



Canada Agricultural Review Tribunal      Commission de révision agricole du Canada  
Ottawa, Canada  
K1A 0B7

Citation: *Aikoriogic v Minister of Public Safety and Emergency Preparedness*, 2019 CART 18

**Dockets: CART-2131**

**BETWEEN:**

**AIKORIOGIE**

**APPLICANT**

**- AND -**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENT**

**BEFORE:    Luc Bélanger, Chairperson**

**WITH:        Mr. Otamire Aikoriogic representing the Applicant; and  
                 Ms. Tara-Lee Fraser representing the Respondent**

**DECISION    December 2, 2019  
DATE:**

## **1. INTRODUCTION**

[1] On January 27, 2019, the Applicant was served with Notice of Violation (NOV) # 4971-19-0198 upon his arrival at the Pearson International Airport located in Toronto, for importing four water bottles filled with wood chips, bark and soil which were not reported. Therefore, contravening to section 39 of the [Plant Protection Regulations](#). The NOV was issued with a penalty of \$800 by the Canada Border Services Agency.

[2] Now before the Canada Agricultural Review Tribunal (Tribunal), this matter concerns a request for review of a Minister's decision # 19-00496 upholding the NOV # 4971-19-0198, pursuant to subsection 13(2)b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[3] When submitting a request for review the Applicant must meet some basic requirements established by the legislator in order for this right to be preserved. A request for review is a right that Parliament extends to applicants which allows them, for a very limited expenditure of time and money, to have a NOV or a Minister's decision upholding the NOV, reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the issuance of a decision, considerable time and money from all parties, will be expended.

[4] Therefore, I must determine whether the Applicant met the admissibility threshold 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).

[5] For the following reasons, I found the Applicant's request for review not admissible since the Applicant failed to file a request for review within the prescribed time and manner pursuant to subsection 14(1) of the [AAAMP Regulations](#), and thereby not meeting the admissibility threshold.

## **2. BACKGROUND**

[6] On June 12, 2019, the Tribunal received a letter from the Applicant, by regular mail, requesting the Tribunal to review and set aside the Minister's decision # 19-00496.

[7] On June 13, 2019, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 13, 46 and 47 of the [Tribunal Rules](#) before or on June 28, 2019.

[8] On June 17, 2019, the Respondent complied with rule 46 of the [Tribunal Rules](#), by filing to the Tribunal a proof of service of the Minister's decision, which was delivered to the Applicant on May 21, 2019.

[9] On July 19, 2019, the Tribunal sent a second and final acknowledgement letter asking the Applicant once again to comply with rules 13 and 47 of the [Tribunal Rules](#) before or on July 19, 2019.

[10] On August 28, 2019, the Tribunal sent a third and final acknowledgement letter asking the Applicant to comply with rules 13 and 47 of the [Tribunal Rules](#) before or on September 12, 2019.

[11] On September 16, 2019, the Applicant filed, by registered mail, to the Tribunal his request for review.

### **3. ISSUE**

[12] Did the Applicant meet the admissibility threshold set out in the [AAAMP Act](#) and its regulations? Which consist of three requirements:

1. filing the request for review in the prescribed time and manner;
2. the non-payment of the penalty associated to the notice of violation, and;
3. providing the required information and motifs of the request for review under the [Tribunal Rules](#).

### **4. ANALYSIS**

[13] Before the Tribunal proceeds to a full hearing of a matter, the Tribunal must render a decision on the admissibility of the Applicant's request for review pursuant to section 48 of the [Tribunal Rules](#).

[14] Absolute bars to admissibility arise when the applicant has already paid the penalty associated to the NOV, or has failed to file the request for review within the prescribed time and manner as set in the [AAAMP Act](#) and [AAAMP Regulations](#).

[15] In the context of a request for review of a Minister's decision, the Applicant must deliver its request in the permitted mode of transmission and within 15 days after the date of service of the Minister's decision subject to the review, pursuant to subsection 13(a) of the [AAAMP Regulations](#).

[16] Furthermore, the Applicant may make a request for review of a Minister's decision by delivering it by hand or by sending it by registered mail, courier, fax or other electronic means to the Tribunal, pursuant to subsection 14(1) of the [AAAMP Regulations](#).

[17] The Federal Court of Appeal (FCA) has interpreted this provision very strictly as to not permit the delivery of a request for review by regular mail ([Re: Section 14 of the AAAMP Regulations](#)<sup>1</sup>).

[18] Similarly, the FCA articulates in [Clare](#)<sup>2</sup> that the Tribunal lacks jurisdiction to extend the clear time limits for filing a request for review which are provided by [AAAMP Act](#) and [AAAMP Regulations](#).

[19] Finally, the required method of delivery pursuant to subsection 14(1) of the [AAAMP Regulations](#) is essentially replicated in rule 13 of the [Tribunal Rules](#), which requires that any request for review made under sections 8, 9, 12(2) and 13(2) of the AAAMP Act, transmitted by fax or by electronic means, be sent by registered mail to the Tribunal within 15 days after the day on which they are transmitted.

[20] When applying the facts of this matter to the law, I conclude that the Applicant's request for review was not filed by the permitted method of delivery within the required statutory period pursuant to subsection 14(1) of the [AAAMP Regulations](#).

[21] Indeed, according to the proof of service filed by the Respondent on June 17, 2019, the Minister's decision was served on the Applicant on May 21, 2019. Therefore, the last day for the Applicant to file his request for review would have been June 5, 2019, pursuant to subsection 13(a) of the [AAAMP Regulations](#).

[22] However, the Applicant's first letter was received by the Tribunal on June 12, 2019, which was seven days after the prescribed time frame provided by the [AAAMP Regulations](#).

[23] Despite this late submission, the Tribunal granted three additional opportunities to the Applicant to file its request in the prescribed method of delivery. Yet, he failed to comply with rule 13 of the [Tribunal Rules](#) and concurrently subsection 14(1) of the [AAAMP Regulations](#).

## **5. ORDER**

[24] By failing to bring forward its request for review in the prescribed time and manner, the Applicant is deemed to have committed the violation of section 39 of the [Plant Protection Regulations as](#) indicated in the NOV, pursuant to subsection 8(2) of the [AAAMP Act](#).

[25] I therefore **ORDER** that the request for review of the Minister's decision is inadmissible, and pursuant to this order be dismissed.

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<sup>1</sup> [Reference re section 14 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations \(CA\)](#), 2012 FCA 130.

<sup>2</sup> [Clare v. Canada \(Attorney General\)](#) 2013 FCA 265.

[26] Finally, I wish to inform the Applicant that this violation is not a criminal offence. After five years, he is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 2<sup>nd</sup> day of December 2019.



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Luc Bélanger  
Chairperson  
Canada Agricultural Review Tribunal