS that the application for a review of the Minister's decision, as requested by the Applicant, is inadmissible and, pursuant to this order, is dismissed.**

## Table of Contents

REASONS .....	Erreur ! Signet non défini.
I. OVERVIEW.....	Erreur ! Signet non défini.
II. ISSUE.....	Erreur ! Signet non défini.
III. BACKGROUND .....	Erreur ! Signet non défini.
IV. ANALYSIS .....	Erreur ! Signet non défini.
V. ORDER.....	Erreur ! Signet non défini.

### **REASONS**

#### **I. OVERVIEW**

[1] On April 17, 2018, at Montréal – Pierre Elliot Trudeau International Airport, the Applicant, Paul Nkeng, imported bulbs of garlic without meeting the requirements of the [PPA](#). Upon discovering this, the Canada Border Services Agency (Agency) issued Notice of Violation No. 3961-18-0472 with an administrative monetary penalty of \$1,300 for a violation of section 7 of the [PPA](#).

[2] The Applicant filed a request for a review of the facts with the Minister of Public Safety and Emergency Preparedness (Minister). On September 21, 2018, the Minister rendered Minister’s Decision No. 18-01149, confirming the facts of Notice of Violation No. 3961-18-0472.

[3] On November 1, 2018, the Applicant filed a request for a review of Minister’s Decision No. 18-01149 with the Tribunal.

[4] A request for review is a right which Parliament has extended to applicants. However, it is important to note that each step in the review process requires all the parties to expend considerable time and money. To ensure proper use of said review process, Parliament imposed admissibility requirements on applicants which must be met for their rights to be preserved.

[5] In light of the preceding, a request will be declared admissible if the applicant meets the requirements set out in the [AAAMP Act](#), the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules).

#### **II. ISSUE**

In this case, did the Applicant meet the admissibility requirements set out in the [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#)?

### III. BACKGROUND

[6] The notice of violation was served on the Applicant in person on April 17, 2018, upon his arrival at Montréal – Pierre Elliot Trudeau International Airport.

[7] The Applicant elected to contest the notice of violation with the Minister.

[8] On September 21, 2018, the Minister issued a decision confirming the facts of the notice of violation.

[9] On November 1, 2018, the Tribunal received the request for review of the Minister's decision, by registered mail.

[10] On November 13, 2018, the Agency confirmed by email that the administrative monetary penalty of \$1,300 had not been paid.

### IV. ANALYSIS

[11] The Tribunal is an expert and independent body constituted by Parliament pursuant to subsection 27(1) of the [AAAMP Act](#).

[12] Under subsection 38(1) of the [AAAMP Act](#), it has jurisdiction to respond to requests for review of matters arising from the issuance of agriculture and agri-food administrative monetary penalties.

[13] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) set out the admissibility requirements for a request for review. It is important to note that a case will be declared inadmissible where an applicant has already paid the administrative monetary penalty.

[14] In addition, a case will be declared inadmissible where the request for review has not been filed within the prescribed time, in accordance with the conditions set by Parliament.

[15] Paragraph 13(a) of the [AAAMP Regulations](#) specifies the time within which a request for review of the Minister's decision must be filed with the Tribunal:

***13 If a person is notified that the Minister, having concluded a review, has decided that the person committed a violation***

***(a) the time within which the person may request a review of the Minister's decision by the Tribunal is 15 days after the day on which the notice is served and the request must be in writing ;***

[16] Furthermore, it is important to note that, according to the Federal Court of Appeal (FCA) in [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265 (*Clare*), the time limits for filing a request for review, as set out in the [AAAMP Act](#) and the [AAAMP Regulations](#), cannot be extended by the Tribunal.

[17] This principle is directly applicable to the Applicant's situation with regard to the filing of this request for review with the Tribunal.

[18] The time limit set in subsection 13(1) of the [AAAMP Regulations](#), which the Applicant had to comply with to preserve his right of review, was 15 days after the day on which the notice of the Minister's decision was served. The facts indicate that this deadline was not met.

[19] On this point, it is important to note that, according to [Adebogun v. Canada \(Attorney General\)](#), 2017 FCA 242 (*Adebogun*):

*[11] . . . A document sent by registered mail is deemed to be served on the 10<sup>th</sup> day after the date indicated in the receipt, whether it was actually received by the recipient or not*

[20] The Minister's decision was rendered on September 21, 2018. According to the receipt issued by the post office, the decision was mailed on September 26, 2018. In accordance with [Adebogun](#) and subsection 9(2) of the [AAAMP Regulations](#):

*9(2) [a] document sent by registered mail is served on the 10th day after the date indicated in the receipt issued by a post office.*

[21] The Minister's decision is deemed to have been served on the Applicant on October 9, 2018. Accordingly, as established under paragraph 13(a) of the [AAAMP Regulations](#), the 15-day time limit is calculated from October 10, 2018.

[22] Therefore, the last day on which the Applicant could file his request for review with the Tribunal was October 24, 2018.

[23] Although the request for review was received by an authorized mode of transmission (registered mail) on November 1, 2018, it did not meet the 15-day deadline provided in subsection 13(1) of the [AAAMP Regulations](#). On this basis, the request for review filed with the Tribunal is inadmissible.

## V. ORDER

[24] For these reasons, **I ORDER** that the request for review of Minister's Decision No. 18-01149 be declared inadmissible in accordance with subsection 13(2) of the [AAAMP Act](#). The Applicant is therefore deemed to have committed the violation as alleged in Notice of Violation No. 3961-18-0472.

[25] **I ORDER** the Applicant to pay the Agency the administrative monetary penalty of \$1,300 within thirty (30) days after the day on which notice of the Tribunal's decision is served.

[26] The Tribunal wishes to inform the Applicant that this violation is not a criminal offence. After five years, the Applicant is entitled to apply to the Minister of Agriculture and Agri-Food to have the violation removed from his record, in accordance with section 23 of the [AAAMP Act](#).

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Dated at Ottawa, Ontario, this 16th day of January, 2019.

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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal