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Docket: CART – 2042

METUSH MUSTAFA

APPLICANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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 1, 2019

In the matter of an application to the Canada Agricultural Review Tribunal pursuant to subsection 13(2)b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), for a review of the Minister's decision #18-02900 regarding Notice of Violation #4974-18-1868 accompanied by a \$800 penalty issued pursuant to subsection 40 of the [Health of Animals Regulations](#).

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

1. BACKGROUND TO THE CURRENT ORDER

[1] Following the issuance of the Notice of Violation #4974-18-1868 (NOV), the Applicant applied to the Minister of Public Safety and Emergency Preparedness for review of 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 issued the decision #18-02900 upholding the issuance of the NOV with a penalty of \$800.

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

[4] 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 the [AAAMP Act](#) pursuant to section 38(1) of the [AAAMP Act](#). To this end, the Tribunal has jurisdiction to hear this matter pursuant to section 13(2)b) of the [AAAMP Act](#).

[5] On February 21, 2019, the Tribunal found the request for review admissible.

[6] Following both parties' confirmation, a mandatory case management conference call (CMCC) was scheduled on October 10, 2019.

[7] During the CMCC, only Mr. Christopher Hayes, the representative for the Respondent attended the call.

[8] The Applicant did not attend the CMCC even if he had confirmed his attendance to the Tribunal.

[9] Following my introductory remarks and direction on the proceedings of the hearing, Mr. Hayes explained that although the Applicant requested a review by the Minister of Public Safety and Emergency Preparedness and a second one before the Tribunal, the Applicant's true intention was to solely proceed before the Tribunal.

[10] However, for the following reasons, this request for review will be dealt as a review of the Minister's decision in accordance with section 13(2)b) of the [AAAMP Act](#).

2. TYPE OF REVIEW AND EVIDENCE

[11] Once the Minister has issued a decision upholding a NOV, the Tribunal may not ignore the Minister's decision and proceed to first-instance review of the NOV. The Tribunal may only vary, confirm or set aside the Minister's decision pursuant to subsection 14(1)a) of the [AAAMP Act](#).

[12] The Tribunal performs the function of a specialized or appellant administrative tribunal reviewing an administrative decision of first-instance. Therefore, the Tribunal must assess the adequacy of the Minister's decision by considering the evidence presented before the Minister when conducting the first-instance review.

[13] In other words, the request for review of a minister's decision is not a new opportunity to re-hear or for the parties to represent all the evidence or introduce new evidence.

[14] As a result, the parties may only present new evidence with the permission of the Tribunal pursuant rule 44 of the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (*Tribunal Rules*).

[15] In the context of a review of a Minister's decision, the Tribunal is generally reluctant to admit new evidence and will tend to refuse such evidence when it was readily available when the Minister was conducting its first-instance review.

[16] For the above mentioned reasons, the Tribunal will not allow the Respondent's witness, Nathan Reid, Border Services Officer and dog handler, testimony.

[17] However, the parties will have at their disposal all the documents enclosed in the file presented to the Minister's delegate and will have the opportunity to present their respective case by referring to the Minister's decision.

[18] Since the Applicant did not attend the call, I will deal with the admission of any additional witness as a preliminary matter at the hearing.

[19] Following the Tribunal's request in a letter sent on February 21, 2019, the Respondent filed the Agency's Report to the Tribunal and thereby complied with rule 49 of the [Tribunal Rules](#).

[20] The Agency's report has been admitted into the evidentiary record.

3. ORDER OF THE PROCEEDINGS

[21] The Respondent will proceed first, given that the Minister bears the burden of proving, on a balance of probabilities, that the Applicant committed the alleged violation pursuant to section 19 of the [AAAMP Act](#).

[22] The Applicant will then proceed and present its Opening Statement.

[23] Once the parties have presented and argued their respective case, they will have the opportunity to present their Closing Statements; the Respondent will go first and the Applicant will then proceed.

[24] The Respondent will then have a right of reply.

4. ORDER

[25] Considering the above mentioned reasons, I **ORDER** that this request for review will be dealt as a review of the Minister's decision in accordance with section 13(2)b) of the [AAAMP Act](#).

[26] Additionally, I **ORDER** that the hearing to review this matter be held in Toronto, at - the Courtyard Toronto Downtown on **December 5, 2019**, starting at **9:30 a.m.**

[27] Finally, the Notice of Hearing including further details on the location will be sent shortly to the parties by email and registered mail.

Dated at Ottawa, Ontario, on this 1st day of November, 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal